



Victorian Commission for Gambling and Liquor Regulation

REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* (the Act) by Sunbury United Sporting Club Inc for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises, the Sunbury United Sporting Club, from 27 to 50 gaming machines.

Commission:

Miss Gail Owen, Deputy Chairman
Mr Robert Kerr, Commissioner

Appearances:

Ms Katherine Navarro, as Counsel Assisting the Commission
Mr Peter Caillard of Counsel for the Applicant, instructed by
Kearneys Legal

Date of decision:

15 August 2013

Date of reasons:

15 August 2013

Decision:

That the application be granted.

Signed:

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GAIL OWEN

Deputy Chairman



REASONS FOR DECISION

BACKGROUND

1. Sunbury United Sporting Club Inc (**the Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* (**the Act**) to amend its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Sunbury United Sporting Club, 89-107 Mitchells Lane, Sunbury (**the Club**), from 27 to 50.
2. The relevant municipal authority is Hume City Council (**Council**). On 8 July 2013, Council lodged with the Commission a number of documents indicating its opposition to the application. Council also informed the Commission that, although it had lodged a submission opposing the application, it would not attend the hearing.
3. Between 11 and 24 July 2013, the Commission received 21 objections from 18 individuals, the Sunbury Neighbourhood House, Hume Whittlesea Primary Care Partnership and Sunbury Community Health Centre. More than half the individuals objecting did not provide a residential address, but all identified themselves as local residents.
4. On 22 July 2013, the Commission held a public hearing to consider the application.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

5. Gambling on EGMs is a legal recreational and commercial activity in Victoria, so long as it is done in accordance with the Act. The Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities¹. For this reason, the Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some and harm for others.
6. In particular, the Applicant must satisfy the Commission of the "no net detriment test" and other matters outlined in section 3.4.20(1) of the Act.
7. The no net detriment test requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. If the Commission is satisfied that the net economic and social impacts of the application on the

¹ See: s 1.1(2) of the Act.



well-being of the relevant community will be either neutral or positive, there will be no net detriment resulting from the application².

8. The Commission must take into account any submissions Council makes which addresses the social and economic impact of the application on the well-being of the local community, including considering the impact of the application on the surrounding municipal district. This recognises the special role of local government in representing the people of a community³.

HUME CITY COUNCIL AND SUNBURY UNITED SPORTING CLUB

9. The City of Hume (**Hume**) is a metropolitan Local Government Area (**LGA**), located approximately 40 kilometres north-west of Melbourne and is one of Victoria's five major growth corridors. Hume LGA includes three Statistical Local Areas⁴ (**SLA**): Hume – Sunbury (**Sunbury SLA**); Hume – Craigieburn and Hume – Broadmeadows.
10. The Club is located in the Sunbury SLA. There are currently 14 gaming venues in the Sunbury SLA operating a total of 792 EGMs. The EGM density of the Sunbury SLA is 7.80 EGMs per 1,000 adults, as compared with the Hume LGA, Metropolitan and State average EGM densities of 5.82, 5.87 and 6.01 respectively.
11. The Sunbury SLA has an average gaming expenditure per adult of \$711. The Hume LGA average gaming expenditure per adult is \$795. Both figures are above the Melbourne metropolitan average of \$638.
12. The material before the Commission indicated that on the Social and Economic Index of Disadvantage⁵ (**SEIFA**) for 2011, the Hume LGA was ranked 12 out of 80 local government municipalities in Victoria, with a SEIFA score of 952. The SEIFA ranking suggests that the Hume LGA is experiencing a relatively high degree of social and economic disadvantage relative to other municipalities. However, the Sunbury SLA is ranked 154 out of 204 SLAs, with a SEIFA score of 1039. This SEIFA ranking suggests that the Sunbury SLA is not particularly disadvantaged.

² See: *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422 at 435 ("**Romsey**")

³ *Romsey Pty Ltd v VCGR* [2009] VCAT 2275 [247-249]

⁴ The Statistical Local Area (SLA) is an Australian Standard Geographical Classification (ASGC) defined area which consists of one or more Collection Districts (CDs). SLAs are Local Government Areas (LGAs), or parts thereof. Where there is no incorporated body of local government, SLAs are defined to cover the unincorporated areas. SLAs cover, in aggregate, the whole of Australia without gaps or overlays.

⁵ The SEIFA index is an Australian Bureau of Statistics product developed to assist in the assessment of the welfare of Australian communities. The SEIFA index allows the ranking of regions or areas, providing a method of determining the level of social and economic well-being in each region.



MATERIAL BEFORE THE COMMISSION

13. The Applicant provided the Commission with the following material as part of its application:

- an application form seeking an amendment to the venue operator's licence and a copy letter forwarding a copy of the application to Council;
- a Venue Patron Profile;
- a Social and Economic Impact Assessment dated April 2013, prepared by Mr Rhys Quick of Urbis Group (**Urbis report**);
- a Gaming Expenditure Estimate Report dated February 2013, prepared by Mr David Baldi of Mercury Group Victoria Inc (**Mercury report**);
- a Community Attitude Patron Survey dated 18 April 2013, prepared by Ms Christine Maddern of Market Solutions;
- the Five Year Budget of the Club;
- a witness statement of Peter John Bethune, President of the Club,;
- a witness statement of Gary Still, Venue Manager of the Club; and
- a witness statement of Paul Casey, Treasurer of the Club.

14. The Commission also had before it, and considered:

- a submission from Council dated 4 July 2013 (and filed with the Commission on 8 July 2013) which enclosed Council's draft Economic and Social Impact Submission, a paper submitted to the Council meeting held on 8 July 2013 and a copy of unconfirmed minutes of that meeting endorsing the final Social and Economic Impact Assessment;
- the objections referred to in paragraph 3 (other than one submitted after the hearing);
- a letter from the City of Melton dated 3 July 2013, opposing the application;
- an undated Pre-hearing Inspection and Compliance Report prepared by a Commission Inspector;
- an Economic and Social Impact Report dated July 2013 prepared by Commission staff; and
- an undated Size, Layout and Facilities Report prepared by Commission staff.



Evidence from the Treasurer – Paul Casey

15. Mr Casey gave evidence that he has been the Treasurer of the Club for the past 8 years, and has experience with finance matters as evidenced by his occupation as a finance controller for a construction company. Mr Casey gave a summary of the history of the Club and the introduction of 20 EGMs in 1998 (subsequently increased to 27 EGMs). Mr Casey gave evidence that the gaming revenue from these machines was the biggest financial contributor to the Club. Mr Casey told the Commission that, as a result of this revenue, the Club is able to provide a number of facilities to its members and the public and lease sporting ovals from Council which are used by 25 to 30 teams.
16. Mr Casey gave evidence as to the variety of teams that access the sporting grounds. Mr Casey stated that about 500 people play sport on the ovals, with local schools using the ovals twice a month and the Club's teams using the ovals every weekend. Mr Casey also noted the presence the Club has amongst the locals and the fact that all Board members were volunteers.
17. Mr Casey stated that it costs approximately \$20,000 to \$35,000 a year to maintain the grounds and light towers plus \$120,000 to \$125,000 to run sporting activities. These costs include FTA registration, payments to coaches and umpires, provision of sporting equipment and kits for juniors, award presentations and travel costs. Mr Casey gave an example of a 7 year old joining a Club team who would pay \$100 for membership as compared to nearby Club that charged \$350. Mr Casey confirmed that the gaming revenue subsidises the junior teams.
18. Mr Casey said the main reason for the application was to permit the redevelopment of the Club's premises particularly by adding a new function room/bistro area to accommodate sporting team events. Currently sporting teams had to access, and pay, other venues to hold functions due to lack of space at the Club. Mr Casey stated that if the application were unsuccessful the Club would have to delay the redevelopment by 5 to 6 years with the possibility that it not occur at all. However, Mr Casey confirmed that the Club was not fully reliant on the application being approved.
19. Mr Casey confirmed that preliminary plans for the development would be submitted to Council in the next couple of weeks. The redevelopment would take the Club to the "next level" with the potential to cater to up for 300 patrons and derive revenue from holding "outside" functions. Mr Casey said the Club will seek to borrow \$1.5-2 million for the redevelopment once the application has been determined.



20. Mr Casey confirmed that there would be an increase in the number of employees if the redevelopment proceeded. These increased numbers, on a full time equivalent basis were 3 in the kitchen (which is outsourced), 3 in the bistro and 1 to 2 to monitor the gaming room.
21. The Commission questioned Mr Casey as to the management of juniors in the Club. Mr Casey stated that juniors are not permitted in the clubhouse after 8pm. Mr Casey advised that the new function/bistro room will be completely separate from the sports bar and gaming room and will allow juniors to be present with parents when having a meal but well away from the gaming room.
22. The Commission also questioned Mr Casey on the discount given to members for alcoholic drinks. Mr Casey stated that the discount was minimal and was not such as to lead to members consuming more liquor. He also stated that staff were required to, and did, monitor the consumption of alcohol by patrons.
23. Mr Casey indicated that the proposed community contributions to be made by the Club if the Application were granted would be \$10,000, increasing to \$15,000, per year indexed for CPI. The Club would advertise annually inviting local organisations to apply for funding.
24. Mr Casey believes there will be an additional \$75,000 available to fund sporting costs in the next couple of years (the current allocation is \$120,000). The Board's aim is that the additional funds will be used to improve and repair existing sporting facilities and will allow an increase in the subsidies/sponsorships provided to the other local sporting bodies. Mr Casey gave evidence that the Club's Board did not have an issue with the Council's proposal that a representative of Council be a member of the committee which would determine the distribution of community contributions; the Board's concern being to ensure the Club remained involved in determining which local organisations received funds.

Likely Gaming Expenditure Evidence from Mercury Group – David Baldi

25. Mr Baldi gave evidence that, in his opinion, the mid-range of the Club's gaming revenue increase as a result of the application would be \$344,156, with a transfer rate of expenditure in the vicinity of 70%. Mr Baldi also opined that the net increase in gaming expenditure in the Hume LGA as a result of this application would be \$103,247, or .01%.
26. Mr Baldi stated that there would be a taxation benefit to the Club if the application were approved as State tax would reduce from 22.8% to 11.71%.



Evidence from the President – Peter John Bethune

27. Mr Bethune gave evidence that he had been the Club President for 18 years and had been involved in the Club in other roles for an even longer period.
28. Mr Bethune confirmed that the Board would advertise for submissions from local bodies for funding. Mr Bethune also indicated that he was comfortable with Council's proposal in relation to the distribution of community contributions of \$20,000 each year (adjusted for CPI) if the Commission chose to impose that as a condition.
29. Mr Bethune confirmed Mr Casey's evidence that the main benefit of the application will be to provide a dedicated function room/bistro area which will allow teams to use the Club's facilities rather than having to go elsewhere.

Evidence from the Assistant Venue Manager – Melissa Dale

30. Ms Dale adopted Mr Gary Still's witness statement as her own and gave evidence that she had worked with the Club for 8 years and in her current position for 2 years. Ms Dale confirmed that she and her staff have regular meetings with Stephen Paul from Gamblers' Help.
31. Ms Dale also confirmed that the gaming room is visible from the cashier's desk, there is an induction process for new staff, she and her staff discuss problem gambling and the Club has an escalation process in place should issues occur. Ms Dale stated that there are 2 staff monitoring the gaming room at all times and 4 staff during peak times. Ms Dale commented that the gaming room is small and many of the patrons are well known to staff.

Evidence from Neil Murray – Community Clubs Association Victoria (CCAV)

32. Mr Murray gave evidence that CCAV represents not for profit clubs and provides support in areas such as governance. It does not represent the Club.
33. The Club engaged Mr Murray to conduct an audit of its compliance. Mr Murray gave evidence that the Club complied with all its obligations. Mr Murray had made recommendations to the Club in five areas where it could improve its responsible service of gaming (RSG). These areas were the placement and numbering of signs, separating RSG training records from incident records, enhanced reporting to the Board and enhancements to the induction program. The Club has agreed to implement these recommendations.



34. Mr Murray confirmed that he was not aware of the Club having any issues in relation to problem gambling. Mr Murray's view of the application was that it would not increase problem gambling at the Club as, generally, there were available EGMs at the Club and proactive staff who knew the regular patrons and interacted with them.

Venue Patron Survey Evidence from Market Solutions – Christine Maddern

35. Ms Maddern gave evidence that the Council had suggested the patron survey be undertaken and the type of questions which should be asked. The Commission questioned Ms Maddern as to whether the survey was biased in favour of the Applicant. Ms Maddern stated that the participants were not restricted to the patrons in the gaming room, but encompassed all patrons of the Club.
36. Ms Maddern confirmed she had reviewed the Council's December 2010 Attitudinal Community Survey (Council's survey). Ms Maddern indicated some concern as to the reliability of the results of the Council's survey due to Council's choice of a general community paper based study which focused on people's attitudes to gaming rather than the Club or the application. Ms Maddern considered the Council's survey to have had a low response rate. Ms Maddern opined that people with a particular interest are more likely to participate in such surveys and, therefore, the results did not necessarily reflect the community view.

Economic and Social Impact Evidence from Urbis – Rhys Quick

37. Mr Quick was questioned about various aspects of the Council's Social and Economic Impact Assessment Report (**SEIA report**) including references to the link between increased accessibility to EGMs and an increase in the propensity for problem gambling. Mr Quick stated that, in his view, the incremental risk of problem gambling arising from an increase in EGMs reduces as the number of EGMs in the area increases, with the result that additional EGMs result in little incremental harm.
38. Mr Quick disagreed with a number of propositions in Council's SEIA report, including statements that:
- young people are a group at high risk of problem gambling (in Mr Quick's opinion, young people are not traditionally associated with EGMs);
 - based on the Productivity Commission's findings, 15% of gamblers are problem gamblers (in Mr Quick's view the correct figure is slightly less than 3%);



- excessive alcohol consumption is associated with EGM play;
- a 70% transfer rate of expenditure would result in a 70% reduction in employment.

39. The Commission questioned Mr Quick about areas of disadvantage close to the Club. Mr Quick confirmed that there were areas of disadvantage but they were in the vicinity of the central business area of Sunbury and more than a kilometre from the Club.
40. Mr Quick gave evidence that there is an increased return to the community, as all EGM revenue will be returned. Mr Quick noted that the risk of problem gambling was reduced because the Club was located away from retail areas and was not in a high traffic location. Mr Quick stated that, in determining the risk the application poses, it is also important to look at the nature of venue. Mr Quick noted that the Club offered a variety of non-gaming entertainment and the gaming room size did not change with the expansion of the premises. Mr Quick concluded that there was no evidence that the application would have a discernable impact on problem gambling
41. Mr Quick confirmed that Urbis was assisting the Club in its planning permit application and had been involved with Council in a number of pre-planning permit application meetings. Mr Quick confirmed that the plans were to be submitted to Council in the next couple of weeks.

Council's Submissions

42. Council opposed the application on a number of grounds including:
- (a) the proposed increase of 23 EGMs at the Club would, on balance, amount to a net negative social and economic impact;
 - (b) the patron survey undertaken by Market Solutions was not representative of the local community;
 - (c) Council's survey indicated approximately 90% of the respondents from Sunbury and Diggers Rest opposed EGM increases at clubs within 5km of their residences;
 - (d) higher gaming expenditure cancelled out any proposed benefits in the increase in funding to sporting clubs and community contributions;



- (e) EGM density in Hume is higher than the Melbourne metropolitan average, contrary to its Local Gaming Policy and Responsible Gaming Policy 2003; and
 - (f) the Applicant had failed to produce any evidence of a demand for larger function facilities and there are other function facilities elsewhere in Sunbury.
43. The council considered that, if the application were granted, the Commission should place conditions on the licence, namely:
- the proposed community benefits be implemented in a timely manner;
 - the Club be required to make an annual contribution of \$20,000 (increased annually by CPI) to not-for-profit groups in the Sunbury community for the duration of the licence;
 - a committee, including 2 community representatives not associated with the Club, administer this funding; and
 - an annual report be provided to Council as to the membership of the selection panel and the distribution of the \$20,000 to the Sunbury community.
44. City of Melton's objection was on the basis that the increase in the number of EGMs at the Club may result in increased negative impacts for its residents in Diggers Rest. City of Melton advised that residents from Diggers Rest may access the Club's facilities, but acknowledged that Diggers Rest is over five kilometres from the Club.

Objections from local residents and local organisations

45. The Commission received a number of objections from people identifying themselves as local residents in Sunbury, as well as three local organisations that provide local community services. None of the objectors were present at the hearing.
46. The issues raised in the objections can be summarised as follows:
- (a) the Club was within one kilometre of secondary and primary schools;
 - (b) the Club was exposing children participating in sports at the Club to gambling and its associated issues;



- (c) youth are more likely to become problem gamblers than adults, in particular youths aged 18 to 24, who spend more money on the pokies than any other age group; and
- (d) family violence was a big problem in Sunbury and can be linked to problem gambling.

Applicant's submissions

- 47. The Applicant's counsel, Mr Caillard, submitted that, due to its gambling policy, Council would always oppose any application regardless of any possible positive impact of the application on the well-being of the community.
- 48. Mr Caillard noted that due to the Council not appearing at the hearing, the Applicant could not test the material provided by Council, including the matters raised with Mr Quick and, as such, the Council's submissions should be given very limited weight.
- 49. Mr Caillard submitted that the Sunbury SLA experiences the lowest level of disadvantage of all the SLAs in the Hume LGA, the Club is not in a high traffic location and does not attract convenience gaming and, accordingly, the Club was ideally placed to increase the number of EGMs.
- 50. Mr Caillard emphasised the not-for-profit nature of the Club and that any surplus revenue was channelled back into the Club's activities. Mr Caillard noted that the main benefit of the increase in gaming expenditure would be the improved premises, including the new function room that will be available to the local community and the increased community contributions.
- 51. Mr Caillard argued that an increase in gaming expenditure, even if it were low, did not necessarily amount to detriment to the community. Further, there was no evidence that the projected additional expenditure would lead to an increase in problem gambling. Mr Caillard submitted that the Club could mitigate any increase in the risk of problem gambling and relied on evidence of the Club's responsible gaming policies and procedures and Ms Dale's evidence of the Club's attitude to responsible gaming.

FINDINGS

Social Impact

- 52. Approval of new EGMs at a gaming venue has the potential to increase problem gambling and the effects of problem gambling. However, the Commission is satisfied that the Applicant has responsible gambling practices at the Club that will assist in managing this risk. The evidence before the Commission is that the Club is compliant with its regulatory obligations and has



voluntarily sought to improve its compliance, as evidenced by the voluntary audit and adoption of the auditor's recommendations.

53. The Commission notes the evidence of the assistant manager in terms of the staff's knowledge of, and ongoing relationships with, gaming patrons, as well as Mr Murray's evidence of no known problem gambling issues at the Club. The Commission is satisfied that the Applicant has a good track record in relation to the management of the Club and staff, which further mitigates the risk of an increase in problem gambling at the Club.
54. The Commission considers that the additional \$15,000 in community contributions per annum (indexed to CPI) will result in a small social benefit for the local community. The Commission notes the proposed process adopted by the Club's Board is designed to ensure funding is prioritised to local sporting bodies or not for profit organisations.
55. The Commission accepts that the area around the Club is in an upper SEIFA decile, which is indicative of an area being of low disadvantage. This is an important distinction to make in light of the low overall ranking of the Hume LGA.
56. The Commission is satisfied that the Applicant's plans for redevelopment of the Club's facilities will be of some social benefit to both the Club and the local community. The Commission notes the important and positive role the Club plays in the local community. Redevelopment and further expansion will allow the Club to grow in proportion to the predicted increased municipality needs. In the Commission's view the Club's contribution to, and participation in, the community's welfare as a result of sporting activities for all ages is its most significant positive social benefit.
57. The Commission considers there will be a neutral to positive social impact on the community if the application is granted.

Economic Impact

58. On all the material presented to it, the Commission considers that a substantial portion of the additional expenditure will be transferred from EGMs at other venues. However, the Commission notes that it is never possible to quantify with absolute certainty the exact amount of revenue that will be drawn from other venues. The Commission considers Mr Baldi's estimated transfer percentage of 70% to be reasonable when taking into account the accessibility to EGMs within the Hume LGA and the proximity of competing gaming venues to the Club. Council did not dispute Mr Baldi's forecast or transfer rate.



59. The Commission accepts that approval of the application will result in a net increase in gaming expenditure in the Hume LGA, but is satisfied that it is a small proportional increase in the Hume LGA and Sunbury SLA.
60. The Commission notes that an additional positive economic benefit is the taxation benefit which will provide the Club with additional revenue to contribute towards its various initiatives.
61. The Commission considers the redevelopment/expansion works associated with the Club will be of a slight economic benefit, both in the construction phase and the ongoing operation of the improved Club through employment and locally sourced contracts. The Commission does accept that the 70% transfer rate of EGM expenditure does imply some transfer in employment but agrees with Mr Quick that it is unlikely to result in a 70% reduction across the other venues. The upgrading of the Club's premises is also a benefit insofar as it results in an increase in competition.
62. The Commission is satisfied that there will be a small positive economic impact on the community if the application were approved.

Council conditions not adopted

63. The Commission is confident that the Applicant will provide the community contributions indicated in its submissions and in the evidence given at the hearing and is satisfied that the Council's proposed conditions in relation to the community contributions are unnecessary.

Failure of Council to attend

64. The Commission is disappointed at Council's failure to attend the inquiry. Due to its absence at the hearing, Council's submissions were not able to be "tested" by the Applicant and Council was not able to respond to the discrepancies identified by the Applicant's witnesses. This placed the Commission in the position that it could only consider the Applicant's submissions on those discrepancies and ultimately forced the Commission to give the Council's submissions less weight.
65. The Commission is concerned that one of the Council's reasons for failing to attend the inquiry was said to be the cost which was estimated to be \$20,000 in daily legal fees. The Commission's view is that such fees, if accurate, seem excessive for this jurisdiction, particularly when legal representation is not necessary and councils often appear by their officers.



DECISION

66. The Commission has considered the likely social and economic impacts of the application and has determined that those impacts are likely to be of some positive benefit.
67. On the material put before the Commission, it is satisfied of the other matters set out in section 3.4.20(1). Accordingly, the Commission is satisfied that it should exercise its discretion to approve the application.

The preceding document is a true copy of the Reasons for Decision of Miss Gail Owen (Deputy Chairman) and Mr Robert Kerr (Commissioner).