



Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(4) of the *Gambling Regulation Act 2003* by the Tooradin & District Sports Club Incorporated for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises, the Tooradin & District Sports Club, Tooradin Recreation Reserve, South Gippsland Highway, Tooradin, from 42 to 46 gaming machines.

Pursuant to section 28 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011*, the application was determined without a public inquiry.

Decision: That the application be granted.

Signed:

Mr Ross Kennedy

Deputy Chairman



REASONS FOR DECISION

INTRODUCTION

1. This is an application by the Tooradin & District Sports Club (**the Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Tooradin & District Sports Club, Tooradin Recreation Reserve, South Gippsland Highway, Tooradin (**the Club**), from 42 to 46.
2. The relevant municipal authority is the City of Casey (**the Council**). On 23 October 2013, the Council informed the Commission that it did not wish to make a submission in support of, or in opposition to, the Application.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (**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 communities.¹ 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. In particular, the balance is maintained by requiring an applicant who wishes to increase the number of EGMs at a venue to satisfy the Commission of the "no net detriment test" and the other matters set out in section 3.4.20(1) of the Act.²
4. 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. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.³

¹ Section 1.1(2) of the Act
² *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] (Bell J)
³ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435



5. Section 28 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* provides that where an application proposes to increase the number of gaming machines permitted at approved premises by less than 10% of the number of gaming machines currently operating at the premises, that application may be determined without the need for a public inquiry. Accordingly, this application was determined by the Commission without a public inquiry.

THE CITY OF CASEY AND THE TOORADIN & DISTRICT SPORTS CLUB

6. The City of Casey (**Casey**) is a metropolitan Local Government Area located approximately 70 kilometres south-east of Melbourne and includes the major regional centres of Narre Warren, Cranbourne and Berwick. Casey occupies four Statistical Local Areas⁴ (SLAs): Casey – Berwick, Casey – Cranbourne, Casey – Hallam, and Casey – South.
7. Casey is subject to a municipal cap of 1017 EGMs⁵. Currently there are 13 gaming venues in the municipality operating a total of 920 EGMs. If this application is granted, the installation of four additional EGMs at the Club will take the number of EGMs operating in Casey up to 924.
8. Casey has an average of 9.39 EGMs per 1,000 adults which is 21% less than the metropolitan average and 24% less than the State average. Expenditure on EGMs in the Casey municipality for the 2012-13 financial year was \$114,485,606.97 which equates to an average expenditure per adult of \$568, which is 2% less than the metropolitan average and 3% more than the State average. That said, gaming expenditure in Casey has decreased by 18.32% in real terms over the last five years compared to a 16.34% decrease in metropolitan Victoria over the same period.
9. The Club is the only gaming venue located within the Casey – South SLA. In terms of social and economic disadvantage, the Casey – South SLA is ranked 29th out of the 79 metropolitan SLAs on the SEIFA scale for disadvantage.⁶ This indicates that there is a relatively low level of disadvantage in the area in which the Club is located. Notably, when broken down into a Census

⁴ The Statistical Local Area is an Australian Standard Geographical Classification (ASGC) defined area which consists of one or more Collection Districts (CDs). SLAs are Local Government Areas, 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 overlaps.

⁵ Pursuant to section 3.4A.5(3)(b) of the Act, the Commission determined, in accordance with the criteria specified in the Minister for Gaming's Order on 15 August 2012, the maximum permissible number of gaming machine entitlements under which gaming may be conducted in each region.

⁶ Socio-Economic Indexes for Areas (SEIFA) is a product developed by the ABS to assist in the assessment of the welfare of Australian communities. The SEIFA Index allows the ranking of regions/areas, providing a method of determining the level of social and economic well-being in each region.



Collection District level, none of the collection districts within a 5km radius of the Club are in the first quintile of disadvantage. This suggests that there is little to no disadvantage in the area from which the majority of the Club's patrons are expected to be drawn from.

THE MATERIAL BEFORE THE COMMISSION

10. The Applicant provided the Commission with extensive material in support of its application, including:
 - a) Gaming Expenditure Estimate Report prepared by Mr David Baldi of Mercury Group Victoria (**Mercury Report**), dated September 2013;
 - b) Social and Economic Impact Statement Tooradin & District Sports Club, City of Casey, prepared by Kearney Guy Legal on behalf of the Applicant (**Kearney Report**);
 - c) Witness Statement (with annexures) of Ian Jarred, dated 10 September 2013;
 - d) Witness Statement (with annexures) of Tim Burgess, dated 10 September 2013;
 - e) Expert Statement of Jacqueline Anne Hutchison, dated 27 August 2013; and
 - f) Constitution of Tooradin & District Sports Club.
11. Additionally, the Commission considered an Economic and Social Impact Report dated November 2013 and a Pre-Hearing Inspection and Compliance Report, dated 9 October 2013, prepared by Commission staff.

The Tooradin & District Sports Club

12. The Commission is advised that the Club was established in 1976 and has operated at its current site since inception. The Club consists of a bistro, bar, small and large function areas that seat 50 and 120 patrons respectively, and the gaming room with 42 EGMs.
13. The Club currently has 790 full members and 29 social members. The Club provides food, sporting, function and meeting facilities to the Tooradin area, as well as other communities within Casey.



14. The Club allows community groups to use Club facilities free of charge. These facilities are used for activities such as community functions, meetings, fundraisers and presentation nights. The Club also provides its members with discounted bistro meals and drinks, as well as having access to the facilities of the Club.
15. The Club plans to use the revenue that will be derived from an additional EGM to continue to fulfil its charitable objects, increase its financial contributions to the community and further develop and implement community focused initiatives and events. The additional revenue will also assist the Club in reducing the proportion of revenue devoted to tax and will increase community contributions overall.

Social and Economic Impact Statement

16. The Club provided the Commission with a Social and Economic Impact Statement prepared by its legal advisors, Kearney Guy Legal. While the report is entitled 'Social and Economic Impact Statement', it is clear that the report is largely a collation of publicly available material with little to no analysis applied. The report contains the following disclaimer:

This document was prepared on behalf of the Applicant by Kearney Guy Legal. The sources used in its preparation are listed below. The authors are consultants to the Applicant and are not independent experts. This document is not an expert report.

A Social and Economic Impact Statement prepared on this basis places the Commission in a difficult position as it must reduce the weight it places on non-expert evidence. Further, much of the Kearney Report is not adequately referenced to source material and cannot be easily verified for accuracy.

17. For these reasons, the Commission does not consider it appropriate to place any significant weight on the Kearney Report and its conclusions. However, it is appropriate to acknowledge those parts of the report which are useful to the Commission's decision making process.
18. The Kearney Report states that the revenue from an additional 4 EGMs will be used to assist the Club in continuing and increasing the level of support the it provides to a wide variety of community organisations. An additional 4 EGMs is also likely to reduce the per machine tax



liability of the Club which will provide it with a small increase in revenue that can be used to further the Club's community support.

19. The Kearney Report considered that the risk of an increase in problem gaming as a result of approval of the application is low due to the following factors:
 - 19.1. the Club has the characteristics of a destination venue and its location does not lend itself to convenience gambling;
 - 19.2. all visitors and members are required to sign in before entering the Club which reduces anonymity and discourages problem gamblers;
 - 19.3. the municipal limit on gaming machines within Casey will not be breached; and
 - 19.4. the Club is an experienced gaming operator with effective responsible service of gaming policies and procedures which act to mitigate against the incidence of problem gaming.
20. The Kearney Report concluded that approval of the Application would have a positive social and economic impact on the community of Tooradin and the Casey municipality.

Evidence of likely EGM expenditure

21. The Applicant submitted an expenditure report prepared by Mr David Baldi of Mercury Group to estimate the likely expenditure of an additional 4 EGMs at the Club. Mr Baldi is the General Manager of the Mercury Group and has considerable experience in the hospitality industry. Despite this experience, Mr Baldi does not have any formal qualifications in providing financial or economic estimates. It is also unclear as to whether the report purports to be an expert report or otherwise.
22. The Mercury Report estimated that, based on an assessment of the current performance of EGMs in the venue, their utilisation rate and expenditure trends at the venue and throughout Casey, an additional four EGMs in the Club would generate additional annual revenue of between \$27,143 and \$54,286.
23. Mr Baldi estimated that the entirety of the additional expenditure would be transferred from other gaming venues within the municipality and, as such, should this application be approved there



would be no net increase in EGM expenditure within the municipality. Mr Baldi does not provide a rationale for his estimate of transferred expenditure.

24. Having considered the current performance of gaming machines at the Club, the Commission accepts Mr Baldi's estimate of likely EGM expenditure to be not unreasonable. However, the Commission regards with caution an estimate of transferred expenditure that appears to not have an analytical basis.

Responsible Service of Gaming

25. The Applicant submitted an expert report prepared by Ms Jacqueline Hutchinson detailing the Club's responsible service of gaming practices. Ms Hutchinson has a broad experience in hospitality venues and currently holds the position of Compliance Officer of the Mercury Group.
26. Ms Hutchinson's report states that the Club subscribes to the Mercury Responsible Gambling Initiative which includes policies and procedures covering self-exclusion, codes of conduct, staff training, complaint resolution and anti-money-laundering. According to Ms Hutchinson, there are currently 123 persons self-excluded from the Club.
27. Mr Hutchinson's report concludes that the nature of the Club, which discourages anonymity and has strong responsible service of gaming practices will mitigate against any risk of an increase in problem gambling should the application be approved.

LIKELY ECONOMIC IMPACT OF APPROVAL

28. There is often an overlap between economic and social impacts of applications to operate EGMs. Be that as it may, the Commission considers that it is useful for the purpose of the balancing exercise to identify and analyse economic and social impacts as separate categories to arrive at a net position for each before undertaking the final analysis.⁷
29. The Commission accepts that there is unlikely to be a significant increase in expenditure within Casey as a result of approval of this application. While Mr Baldi's estimate did not assist the Commission in providing a considered transferred expenditure estimate, the Commission

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Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation [2009] VCAT 2275.



regards it likely that a significant portion of the increase in expenditure at the Club will be transferred from other gaming venues in Casey.

30. Expenditure that is derived from people pursuing gaming as a recreational activity is legitimate consumption expenditure and has an economic stimulus. However, expenditure that is derived from problem gaming is an economic burden as it leads to social costs such as a loss in productivity and an increase in health and social service requirements.
31. The Commission considers there to be an economic and social benefit in strengthening the financial position of the Club through additional gaming revenue and a reduced tax liability. The on-going contributions the Club provides to community and sporting groups furthers economic stimulus within the municipality and should be seen as an ancillary benefit.
32. The Commission accepts that there is some potential for overall economic detriment of the application through possible increased problem gambling expenditure. This potentiality is limited by the policies and processes that the Applicant has in place to identify and assist problem gamblers, as well as the relatively negligible increase in the number of EGMs.
33. Accordingly, the Commission considers that there will be a slightly positive economic impact on the community if the application were to be approved.

LIKELY SOCIAL IMPACT OF APPROVAL

34. While the Commission cannot be certain of the exact benefits that the revenue from an additional EGM will bring, the Commission is satisfied that the increase in gaming revenue will be used for the betterment of the Club's members and the Tooradin and Casey communities.
35. Given the low level of disadvantage within the municipality and the small increase in gaming machines, the Commission considers that there will be a neutral social impact on the community if the application were to be approved.

CONCLUSION

36. The Commission has considered the likely social and economic impacts of the proposal and considered that those impacts are likely to be neutral to slightly positive.



37. Accordingly, the Commission considers it appropriate to exercise its discretion and approve the application.

The preceding paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy, Deputy Chairman.