



Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by the Wonthaggi Club for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises the Wonthaggi Club, 16 McBride Avenue, Wonthaggi from fifty-eight (58) to sixty-eight (68) gaming machines.

Commission: Mr Bruce Thompson, Deputy Chair
Mr Des Powell, Commissioner

Appearances: Mr Nick Tweedie of Counsel for the Applicant
(instructed by Minter Ellison)

Mr Peter O'Farrell of Counsel for the Shire of Bass Coast
(instructed by Harwood Andrews)

Mr Bronte Campbell as Counsel Assisting the Commission

Date of Hearing: 14 November 2012

Date of Decision: 26 November 2012

Decision: That the application be granted.

Signed:

Bruce Thompson
Deputy Chair



REASONS FOR DECISION

INTRODUCTION

1. This is an application by the Wonthaggi Club (the **Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Wonthaggi Club, 16 McBride Avenue, Wonthaggi (the **Club**), from 58 to 68 EGMs. The Applicant purchased 68 entitlements to operate EGMs at the 2010 Gaming Entitlements Auction (**the Auction**) and now seeks to have its venue operator's licence varied to allow the operation of the additional 10 EGMs.
2. The relevant municipal authority is the Bass Coast Shire Council (the **Council**). The Council opposed the application and was represented at the hearing of 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 See: s 1.1(2) of the Act.

² See: *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 ("Romsey").



5. Further, section 3.4.19 of the Act allows the Council to make a submission addressing the economic and social impact of the proposal on the well-being of the community and taking into account the impact of the proposal on surrounding municipal districts. The Commission is bound to take this submission into consideration when applying the no net detriment test: section 3.4.19(5) of the Act. This recognises the special role of local government in representing the people of a community.⁴

THE BASS COAST SHIRE AND THE WONTHAGGI CLUB

6. The Shire of Bass Coast (**Bass Coast**) is a rural Local Government Area located approximately 120 kilometres south-east of the Melbourne CBD and includes the major regional centres of Inverloch, Cowes and Wonthaggi. Bass Coast occupies two Statistical Local Areas⁵ (**SLAs**), Bass Coast – Phillip Island and Bass Coast – Balance. The club is located in the Bass Coast – Balance SLA.
7. Bass Coast is subject to a regional cap of 216 EGMs⁶. Currently there are 6 gaming venues within the municipality with approvals to operate up to 206 EGMs. As a result of the outcome of the Auction, only 174 EGMs are currently operating within Bass Coast.
8. The Club purchased 68 EGM entitlements at the Auction. Notably, the Wonthaggi Workmen's Club (which is located approximately 100m from the Club) purchased 7 less EGM entitlements at the Auction than it is approved to operate. The Commission acknowledges that should this application be approved, 7 EGMs will in effect be transferred from the Wonthaggi Workmen's Club to the Club and the net effect will be an additional 3 EGMs will be introduced into the township of Wonthaggi.
9. Bass Coast has an average of 6.59 EGMs per 1,000 adults which is 30% more than the rural average and 15% more than the State average. Expenditure on EGMs in the Bass Coast for the 2011-2012 financial year was \$19,134,356 which equates to an average expenditure per adult of \$724.

⁴ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] - [249].

⁵ An SLA is a general purpose spatial unit. It is the base spatial unit used to collect and disseminate statistics by the Australian Bureau of Statistics.

⁶ Pursuant to section 3.4A.5(3)(b) of the Gambling Regulation Act 2003 the Victorian Commission for Gambling and Liquor Regulation 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.



10. The Bass Coast – Balance SLA is ranked 60th out of the 84 rural SLAs on the SEIFA Index⁷ for disadvantage and contains some pockets of relative disadvantage within the SLA. Notably, when broken down into a Census Collection District level, 47% of collection districts within a 5km radius of the Club are in the first quintile of disadvantage indicating a significant level of disadvantage within the township of Wonthaggi.

THE MATERIAL BEFORE THE COMMISSION

11. The Applicant provided the Commission with extensive materials to establish the economic and social benefits that approval of the application would bring to the municipality. That material is summarised below.

Mr Stephen Curtis

12. Mr Stephen Curtis is the Secretary Manager of the Applicant and provided a witness statement and was cross-examined. Mr Curtis has been employed by the Applicant since 2009 and previously has held managerial positions at numerous gaming venues within Victoria. Mr Curtis acts under the instruction of the Board of Directors of the Club.
13. Mr Curtis told the Commission that the Club is a not-for-profit organisation with over 100 years of history. The Club consists of a bistro, alfresco dining and entertaining area, TAB, gaming lounge with 58 EGMs, private members bar and two function rooms.
14. The Club has more than 2100 members of which more than 75% live in Wonthaggi or the neighbouring towns of Inverloch and Cape Paterson. In terms of age demography, Mr Curtis gave evidence that 45% of the Club's members are aged 60 years or older and 80% of members are aged 40 years or older. In addition to members, Mr Curtis told the Commission that the Club's patronage also includes members' guests and visitors to the municipality.
15. Mr Curtis gave evidence that the Club has entered into a Memorandum of Understanding with the Wonthaggi Golf Club and Wonthaggi Bowls Club to work together to establish a Combined Community Sports Club whereby the three clubs could share facilities and resources and

⁷ 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.



strengthen the sustainability of the Clubs. When questioned on the level of financial commitment that the Club would provide to support this proposal, Mr Curtis told the Commission that the Board of Directors had yet to commit any funds to the proposal due to the proposal being in its development stage. This response was at odds with the material filed on behalf of the Club which stated that the Club was committed to providing \$1 million to support the proposal.

16. Mr Curtis told the Commission that the Applicant had a long-term goal of redeveloping the venue to increase the level of amenity for its patrons. Mr Curtis gave evidence that the Club had engaged an architectural firm and the redevelopment of the venue was costed at \$1 million. Mr Curtis told the Commission that the Club planned to fund the redevelopment from cash reserves but would not be in a position to commence the project until it had fully paid off its Gaming Machine Entitlements. Mr Curtis estimated this to be in early 2018.
17. When questioned as to whether this application would result in any additional employment at the Club, Mr Curtis told the Commission that the Applicant had already hired an additional 1 full-time equivalent staff member in anticipation of this application being approved. Mr Curtis confirmed that this position would continue whether or not this application was to be successful.
18. Mr Curtis told the Commission that in 2005, the Club applied to the then Victorian Commission for Gambling Regulation (**VCGR**) for amendment of its venue operator's licence to vary the number of EGMs permitted at the club from 46 to 58. The VCGR approved that application partially on the basis that the 12 EGMs would be transferred from the Phillip Island Football Club and the Club would provide the Phillip Island Football Club with financial support in the amount of \$22,500 per annum until the cessation of the Tabcorp and Tatts EGM duopoly.
19. Mr Curtis gave evidence that, should this application be approved, the Club was committed to providing an additional \$22,000 in cash donations to local sporting and community groups. In relation to the current sponsorship of the Phillip Island Football Club of \$22,500 per annum, Mr Curtis confirmed to the Commission that this arrangement ended with the expiry of the Tabcorp and Tatts EGM duopoly in August 2012. However, Mr Curtis told the Commission that the Club was committed to continuing to provide those funds for the benefit of the community into the future, whether they be to the Phillip Island Football Club or to other local organisations.



20. Mr Curtis told the Commission that the Club would be willing to accept a condition on the approval of this application that the Club make a minimum of \$44,500 (being the sum of the additional community contributions and what was being provided to the Phillip Island Football Club) in community contributions should the Commission have any concerns about the Club's commitment to provide the contributions.
21. Mr Curtis also told the Commission that the Club intended to enter into a major sponsorship agreement with the Wonthaggi Football & Netball Club whereby the Club would provide a one off grant of \$30,000 to assist the Football & Netball Club in funding the purchase of outdoor lighting for their sporting grounds. The Club also intends to provide the Football & Netball Club with \$56,000 over eight years to assist its management and operation. These donations however were not contingent on the approval of this application.
22. Mr Curtis gave evidence that the Club has recently entered into a lease of the Wonthaggi Golf Clubhouse (**Golf Club**) whereby the Club assists with the operation and management of the Golf Club and provides financial support to the Golf Club in the form of monthly lease payments. Mr Curtis gave evidence that since the Club entered into this arrangement, the Golf Club has improved its financial position from running at a loss to being a slightly profitable organisation. However, in cross-examination, Mr Curtis conceded without the Club's monthly lease payments, the Golf Club would still be operating at a loss.
23. Mr Curtis drew the Commission's attention to a clause in the lease of the Golf Club which would allow the Club to terminate the lease without penalty should this application be unsuccessful. In Mr Curtis' opinion, the Golf Club would struggle to survive without the Club's involvement. According to Mr Curtis, the Club intends to continue with the lease on a long term basis but would not be able to afford the lease payments without the revenue that would be derived from an increase of EGMs at the Club.
24. Mr Curtis told the Commission that, in addition to the increased revenue that the Club would receive from the additional EGMs, the Club would be mostly likely to receive a gaming tax benefit from the installation of the additional EGMs. The increase in gaming revenue, together with the tax benefit, would allow the Club to increase its community contributions and consolidate its financial position which will assist the Club in reaching its aspirational goal of establishing a Combined Community Sports Club, as well as renovating the venue.



25. Mr Curtis gave evidence that the Club strives to deliver its gaming services in a responsible manner. According to Mr Curtis, all directors, managers and gaming staff have undertaken training in the Club's Responsible Gaming Code and Self Exclusion Program. In Mr Curtis' opinion, an additional 10 EGMs at the Club will not lead to an increased risk of problem gambling within the Bass Shire.

Ms Jacqueline Hutchison

26. Ms Jacqueline Hutchison is the Compliance Officer of Mercury Group Victoria Incorporated (**Mercury**), a not-for-profit organisation established to provide regulatory compliance services to gaming venues. Ms Hutchison gave a witness statement and gave brief oral evidence at the hearing of the application. Ms Hutchinson's evidence was unchallenged by the Council.
27. Ms Hutchison gave evidence that the Club has adopted the Mercury Responsible Code of Conduct and subscribes to the Mercury Responsible Gambling Initiative, a co-ordinated program for Victorian gaming venues that covers:
- Self Exclusion;
 - Training of all staff in the operation of the Mercury Responsible Gambling Initiative;
 - Responsible Service of Gaming training;
 - Independent Complaint Resolution Process
 - Code and Program Reviews
 - Provision of all required printed material and displays; and
 - Integration with the Mercury Anti-Money-Laundering/Counter-Terrorism-Funding Program.
28. Ms Hutchison told the Commission that the Club has an excellent attitude towards regulatory compliance and exceeds its mandatory responsibilities in respect of delivering responsible gambling. In Ms Hutchison's opinion, if this application was to be successful, the Club's operations would not lead to an increased risk of problem gambling in the region.

Evidence of likely EGM expenditure

29. The Applicant provided the Commission with an expenditure report prepared by Mr Michael Clyne for Progressive Venue Services Australia Pty Ltd (**PVS**). Mr Clyne was engaged by PVS



to critique and analyse the outputs of the Geotech Model which is used to estimate likely EGM expenditure in gaming venues. The Geotech Model is a retail gravity geo-spatial model which has been presented as evidence and accepted by the Commission on numerous occasions.

30. Mr Clyne is an independent gaming expenditure expert who has appeared before the Commission to give evidence on many occasions, however not in a capacity where he has been engaged to assess the outputs of the Geotech model. Rather, in previous matters, Mr Clyne has provided the Commission with an expenditure estimate based on his own modelling and experience within the gaming industry. Nonetheless, in previous matters, the Commission has accepted the predictions of the Geotech Model and accepts that Mr Clyne is qualified to give an expert opinion on matters of gaming expenditure.
31. Mr Clyne told the Commission that the Geotech Model predicted that the annual expenditure on the 10 additional EGMs to be installed on the premises to be approximately \$830,506 of which 42.7% would be transferred from other venues. In Mr Clyne's opinion, the Geotech Model's prediction is inflated due to the over performance of the EGMs currently installed in the Club. Mr Clyne gave evidence that the EGMs currently operating in the Club have experienced exceptional performance in recent times. Mr Clyne concluded that the expenditure growth is due to the influx of workers and families associated with the construction of the desalination plant in Wonthaggi. Mr Clyne produced expenditure data collected by the Commission to demonstrate the relevant performance trends.
32. Mr Clyne told the Commission that it would be reasonable to expect that EGM expenditure within the municipality, and the Club, would reduce as the construction of the desalination plant came to a conclusion. Mr Clyne referred to recent expenditure data collected by the Commission for the Bass Coast which shows a general decline in expenditure within the municipality in the last 12 months. Accordingly, Mr Clyne is of the opinion that to produce an accurate expenditure prediction for the 10 EGMs to be installed in the Club, it is necessary to reduce the Geotech Model's output to allow for the general reduction in EGM expenditure within the municipality due to the completion of the desalination plant project. In Mr Clyne's opinion, the Geotech Model's output should be discounted to an annual expenditure of \$769,444.



33. Mr Clyne also considered the Geotech Model's transferred expenditure prediction of 42.7% to be understated. Mr Clyne told the Commission that the Geotech Model did not take into account the closure of the Isle of Wight Hotel or the reduction in EGMs in the Wonthaggi Workmen's Club and the Inverloch Hotel. In Mr Clyne's opinion, it is reasonable to expect that a significant portion of expenditure would be transferred from those venues to the Club should the additional 10 EGMs be installed in the venue. Accordingly, Mr Clyne considers it appropriate to inflate the Geotech Model's predicted transfer rate to 70%.
34. After applying the adjustments to the overall predicted expenditure and the anticipated transfer rate, Mr Clyne concluded that an additional 10 EGMs in the Club would result in an increase in expenditure within the municipality of approximately \$230,833. This would represent a 1.21% increase in overall gaming expenditure in the Bass Coast Shire.
35. The Commission accepts Mr Clyne's estimate as reasonable.

Social and Economic Impact

36. The Applicant engaged Mr Rhys Quick, a director of Urbis Pty Ltd to prepare a social and economic impact statement to accompany the application. Mr Quick gave evidence and was cross-examined. The Commission has regularly accepted that Mr Quick is qualified to give an opinion on the likely social and economic impacts of an application to use EGMs.
37. In Mr Quick's opinion the likely impact of the approval of this application on problem gambling in the Bass Coast Shire will be minimal due to the following factors:
 - seven of the 10 EGMs to be installed in the Club will, in effect, be transferred from the Wonthaggi Workmen's Club which is located approximately 100 metres from the Club;
 - the application will result in a net increase of 3 EGMs within the township of Wonthaggi and will have a minimal impact on the accessibility of EGMs within the region;
 - residents of Wonthaggi already have ready access to EGMs and an additional 10 EGMs in an already established venue does not pose any materially greater risk of problem gambling;



- the statistical profile of the Bass Coast suggests an aging population, and research suggests that the elderly age group is less vulnerable to problem gambling behaviour; and
- the Applicant is an experienced gaming venue operator with a commitment to Responsible Service of Gaming and harm minimisation.

38. Mr Quick's report stated the principal economic and social benefits of the application are derived from the increase in revenue for the Club which will allow it to:

- increase donations made to the community through the operation of its community grants fund;
- take on the Wonthaggi Golf Club lease on a long term basis thereby guaranteeing the future of the Wonthaggi Golf Club; and
- fund on-going improvements to the Club premises.

39. Mr Quick conceded that he had not seen any data in respect of the financial position the Wonthaggi Golf Club and was unable to make an independent assessment of whether or not the Golf Club was in a precarious financial position prior to the Club taking on the lease of the clubhouse.

40. Mr Quick's report stated that the principal economic and social disbenefit of the application was, as with any new EGMs and increased expenditure on EGMs, the potential to exacerbate the effects of problem gambling. Mr Quick noted that this disbenefit was unlikely to occur, or should be given low weight by the Commission, because:

- the RSG and harm minimisation measures implemented by the Applicant will minimise the likelihood of problem gambling increasing;
- there will be no significant increase in exposure of local residents or visitors to Wonthaggi to EGMs, given there is already sufficient access to EGMs within the town; and



- the additional machines to be installed into the venue will, in effect, be transferred from other venues within the municipality as a result of the outcome of the 2010 Gaming Entitlements Auction.

THE COUNCIL'S SUBMISSIONS

41. The Council opposes the application on the basis that the Council views any increase in EGM numbers to be detrimental to the municipality. With respect to this particular application however, the Council considers the township of Wonthaggi to be a vulnerable area where the impacts of problem gaming expenditure will be particularly harmful. The Council has a concern that an increase in problem gaming expenditure places a burden on individuals, their families and community support services. In support of their opposition, the Council filed two witness statements:

- a statement of Steven John Piasente dated 28 August 2012, attaching an Economic Impact Assessment; and
- a statement of Bernadette Helen Murphy dated 29 August 2012, attaching a Social and Health Impact Assessment.

Both Ms Murphy and Mr Piasente gave evidence and were cross-examined at the hearing of the application.

42. The Commission notes that the Council's policy with respect to the provision of EGMs is to do whatever possible to reduce the number of EGMs in Bass Coast. It follows then that any application whereby approval to operate EGMs is sought will be opposed by the Council without regard to any of the benefits that may arise out of that application. The Commission cannot support this approach but instead must rely on evidence based research and conclusions. The Commission considers the comments of Deputy President Dwyer and Member Sibonis in *Bendigo Stadium Ltd v Greater Bendigo CC* to be apt in this regard:

We agree with the sentiments expressed in *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* that a Council does not have licence to dictate the terms of a decision or advance an argument based upon a moral objection to gambling or the use of EGMs. The Tribunal decision must be made objectively within the context of the GR



Act, and on the evidence before it. It will be self-evident that based on that evidence, we consider the Council's opposition holds little weight in this proceeding.

43. Ms Murphy is the Social and Community Planning Team Leader at the Council and has a considerable academic background in Public Health strategic planning and evaluation. Ms Murphy gave evidence that Wonthaggi is a vulnerable town where the effects of problem gaming are felt substantially. Ms Murphy told the Commission that the location of the Club, in a strip shopping centre, was conducive to convenience gambling and that to increase the number of EGMs at the Club would be to increase the risk of problem gambling. Ms Murphy concluded that there were little to no social benefits to the application but numerous social detriments arising out of an increase in problem gambling.
44. Ms Murphy gave evidence that while the effects of problem gambling have been extensively considered, academic assessments of the effects of moderate gambling are only just starting to come to light. In Ms Murphy's view, problem gambling is only the 'tip of the iceberg' and moderate gambling will be shown to have a significantly detrimental social impact in future studies. While this may well be the case, the Commission cannot speculate as to the effects of moderate gambling without empirical evidence as to those matters.
45. Mr Piasente is the Council's Community and Economic Director. Mr Piasente informed the Commission that members of his staff produced the Economic Impact Assessment (EIA) at his direction.
46. The Commission considers the Economic Impact Assessment to be unreliable as it includes a flawed assumption that any new expenditure to the Club is new expenditure to the municipality (thereby ignoring transferred expenditure). Further, key sections of the EIA, such as the impact of EGM expenditure on employment, are based on the outputs of what is known as the REMPLAN model.
47. The Commission has previously stated that the REMPLAN model and other similar economic models cannot be relied upon. The REMPLAN model is a 'black box' economic model whereby the modelling process is shielded so as to preserve the ability to commercially exploit the model. There is an inherent difficulty with all 'black box' models as the modelling process



is unable to be analysed or tested and as such, the Commission can give little or no weight to such evidence.

48. Mr O'Farrell, on behalf of the Council, submitted that the Commission ought not grant this application as the benefits of the application do not outweigh the detriment that the application would have on the Bass Coast.
49. Mr O'Farrell acknowledged that there were benefits of the application, namely an increase in community grants, securing the ongoing viability of the Golf Club and provision of funds that would assist the Club in improving the venue. However, Mr O'Farrell submitted that those benefits were outweighed by:
- the location of the Club, in a significantly disadvantaged town and in the heart of a strip shopping centre;
 - an increase in the already high density of EGMs within Wonthaggi;
 - an increase in EGM expenditure in a municipality with an already very high average expenditure;
 - an increase in accessibility for problem gamblers; and
 - an increase in the risk of the occurrence of problem gambling.
50. Mr O'Farrell submitted to the Commission that, should it consider it appropriate to grant the application, the Commission should impose one or more of the following conditions on the approval:
- the Applicant be required to provide financial contributions to local community and sporting groups of no less than \$44,500 annually;
 - that the Commission approve the installation of an additional 7 EGMs (as opposed to 10 EGMs);
 - that the Applicant is required to agree with Council to which groups any community contributions arising out of the application be directed.



Community surveys

51. The Commission notes that neither the Applicant nor Council provided any evidence of community attitude to the proposal. This is regrettable in light of the weight that should properly be attached to such evidence.

LIKELY ECONOMIC IMPACT OF APPROVAL

52. There is frequently a large degree of 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 that it must undertake to identify and analyse economic and social impacts as separate categories to arrive at a net position for each before undertaking the final analysis.⁸
53. The Commission considers there to be a marginal economic benefit associated with this application.
54. The Commission accepts that there will be increased gaming expenditure of approximately \$230,833 in net terms within the LGA. This is an economic benefit because it is a legitimate consumption expenditure undertaken by and large by people enjoying a recreational activity. On the other hand, there is the potential for some of this revenue to come from problem gamblers leading to other economic costs such as lost productivity, increased health and social service requirements and other social costs.
55. The Commission accepts that in the context of this application the prospect of increased problem gambling is low. Nonetheless, there are two sides to the coin and not all new revenue generated from new EGMs will be an economic benefit to the community as some of this revenue is lost to the local economy through State taxes and other costs associated with the provision of EGMs.
56. The Commission considers that the proposed increase in community contributions of \$22,500 will have a slight economic and social benefit to the municipality. The Commission notes that the Club has many aspirational goals that will have an economic benefit to the municipality should they be reached. However, the Commission is not satisfied there is any certainty that



these aspirations will be reached, nor do those goals directly relate to this application. Accordingly, the Commission cannot place any weight on these matters.

57. The Commission is satisfied that it is likely that, should this application not be approved, the Wonthaggi Workman's Club could purchase an additional 7 EGM entitlements and install them in that venue. The Commission considers the risk profile of the Wonthaggi Workman's Club to be identical to the Club and notes that the Wonthaggi Workman's Club would be able to install the EGMs in the venue without the need of satisfying the no net detriment test.
58. Overall, the Commission accepts that there is a small potential for some economic downsides of the application through possible increased problem gambling expenditure. This potentiality is limited to some extent by the policies and processes that the Applicant has in place to identify and assist problem gamblers. Accordingly, the Commission considers that there will be a neutral economic impact on the community if the application were to be approved.

LIKELY SOCIAL IMPACT OF APPROVAL

59. The approval of any new EGMs has the potential to increase problem gambling and the effects of problem gambling, especially when that venue is located in a community that demonstrates relative social and economic disadvantage. In this case, the Commission is satisfied that that potential is low due to the high prevalence of EGMs in Wonthaggi and the relatively small anticipated increase in EGM expenditure. This risk is also minimised, so far as is reasonable, by the Applicant's well-developed responsible gambling policy and procedures.
60. The Commission considers there may be a social benefit associated with securing the future of the Golf Club however cannot give this matter any weight. While Mr Curtis gave secondary evidence on the viability of the Golf Club, no primary evidence was put before the Commission that demonstrated that the Golf Club was in a precarious state.
61. Similarly, the Commission would consider there to be a social and economic benefit associated with the amalgamation of the sporting clubs in Wonthaggi and the proposed renovations to the Club. However, the Applicant was unable to demonstrate that those benefits are likely to materialise as a result of this application. Accordingly, the Commission must give these matters low weight.

⁸ This is consistent with the approach taken by Justice Bell in *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275.



62. In the end, the social benefits of the proposal need to be weighed against the detriments to arrive at the net social impact. These are difficult matters to weigh and compare. However, on balance, the Commission considers that the likely social impact of the proposal will be neutral.

CONCLUSION

63. The no net detriment test in section 3.4.20(1)(c) of the Act 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.⁹
64. The Commission has considered the likely social and economic impacts of the proposal and considered that those impacts are likely to be neutral.
65. The Commission does not consider it necessary to impose a condition with regard to the community contributions. The Applicant indicated that it was willing to accept a condition on its licence that required the donations and capital works to be undertaken. This might be appropriate if significant weight were to be placed on these matters and there was some doubt about the *bona fides* of the Applicant. That is not the case in this Application. Mr Curtis gave sworn evidence of the Applicant's present intention about these matters. It would be a very serious matter if that evidence were to be false. For those reasons, the Commission does not consider a condition of the nature indicated is necessary or appropriate.
66. In regard to the two other conditions proposed by Mr O'Farrell, the Commission does not consider it appropriate to impose these conditions. In the Commission's view, it would be inappropriate for the Commission to grant approval of less machines than applied for as, in this particular application, the principal benefits of the application are derived from an increase in expenditure which is to be provided by an additional 10 EGMs. It is reasonable to assume that the same level of expenditure, and therefore the same level of anticipated benefit, could not be achieved with 7 EGMs. Further, no evidence was provided to the Commission as to the impact on the municipality 7 EGMs would have compared with 10 EGMs.

⁹

Romsey (2008) 19 VR 422, 435.



67. In terms of to which groups the community contributions should be directed, the Commission notes that both the Council and the Applicant expressed a willingness to work together to ensure that the most positive benefit is derived from those funds. While, the Commission does not consider it necessary to impose a condition requiring the Applicant to work with the Council, the Commission encourages the Club and the Council to consider setting up a formal process to determine where these funds are best distributed.
68. On the material that has been put before it, the Commission is satisfied of the other matters in section 3.4.20(1). The Commission is also satisfied that the Applicant understands and will continue to act on its obligations to, so far as is reasonable, take measures to prevent problem gambling. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the application.

The preceding [68] paragraphs are a true copy of the Reasons for Decision herein of –

Mr Bruce Thompson, Deputy Chair

Mr Des Powell, Commissioner