



Victorian Commission for Gambling and Liquor Regulation

REASONS FOR DECISION

In the matter of an application under section 3.3.4 of the *Gambling Regulation Act 2003* by the Shepparton Club Inc. for approval of the premises at 517 - 523 Wyndham Street, Shepparton as suitable for gaming with 65 gaming machines.

Commission:

Ms Gail Owen, Deputy Chairman
Mr Des Powell, Commissioner

Appearances:

Ms Margaret Kearney, Solicitor, for the Applicant

Mr Rupert Watters as Counsel Assisting the Commission

Date of Hearing:

21 November 2012

Date of Decision:

21 November 2012

Decision:

That the premises be approved as suitable for gaming with 61 gaming machines.

Signed:

Gail Owen

Deputy Chairman



REASONS FOR DECISION

INTRODUCTION

1. This is an application by the Shepparton Club Inc (**the Applicant**) for approval of the premises at 517 – 523 Wyndham Street, Shepparton (**the Proposed Premises**) as suitable for sixty-five (65) electronic gaming machines (**EGMs**). At the time of the hearing of the application, the Applicant had permission to operate up to 61 EGMs at its existing premises at 455 Wyndham Street (**the Existing Premises**), but had only obtained 46 entitlements in the gaming machine entitlements auction.
2. The relevant municipal authority is the City of Greater Shepparton (**the Council**). The Council did not oppose 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 obtain approval for approval for gaming at a new venue to satisfy the Commission of the "no net detriment test" and the other matters set out in section 3.3.7 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) (**Romsey No. 2**). Whilst the *Romsey* cases were concerned with applications for the amendment of venue operator's licences under Part 4 Division 2 of the Act, the analytical framework they establish is, for the most part, equally applicable to applications for premises approval under Part 3 Division 2.

³ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435 (**Romsey**).



5. Further, section 3.3.6 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 3.3.7(3) of the Act. This recognises the special role of local government in representing the people of a community.⁴

THE CITY OF GREATER SHEPPARTON

6. The City of Greater Shepparton is a Regional Local Government Area located approximately 180 kilometres north of the Melbourne CBD and covers an area of 2,422 km². Major centres within the Greater Shepparton LGA include Shepparton, Mooroopna and Tatura. Greater Shepparton occupies three Statistical Local Areas (SLAs),⁵ Greater Shepparton – Part A, Greater Shepparton – Part B East and Greater Shepparton – Part B West. Both the Existing and Proposed Premises are located within the Greater Shepparton – Part A SLA.
7. Greater Shepparton is subject to a regional cap of 329 EGMs. Currently, there are 7 gaming venues within the LGA with approvals to operate up to 333 EGMs, albeit only 305 entitlements have been purchased by those venues. A further venue, the Peppermill Hotel, has recently been approved to operate with 20 EGMs.
8. Greater Shepparton has an average of 6.32 EGMs per 1,000 adults which is 15% less than the regional average (7.45 EGMs per 1000 adults), but 10% above the State average (5.73 EGMs per 1000 adults). Expenditure on EGMs in Greater Shepparton for the 2011-2012 financial year was \$30,565,582.38 which equates to an average expenditure per adult of \$633 per adult, which is 1% more than the regional average (\$627 per adult per annum) and 5% more than the State average (\$602 per adult per annum).
9. The trend of gaming expenditure in Greater Shepparton is declining. Over the past five years, gaming expenditure in Greater Shepparton has declined by 11.05% in real terms. This is a somewhat smaller decline than the average decline experienced by regional areas, which was 11.60% over the same period.
10. The Greater Shepparton – Part A SLA is ranked 32nd out of 41 regional SLAs on the SEIFA

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.



Index⁶ for disadvantage and contains pockets of relative disadvantage within the SLA. When broken down into a Census Collection District level, 39% of collection districts within a 5km radius of the Proposed Premises are in the first quintile of disadvantage, indicating that they are relatively disadvantaged.

THE MATERIAL BEFORE THE COMMISSION

11. The Applicant supplied a number of witness statements in this matter. The Applicant did not, however, provide any expert evidence regarding the social or economic impact of approval of the Proposed Premises as suitable for gaming.⁷ Council did, however, provide a written report by Mr Robert Milner, an expert town planner, which did assess the social and economic impact of the application.
12. In substance, the Application raises two issues:
 - a. whether the Proposed Premises should be approved as suitable for gaming; and, if so,
 - b. whether the Proposed Premises should be approved for gaming with more EGMs than the Existing Premises.
13. In relation to the first question, the Commission is satisfied that the Proposed Premises should be approved as suitable for gaming.
14. The distance between the Proposed and Existing Premises is approximately 600m. As explained in the Applicant's material, the change of location is unlikely to have any long term effect on the economic impact produced by the venue, although it is expected to produce a number of temporary construction jobs. This is consistent with the evidence of Mr Milner.
15. Turning to the social impacts of the proposal, the Commission is satisfied that the net social impact of the approval will be positive. This is because the primary benefit of the relocation is to reduce the possibility of convenience gaming at the Club premises. As Mr Milner explained:

The existing Shepparton Club is located in the southern part of the city centre in the block between Wyndham and Maud Streets, south of Vaughan Street. It shares the block with JB

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.

⁷ The Commission acknowledges the 'Social and Economic Impact Statement' provided by the Applicant. As that Statement conceded, however, it was 'not an independent, expert report.'



HIFI, Best and Less, Chemists Warehouse and the First Choice Liquor Superstore. The club is proximate to a range of retail outlets as well as residential and commercial premises in Maud Street.

16. The proximity of so many retail uses to the Existing Premises raises a real prospect of 'convenience gaming' at the Existing Premises. Government policy is that gambling should be 'accessible, but not convenient'. This position reflects a concern that, if EGMs are too readily accessible, this may increase levels of problem gambling, by exposing vulnerable members of the population to regular temptation.
17. In contrast to the Existing Premises, the Future Premises will be located away from the Shepparton retail core in an office development. Whilst the distance between the two premises is relatively small, the context is significant. The Proposed Premises' location means that people wishing to gamble will have to consciously choose to visit them, rather than potentially drawing in gamblers who may not have intended to gamble that day.
18. For the above reasons, the Commission is satisfied that, having regard to the impacts identified in the material, the approval of the Proposed Premises will not result in a net social and economic detriment to the Greater Shepparton LGA.
19. This leaves the question of the approval for the additional four EGMs sought by the Applicant.
20. At the hearing on 21 November 2012, the Commission indicated to the Applicant that it was satisfied on the basis of the material before it that it should approve the Proposed Premises as suitable for 61 EGMs, but was not satisfied that it should approve any larger number of EGMs. It invited that Applicant to consider whether it wished to press its application for an additional 4 EGMs. Ms Kearney then indicated that the Applicant was content to have the Proposed Premises approved for use with 61 EGMs. Accordingly, it is unnecessary to resolve this matter.

CONCLUSION

21. The no net detriment test in section 3.3.7 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.⁸

22. The Commission has considered the likely social and economic impacts of the proposal and considered that those impacts are likely to be neutral or marginally positive.
23. On the material that has been put before it, the Commission is satisfied of the other matters in section 3.3.7. 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.

CONDITION

24. It will be a condition of the approval that it does not take effect until the Applicant notifies that the Commission that the development of the Proposed Premises has been completed generally in accordance with the plans supplied by the Applicant.

The preceding [24] paragraphs are a true copy of the Reasons for Decision herein of –

Ms Gail Owen, Deputy Chairman

Mr Des Powell, Commissioner

⁸ *Romsey* (2008) 19 VR 422, 435