



Victorian Commission for Gambling and Liquor Regulation

REASONS FOR DECISION

In the matter of an application by Collingwood Football Club Ltd under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* for amendment of the venue operator's licence to vary the number of gaming machines at the approved premises, the Coach and Horses, 33 Maroondah Highway, Ringwood, from eighty (80) to eighty-eight (88) gaming machines.

Commission: Mr Bruce Thompson, Acting Chairman
Ms Kate Hamond, Commissioner

Appearances: Mr Dale Curtis for the Applicant
Ms Emma Pepler for the Council
Ms Shahaan Murray as Counsel assisting the Commission

Decision: That the application be refused.

Date of Hearing: 4 February 2013

Date of Decision: 13 March 2013

Date of Reasons: 15 March 2013

Signed:

Ms Kate Hamond
Commissioner

REASONS FOR DECISION

INTRODUCTION

1. This is an application by Collingwood Football Club Ltd (**Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) at the approved premises, the Coach and Horses, 33 Maroondah Highway, Ringwood (**Venue**) from 80 to 88 EGMs.
2. The relevant municipal authority is the City of Maroondah (the **Council**). The Council opposed the application and appeared at the inquiry.

LEGISLATIVE FRAMEWORK AND THE COMMISSION'S ROLE

3. The Commission's role is to determine the application before it pursuant to the *Gambling Regulation Act 2003* (the **Act**).¹ The Act recognizes that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities, and some members of some communities.² For this reason, the Act includes safeguards to ensure a balance is struck between accommodating a lawful and legitimate recreational activity and minimising harm. In making its determination, the Commission must be satisfied that, among other things, the net economic and social impact of the new EGMs on the well-being of the community will not be detrimental (**no net detriment test**).³
4. The no net detriment 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.⁴
5. The Act allows the Council to make a submission to the Commission concerning the economic and social impact of the proposal. The Commission is bound to take any such submission into account.⁵ This recognises the special role of local government in representing the people of a community.⁶

¹ Section 3.4.20 of the Act.

² Section 1.1(2) of the Act.

³ Section 3.4.20 of the Act.

⁴ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [248]

⁵ Section 3.4.19 of the Act.

⁶ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009J VCAT 2275, [247] - [249]

THE CITY OF MAROONDAH AND THE COACH AND HORSES

6. The City of Maroondah (**Maroondah**) is a metropolitan Local Government Area (**LGA**) located approximately 30 kilometres east of the Melbourne CBD. Major centres in Maroondah LGA include Ringwood, Croydon and Heathmont. Maroondah comprises two statistical local areas (**SLAs**), Maroondah – Ringwood, and Maroondah – Croydon. The Venue is situated in the suburb of Ringwood in Maroondah – Ringwood.
7. Maroondah LGA is subject to a municipal cap of 806 EGMs.⁷ There are 10 venues operating 712 approved EGMs currently in the LGA. The EGM density and expenditure in Maroondah LGA is above average compared with other metropolitan municipalities and the state. Maroondah LGA is ranked highest out of 31 municipalities in respect of EGM density (8.38 EGMs per 1,000 adults) and 8th highest in respect of EGM expenditure per adult, per annum (\$786 per adult in 2011-12).
8. The material before the Commission indicated that on the Social and Economic Index of Disadvantage (**SEIFA**), Maroondah- Ringwood SLA is in the mid-range of disadvantage ranking 39rd out of 79 metropolitan SLAs.

MATERIAL BEFORE THE COMMISSION

9. The Applicant provided the Commission with an economic and social impact assessment in order to establish the economic and social benefits that approval of the application would bring to the municipality. That material is summarised below.
10. In opposition to the application, the Council filed an Economic and Social Impact Submission and community submissions dated 14 January 2013.
11. The Commission also had before it a statistical report titled Economic and Social Impact Report dated January 2013 (**Commission Report**) and a Pre-hearing Inspection and Compliance Report prepared by Commission officers.

⁷ Pursuant to section 3.4A.5(3A)(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.

Social and Economic Impact Statement – Urbis

12. The Applicant engaged Mr Rhys Quick, Director of Urbis Pty Ltd (**Urbis**), to prepare a Social and Economic Impact Assessment in relation to the application.
13. In the opinion of Mr Quick, the community of Maroondah LGA will not suffer a detriment from the addition of 8 EGMs to the Venue but will derive a benefit from the community contributions proposed in the application.
14. According to Mr Quick's report, the economic benefit of the application is minimal. He stated that this was due to the predicted small increase in EGM expenditure of about \$402,375 per annum (0.22%), less transferred expenditure from other venues of \$345,683. This leaves \$56,692 of 'new' expenditure at this venue as some of the transferred expenditure comes from neighbouring LGA's (City of Knox and the City of Whitehorse). The effective increase in expenditure in the Maroondah LGA is predicted to be \$148,022.
15. On the evidence given by Mr Quick, the Venue reaches peak utilisation (generally accepted to be 70% utilisation) on Thursday to Sunday evenings. In respect of the potential social impact of the application, he told the Commission that the proposed 8 additional EGMs will offer greater accessibility to patrons at the Venue during the peak periods of demand and would have a minimal impact on problem gambling.
16. Mr Quick told the Commission that the impact of the application on problem gambling in Maroondah LGA is expected to be negligible because:
 - patrons at the Venue are currently exposed to gaming and the levels of exposure will not be significantly increased by this application given the small increase in EGMs sought;
 - having recently taken over the management of the Venue, the Applicant will mitigate the risk of problem gambling by promoting and delivering a Responsible Service of Gaming Policy;
 - the Venue is not positioned to attract pedestrian traffic or convenience gambling; and
 - while EGM density and EGM expenditure in the LGA is higher than average, the impact of the application on density and expenditure will be negligible.
17. Further, Mr Quick reported that a patron survey conducted by the Applicant indicated that the majority of gaming patrons (72.7%) at the Venue come from Maroondah LGA. He noted

that while a small number of areas in Ringwood SLA exhibited high levels of relative disadvantage, Maroondah LGA had overall low levels of relative disadvantage according to the SEIFA results. He stated that higher relative disadvantage in some areas in Ringwood SLA could be attributed to the older age demographic in those areas, who were likely to be retirees.

18. Mr Quick's report stated the key economic and social benefit of the application is the distribution of \$125,000 per annum to the Collingwood Football Club Foundation Ltd (**the CFC Foundation**) and \$20,000 per annum to the Heartwell Foundation for the provision of support services.
19. At the conclusion of the inquiry the Applicant, through its representative, submitted that a \$50,000 per annum, in line with CPI, community contribution would be made to the City of Maroondah through its Community Grants Program.

Evidence of Likely Expenditure – PVS

20. The Applicant provided an expenditure report prepared by Mr Richard Whitehouse, Partner at Progressive Venue Services (**PVS**), with the application.
21. PVS applies the Geotech Model, a 'geo-spatial' model, to predict the likely expenditure generated by EGMs in gaming venues. The Geotech Model applies calculations to simulate consumer choice at a particular venue based on convenience (measured by travel time) and venue attractiveness. In this instance, the application of the Geotech Model is in the context of an increase in the number of EGMs rather than implementation of a new venue.
22. Mr Whitehouse reported that the likely increase in expenditure to be generated by 8 additional EGMs is \$402,375 per annum, \$345,683 of which would be transferred from other venues. He predicted that new expenditure in Maroondah LGA would be between \$148,022 and, at the conservative upper limit, \$200,000. The Council did not dispute the range of estimated new expenditure.
23. Mr Whitehouse gave evidence that the relatively small increase in expenditure was consistent with the small increase in EGMs proposed by the Applicant and the absence of venue improvements to increase the attractiveness of the venue to consumers.
24. The Commission accepts Mr Whitehouse's predictions as reasonable.

Evidence of Mr Scott Taylor

25. Mr Taylor is the Director of the Heartwell Foundation, which provides movement education and rehabilitation programs to children, particularly children with disabilities or illness.
26. The Heartwell Foundation currently implements programs in 15 pre-schools in the Melbourne metropolitan area (not including Maroondah LGA). The Applicant proposes to contribute \$20,000 to the Heartwell Foundation annually. Mr Taylor gave evidence that the contribution will assist up to 300 children and families in the Maroondah LGA.
27. The Council submitted that the services proposed by the Heartwell Foundation are already provided in Maroondah LGA and coordinated by a dedicated Council staff member. In response, Mr Taylor told the Commission that the Heartwell Foundation assists children to build physical and cognitive skills and educate parents and educational staff on the principles of nutrition and sound activity. He stated that, based on his observations and his previous experience as a secondary school physical education teacher, he believes that there is a current need for the programs implemented by the Heartwell Foundation because the movement programs provided by pre-schools are not adequately assisting children and parents to build these skills.
28. Mr Taylor acknowledged that the Heartwell Foundation had not yet approached the Council but proposes to work with Council to identify and respond to areas of need within the Maroondah LGA.

Evidence of Mr David Emerson

29. Mr Emerson is employed by the Applicant in the position of Director, Stadia & Community. In addition to being a member of the Applicant's executive committee, Mr Emerson is also a founding Board member of the Foundation.
30. Mr Emerson gave evidence that the CFC Foundation commenced operation in 2011 and he furnished, as part of his evidence, a copy of the CFC Foundation Trust Deed and Constitution. Mr Emerson advised that the Collingwood Football Club has, as a guiding objective, to make a significant contribution to the community and to become known as the biggest philanthropic sporting organisation in Australia, and that it intends to achieve this objective primarily through the operation of the Foundation. The CFC Foundation was

established to oversee the development and management of the Collingwood Football Club Community Centre (the **Centre**) at Victoria Park as well as the Collingwood Football Club's community partnership programs and initiatives.

31. The Collingwood Football Club as part of its commitment in relation to this application will provide \$125,000 in the first year to help fund the final stage of redevelopment works for the Community Centre at Victoria Park. In subsequent years the CFC Foundation proposes to use the contribution to support the various activities undertaken at the Centre. This redevelopment will directly benefit a range of community groups and organisations that provide services and programs for disadvantaged young people. Mr Emerson in his evidence, gave examples of the sorts of activities underway which include;

- Indigenous unemployment programs for young people;
- Delivery and promotion of services addressing mental health of young people;
- Programs for people living within Collingwood housing estates;
- Support for the development of the Collingwood Toy Library;
- Development and delivery of programs with Eating Disorders Victoria;
- Training and employment programs for young recidivists in partnership with Victoria Police; and
- Provision for safe accommodation for homeless people (the "Magpie Nest" program run in partnership with the Salvation Army).

32. The Applicant provided the Commission with the lease agreement between the Yarra City Council and the CFC Foundation for the Collingwood Football Club Centre (the Centre). Clause 17.1.3 of the lease states that the CFC Foundation may sub-lease the Centre only with the prior written consent of the Yarra City Council, which will be granted only if the Yarra City Council is reasonably satisfied that, among other things, the sub-tenant is a charitable organisation that will deliver a community benefit to the residents of Yarra City Council.

33. Mr Emerson gave evidence that the contributions from the Venue would assist the CFC Foundation to support the community in the Maroondah LGA. He noted however that there are currently no programs available in the Maroondah LGA and that the Maroondah LGA is not a particular consideration for the CFC Foundation in determining whether to support a community group. In respect of whether there will be any community benefit to the

Maroondah LGA, Mr Emerson was unable quantify the percentage of the \$125,000 likely to benefit Maroondah LGA.

Evidence of Mr Bert Morano

34. Mr Morano is the venue manager at two venues operated by the Applicant, being the Venue and The Club at Caroline Springs.
35. The Applicant commenced management of the Venue on 1 November 2012. The Venue had previously been managed by BLM management, a member of the Australian Leisure and Hospitality Group (ALH Group).
36. Mr Morano told the Commission that 60-70% of the patrons at the Venue are members and that the Venue currently has 2,000 members. His current role at the Venue is to address low staff morale, manage venue improvements and to train Ms Ingrid Marsay to assume responsibility as venue manager at the Venue in the coming months.
37. Mr Morano gave evidence that he divided his time between the Venue and The Club, and that he currently spends 70% of his time at the Venue to address issues arising from the transition from BLM management to the Applicant. He stated that his second in charge from The Club, Ms Marsay, dealt with the daily management of the Venue. Further, he told the Commission that both he and Ms Marsay had completed responsible service of gaming and responsible service of alcohol training, and that the Venue subscribes to the Community Clubs Association of the Victorian Responsible Gambling Code of Conduct. Since resuming management of the Venue, Mr Morano has contacted Gamblers Help East. He gave evidence that he has a 2-3 year relationship with Gamblers Help West in relation to his activities at The Club in Caroline Springs.
38. In relation to the responsible gaming practices at the venue, Mr Morano told the Commission that since his current role began at the venue in early November, no problem gambling issues have been reported to him. Mr Morano stated that the current practice was for incidents to be recorded in the register, and for the manager or supervisor on duty to be notified of each incident. He agreed that there may have been incidents that had not been reported to him, as the manager or supervisor would have handled the situation, and only serious breaches would be reported.
39. Mr Morano further told the Commission that in his past experience in similar roles at other venues, the incidents would be logged and then AHA would be notified through their website

in relation to the breach and then they would 'move on'. However, he envisaged that in the future, this venue would compile the incidents in a report that would then be presented to the board, however no such report has yet been compiled for this venue as he has only recently taken over.

40. Finally, Mr Morano told the Commission that a 'sign-in book' is available at the entrance of the Venue for patrons but acknowledged that it is possible to enter the Venue without signing in.
41. The Commission accepts that Ms Marsay is responsible for daily responsible gambling matters at the Venue and will be formally assuming the role of venue manager. The Applicant did not make Ms Marsay available for examination at the inquiry and Mr Morano provided limited evidence as to the responsible gambling practices of the Applicant at the Venue. As a result, the Commission is of the view that it must reduce the weight it places on the impact of these practices on mitigating any potential for problem gambling resulting from the application.

THE COUNCIL'S SUBMISSIONS

Economic and social impact statement

42. The Council lodged an economic and social impact statement prepared by Ms Diana Bell. Ms Bell appeared on behalf of the Council and was examined in respect of the economic and social impact statement. Ms Bell is a Social Policy Officer employed by the Council.
43. Ms Bell told the Commission that the Council opposes the application on the basis that an additional 8 EGMs would create a risk of increased problem gambling, in particular noting:
- the Maroondah LGA experiences high levels of EGM density;
 - the Venue is located in one of the most vulnerable areas in the Maroondah LGA and in an area likely to attract convenience gambling;
 - the indicators of vulnerability in the community relevant to the Venue, including low household income, high levels of community housing, low home ownership, high unemployment and high levels of housing stress in the Ringwood Central Activities Area (**CAA**), an area bordered by the Eastlink Highway, Ringwood bypass and railway line; and

- the opposition to the application by Gambler's Help Eastern.

44. The Council commissioned a survey to measure community attitudes toward the application. The Council received only 58 completed responses but noted that the survey was taken during the Christmas holiday period which is likely to have contributed to the low response rate.

45. Ms Bell gave evidence that 73.4% of respondents reported that their sense of wellbeing would decrease or greatly decrease if the application was granted. Further, 91.7% of respondents stated that any increase in EGMs would have a negative impact on the social and economic wellbeing of the Maroondah LGA.

46. Ms Bell gave evidence that the Commission should not give weight to the economic and social benefits outlined by the Applicant because:

- the Venue does not have a history of community contributions;
- the proposed community cash contributions represent monies derived from Maroondah LGA, but would not directly benefit the LGA. In particular the contribution to CFC Foundation would benefit the broader community and the contribution to the Heartwell Foundation would not benefit Maroondah LGA because the services to be offered are already provided in the LGA;
- the application will not result in the employment of new staff;
- there were no Venue improvements proposed in the application; and
- the Applicant does not propose to implement harm minimisation procedures to reduce the risk of problem gambling created by the application.

47. Ms Bell noted that the Council's Gaming Policy did not state that the Council will oppose all gaming applications and, if a gaming application evidenced real benefit and the community supported the application, the Council would have to take this into account when determining whether to oppose the application. She stated that in respect of this particular application, the CEO of the Council considered the economic and social impact of the community attitudes prior to making a decision to oppose the application. The research and consultation conducted by Council gives the Commission some comfort that the Council considered the relevant information prior to determining its view about this application.

48. The Council concluded on balance, that the economic and social impacts outlined by the Applicant, considered in addition to the likelihood of an increase in problem gambling within

the municipality arising from the application, the proposal would be detrimental to the Maroondah LGA.

FINDINGS BY THE COMMISSION

Economic impact

49. The range of net increase in EGM expenditure in Maroondah LGA of \$148,022 to \$200,000 was accepted by the Council and the Commission to be a reasonable estimate, and to the extent that this economic activity or 'consumer surplus' is being transferred this represents a positive economic outcome for the Maroondah LGA. It must be kept in mind however, that any increase in gaming expenditure carries with it an attendant risk of harm associated with problem gambling which has the potential of counter acting any economic advantage.
50. It should also be noted in relation to this particular application, that there is no economic activity proposed in relation to capital works or improvements to the premises or the creation of jobs.
51. Accordingly, the Commission considers that the economic impact of the approval of the application on the Maroondah LGA is neutral.

Social impact of approval

52. To some degree there is a dilemma in assessing the social impact of this particular application. Whilst the Commission notes that the contribution to the Foundation is a significant one and in our view to a very worthy cause, it does not have a positive impact on the Maroondah LGA and in fact due to the transfer of the proposed \$125,000 contribution from Maroondah, it in fact represents a disbenefit. Whilst there was not evidence presented at the hearing as to the disposition of those funds into the community it appeared that most of the monies would be devoted to activities in the Yarra City Council.
53. In *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation*⁸, VCAT noted that '*the repatriation of economic or social benefits from a gaming proposal to a different community [other than the community where the venue is situated] is more likely to comprise a disbenefit to the relevant community*'.

⁸ [2013] VCAT 101 (Red Dot) at 54 per Dwyer DP

54. The Commission does not question the commitment of Mr Taylor to providing movement education to children, particularly children with special needs and disabilities. Based on the evidence presented by the Applicant and the submissions of the Council, the Commission is not satisfied that there is a need for the services provided by the Heartwell Foundation within the community of Maroondah LGA, noting that no attempt has been made by Heartwell Foundation to engage with the Maroondah Council or indeed assess the real need for the program within the Maroondah LGA. Accordingly, the Commission must place little weight on the potential benefit to be derived from this program.
55. Insofar as the contribution of \$50,000 to the Council is concerned, the Commission is satisfied that the additional contribution would result in a social benefit to the community of Maroondah LGA.
56. Further, the Commission accepts that the additional machines will increase availability of gaming for those members of the community who enjoy gaming, resulting in a marginal social benefit to the Maroondah LGA.
57. In balance, the Commission considers that the social impact of the approval of the application on the Maroondah LGA is negative.

Conclusion

58. 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
59. The Commission has considered the likely economic and social impacts of the application and has found that the likely detriment to the well-being of the community of Maroondah LGA outweighs the likely benefits to that LGA. Accordingly, the Commission finds that the net impact of the application will be detrimental, and the application must be refused.

The preceding document is a true copy of the Reasons for Decision of Mr Bruce Thompson and Ms Kate Hamond.

⁹ *Romsey* (2008) 19 VR 422, 435.