

## Decision and reasons for decision

In the matter of two applications by Morwell Bowling Club Recreation Centre Inc under sections 3.3.11 and 3.3.16 of the *Gambling Regulation Act 2003* (Vic) for variation of approval of premises and approval of modification of a gaming machine area at the premises known as Morwell Bowling Club, located at 52 Hazelwood Road, Morwell Victoria.

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**Commission** Claire Miller, Presiding Commissioner

Dr Ron Ben-David, Deputy Chair

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**Date of decision** 23 December 2024

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**Date of reasons** 14 January 2025

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**Decision**

1. The application for variation of approval of premises under section 3.3.11 of the *Gambling Regulation Act 2003* (Vic) is granted.
2. The application for modification of the gaming machine area under section 3.3.16 of the *Gambling Regulation Act 2003* (Vic) is granted.
3. Pursuant to sections 3.4.17(4)(b) and 3.4.20 of the *Gambling Regulation Act 2003* (Vic), the Commission exercises its discretion to impose amendments to the venue operator's licence in accordance with the conditions at Appendix A.

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**Signed**



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Claire Miller

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Presiding Commissioner

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## Background

1. Morwell Bowling Club Recreation Centre Inc (**Applicant**) is the venue operator of Morwell Bowling Club (**MBC**) at 52 Hazelwood Road, Morwell VIC 3840 (**Premises**).
2. MBC was approved as a premises suitable for gaming under Chapter 3, Part 3 of the *Gambling Regulation Act 2003* (**GR Act**) and commenced trading with 20 electronic gaming machines (**EGMs**) in 1994. MBC has since been approved to increase the number of EGMs to 69.
3. MBC's website states they:
  - a. support around 19 community organisations in the local and neighbouring areas including football clubs, netball clubs, local schools and various charities and foundations; and
  - b. have over 2000 members and employ approximately 70 staff.
4. On around 20 August 2024, MBC was destroyed by a fire. The fire destroyed the building that housed the EGMs and most other facilities. A function room and the bowling greens were not destroyed.
5. The Applicant is currently rebuilding the destroyed part of the Premises, estimated to take up to two years to complete.
6. The Applicant seeks to establish a new gaming machine area (**GMA**) in an interim building constructed on one of the two bowling greens at the Premises, containing 69 EGMs as currently approved.

## Applications before the Commission for determination

7. The Applicant has submitted the following applications to the Victorian Gambling and Casino Control Commission (**Commission**):
  - a. on 6 November 2024, an application for approval of modification of the GMA in the Premises pursuant to section 3.3.16 of the GR Act, to reopen the GMA in an interim building on one of the bowling greens (**Modification Application**); and
  - b. on 6 December 2024, an application for variation of approval of premises pursuant to section 3.3.11 of the GR Act (**Variation Application**). The Applicant was required to submit a Variation Application because the layout of the Premises had changed due to the damage caused by the fire.

## Legislation and the Commission's task

### Overarching objectives

8. The GR Act includes safeguards to ensure an appropriate balance is struck between the recreational use of EGMs, and its potentially harmful impacts.
9. The objectives of the GR Act are set out in section 1.1(2), which provides, inter alia:

#### 1.1 Purpose, objectives and outline

...

(2) *The main objectives of this Act are—*

(a) *to foster responsible gambling in order to—*

(i) *minimise harm caused by problem gambling; and*

(ii) *accommodate those who gamble without harming themselves or others;*

(ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*

(b) *to ensure that gaming on gaming machines is conducted honestly;*

...

(f) *to promote tourism, employment and economic development generally in the State.*

10. Sections 8A(b), 9(1)(b) and 9(3) of the *Victorian Gambling and Casino Control Commission Act 2011* (Vic) (**VGCCC Act**) provides the Commission's objectives and functions when considering approvals, inter alia:

**8A Objectives of the Commission**

*The objectives of the Commission are-*

...

(b) *to minimise gambling harm.*

**9 Functions of the Commission**

(1) *The functions of the Commission are-*

...

(b) *to undertake... approval, authorisation and registration activities under gambling legislation...*

...

(3) *When performing functions or duties or exercising powers under the Gambling Regulation Act 2003... or any other Act, the Commission must have regard to:*

(a) *the objects of the Act conferring functions, duties or powers on the Commission; and*

(b) *the objectives of the Commission set out in section 8A.*

11. With the Commission's objectives and functions in mind, these Reasons now turn to the consideration of the Variation Application and the Modification Application below.

### Variation Application

12. The Commission's power to determine the Variation Application is contained within section 3.3.11 of the GR Act, which relevantly provides:

**3.3.11 Variation of approval**

(1) *The holder of an approval of premises must give the Commission written particulars of any change in the size or layout of the premises, without delay after that change occurs.*

(1A) *Subsection (1) applies whether or not the approval is suspended.*

(2) *If the Commission is satisfied that the change in the size or layout of the premises will not result in the number of gaming machines for the premises being increased, the Commission may, on the application of the holder of the approval, vary the approval to incorporate those changes.*

13. Section 3.3.11(2) of the GR Act therefore confers a power that may be exercised upon satisfaction that the change in the size or layout of the premises will not result in the number of gaming machines for the premises being increased.

### Modification Application

14. The Commission's power to determine the Modification Application is contained within section 3.3.16 of the GR Act, which relevantly provides:

**3.3.16 Modification of gaming machine areas**

(1) *A venue operator must not modify a gaming machine area in an approved venue without the approval of the Commission.*

*Penalty: 100 penalty units*

- (1A) *In subsection (1), a reference to an approved venue also refers to a venue whose approval under Part 3 is suspended.*
- (2) *An application for approval must be accompanied by the prescribed fee.*
- (3) *The Commission may grant, with or without conditions, or refuse to grant an application for approval of modification of a gaming machine area having regard to—*
- (a) *the size, layout and facilities of the approved venue; and*
  - (b) *any other matter that the Commission considers relevant.*

15. The Commission places particular emphasis upon section 3.3.16(3)(b) which confers a power to have regard to *any other matter* that the Commission considers relevant.

## Decision and reasons

16. The Commission has considered the material and submissions filed by the Applicant in support of the respective applications. Based on this material and the submissions made, the Commission has determined as follows:
- a. the Variation Application (being the variation of approval of premises under section 3.3.11 of the GR Act) is granted;
  - b. the Modification Application (being the modification of the gaming machine area under section 3.3.16 of the GR Act) is granted; and
  - c. pursuant to sections 3.4.17(4)(b) and 3.4.20 of the GR Act, the Commission exercises its discretion to impose amendments to the Applicant's venue operator's licence in accordance with the conditions at Appendix A.

### Variation Application

17. The Variation Application is approved pursuant to section 3.3.11 of the GR Act on the basis that the Commission is satisfied that the change in the size or layout of the Premises will not result in the number of gaming machines approved for use at the Premises being increased.

### Modification Application

18. In determining the Modification Application, the Commission may have regard to the size, layout and facilities of the approved venue pursuant to section 3.3.16(3)(a) of the GR Act, and any other matter the Commission considers relevant pursuant to section 3.3.16(3)(b) of the GR Act.

#### Consideration of size, layout and facilities

19. The Commission considered the suitability of the interim building for conducting gaming by considering the size, layout and facilities of the interim building at the approved Premises.
20. The suitability of the interim building is relevant for the conduct of gaming because the gaming machine area will be situated within the interim building. Therefore, the Commission must have regard to the size, layout and facilities of the interim building. The Applicant provided submissions to the Commission on these aspects.

#### Size

21. The size of the proposed GMA is slightly smaller (10%) than the previously approved GMA (**approved GMA**) (225 sqm vs 250 sqm, respectively).

Layout

22. The approved GMA had four windows on the perimeter walls, whereas the proposed GMA will have three windows.
  - a. Windows and adequate lighting help maintain a connection to the outside world, ensuring that patrons can track the passage of time.
  - b. This reduces the likelihood of extended, unchecked gambling sessions.
23. The number of entrances to the proposed GMA was reduced to one, from three in the approved GMA.
24. The Applicant submitted that the proposed GMA is a “destination point”, because the GMA is located in the corner of the interim building and accessible only through one corridor from the bistro.
  - a. This could be protective of harm because patrons can access other facilities (such as the toilets or bistro) without walking through the proposed GMA and being induced to gamble.
  - b. The location of this GMA within the interim structure may be protective for similar reasons.
25. The EGMs in the proposed GMA are placed in a similar layout to the previously approved GMA.

Facilities

26. The interim building is a standalone structure with air-conditioning, a full commercial kitchen and bistro and is equipped with plumbing and electricity. Supplies, furniture and monitoring equipment were installed in December 2024.
27. The interim building has alternative facilities and does not purely offer gaming. This is a measure to protect against gambling harm, as the venue can offer different services to its patrons.
28. These alternative facilities include:
  - a. within the proposed GMA: a small bar and a cashier; and
  - b. outside of the proposed GMA: a bistro and one of the bowling greens.

Any other matter relevant

29. As described above, the Commission may also consider any other matter it considers relevant. The Commission is guided by the objectives contained in the GR Act and the VGCCC Act in determining what is relevant for the Modification Application.
30. The Commission considers that compliance with relevant laws and directions, and the steps the Applicant has taken to reduce gambling harm, are relevant matters. These are relevant the Commission has a mandate to reduce gambling harm in the community, as discussed above in paragraphs 8 to 11.

Compliance

31. Compliance with relevant laws is paramount when considering modifications to GMAs to uphold legal standards, protect consumers and maintain integrity in the gambling industry.
32. The Applicant has submitted:
  - a. that there will be a Responsible Gambling Officer in the proposed GMA at all times, as required by the Ministerial Direction dated 21 February 2020, issued pursuant to section 10.6.6. of the GR Act;
  - b. the cashier and bar in the proposed GMA are compliant with all regulations and directions; and
  - c. the proposed GMA is physically discrete, and there is no entry point greater than 2.5m.
33. The Commission notes that GMAs are required by law to be physically discrete to separate the GMA from other facilities at the approved Premises. This is to reduce the possibility of inducing patrons using other facilities to attend the GMA.

### Harm Minimisation

34. The Applicant provided written submissions regarding the three windows on the south wall of the GMA. Visibility of the GMA is a harm minimisation concern because of the risk that a person walking past might see or hear the machines and be tempted to gamble.
  - a. These windows have their views obscured into the GMA from outside the GMA by a 2.7 metre high wall located 6 metres from the south wall of the GMA.
  - b. There is no public access in that 6 metre space between the walls.
35. There is adequate soundproofing. In particular:
  - a. insulation batts were installed within the walls of the GMA, with a 'R2' rating; and
  - b. a tiled acoustic panel was installed in the ceiling, with a Noise Reduction Coefficient rating of 0.55 (which is a 55 per cent rate of sound absorption).
36. The GMA also:
  - a. has the required harm minimisation / responsible gambling posters and brochures;
  - b. has three additional clocks to help patrons monitor the passing of time;
  - c. complies with the lighting requirements; and
  - d. complies with the required staff training requirements (approved Responsible Service of Gaming training course).

### **The Commission's consideration of the Modification Application factors**

37. The Commission notes that the variation to the size of the proposed GMA is very minor compared to the previously approved GMA, and that there are alternative facilities in the interim building. On these factors, the Commission considers that the proposed GMA will be suitable for gaming.
38. Regarding the layout, the Commission notes that while there is one less window in the proposed GMA, the proposed GMA is now a destination point within the overall venue layout and only contains one public entrance.
39. Therefore, having regard to the size, layout and facilities, the Commission considers that the proposed GMA would still be suitable for gaming, and that there are no factors which would indicate that the risk of gambling harm will increase to patrons in the GMA (relative to MBC's previous GMA) and to patrons accessing the interim building.
40. The Commission has also considered positively both MBC's ongoing compliance with the relevant laws, regulations and directions, and the implementation of harm minimisation measures through the design features (as discussed above in paragraphs 34 to 36). The Commission makes the finding that these may reduce the risk of gambling harm by creating an environment that is compliant with gambling laws and discourages excessive gambling.
41. The Commission has considered all the above factors as a whole and concludes that the proposed GMA is suitable for gaming, and there is no reason to suggest at this stage that the risk of gambling harm will be increased with the proposed GMA.
42. The Commission grants the approval for the Modification Application.

### **Imposition of conditions at Appendix A**

43. Harm minimisation is a core consideration of the Commission in all its functions, including when determining an application for approval under the GR Act.
44. The main objectives of the GR Act include to foster responsible gambling to minimise harm caused by problem gambling, to accommodate those who gamble without harming themselves or others, to ensure that minors are neither encouraged to gamble, nor allowed to do so, and to ensure that gambling is conducted honestly, and their management is free from criminal influence and exploitation.

45. The VGCCC Act expressly provides that the objective of the Commission is to minimise gambling harm.
46. Pursuant to section 3.4.17(4)(b) of the GR Act, the Commission gave notice in writing to the applicant on 23 December 2024 that it may consider imposing conditions upon the venue operator licence to allow the Commission to reach a state of satisfaction that the Premises continue to be suitable for the management and operation of gaming machines.
47. The Commission invited the Applicant to respond to the draft conditions at Appendix A, which were subsequently accepted by the Applicant on 23 December 2024 with no comment.
48. The Commission considers that it is necessary for the proper conduct of gaming to impose conditions upon the Applicant's venue operator licence to the effect of the conditions at Appendix A, pursuant to section 3.4.17(7)(b) of the GR Act.
49. The imposition of these conditions is not a reflection on the character or integrity of the Applicant or the Premises, rather, that any application for a new GMA or a modification of a GMA in an approved venue (despite the circumstances leading to the application) must meet minimum harm minimisation thresholds before a new GMA can be opened to the public. Each applicant seeking to offer EGMs to the public must demonstrate a commitment to harm minimisation, given the risk that gambling harm may pose.
50. The Commission has imposed the conditions at Appendix A on the Applicant's venue operator's licence, pursuant to section 3.4.20 of the GR Act.

# Appendix A

## Venue Operator Licence – Morwell Bowling Club Recreation Centre Inc (V9410090)

### Licence Conditions

This licence is subject to the following conditions:

#### Windows

1. All external windows looking into the gaming machine area (**GMA**) must be obstructed by an appropriately placed non-permeable wall no less than 2.5m high (**Wall**) or by frosted glass or other treatment to obscure vision into the GMA.
  - i. Should the Venue Operator obstruct the external windows via a Wall with more than 1m of distance between the Wall and the external windows, there must be no public access to the area between the Wall and those external windows.

#### Soundproofing

2. The GMA must have insulation batts installed within the walls of the GMA with a minimum “R-2” rating, for soundproofing.
3. The GMA must have a suspended acoustic panel ceiling installed at all times, with a minimum Noise Reduction Coefficient of 0.55, for soundproofing.

#### Breach of Conditions

4. Where the Victorian Gambling and Casino Control Commission (**Commission**) determines that the Venue Operator has not complied with one or more of these conditions, the Commission may require the Venue Operator to cease operating any electronic gaming machines at the Premises until it is satisfied that:
  - i. such failure is rectified to the satisfaction of the Commission; and
  - ii. the Venue Operator has carried out the relevant and necessary action and/or implemented the relevant and necessary systems, processes and procedures to prevent the occurrence of a future breach.