



Victorian Commission for
Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application by the Italian Australian Social and Sporting Club of Gippsland Inc. 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 at 499 – 501 Princes Highway, Morwell, from 36 to 42.

Commission: Mr M. Brennan, Chair
Ms K. Hamond, Commissioner
Mr R. Kerr, Commissioner

Date: 11 April 2012

Decision: That the application be granted

(Sgd.)


M. Brennan

REASONS FOR DECISION

11 April 2012

Mr M Brennan, Chair

Ms K Hamond, Commissioner

Mr R Kerr, Commissioner

INTRODUCTION

1. This is an application by Italian Australian Social and Sporting Club of Gippsland Inc. ("the Applicant") under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* (Vic) ("Act") for amendment of the venue operator's licence to vary the number of electronic gaming machines ("egms") at the approved premises at 499 - 501 Princes Highway, Morwell, from 36 to 42.
2. Section 28 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* ("VCGLR Act") provides that an application to amend a venue operator's licence to increase the number of egms at a venue must be held in public, unless there are special circumstances requiring that the inquiry, or part thereof, be held in private. The Commission's power to hold inquiries is found in section 28 of the VCGLR Act.
3. Determination of this type of application is governed by section 3.4.20(1) of the Act. In terms of the inquiry itself and the evidence brought the most relevant provision is section 3.4.20(1)(c), which provides:-

"(1) Without limiting the matters which the Commission may consider in deciding whether to make a proposed amendment, the Commission must not amend a venue operator's licence unless –

...

(c) if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the net economic and social impact of the amendment will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located;"

4. Upon making an application the Applicant is required by section 3.4.18(2) to send a copy of the proposal to the relevant local government authority. The relevant authority has the right, by virtue of section 3.4.19(1), to make a submission to the Commission which addresses the economic and social impact of the proposed amendment on the well-being of the community of the municipal district, taking into account the impact of the proposed amendment on surrounding districts.
5. The Applicant provided notification of this application to the relevant responsible authority, Latrobe City Council ("the Council"). Under section 3.4.19(1) of the Act, the Council had the right to make a submission on the social and economic impacts of the proposed amendment. In this case, the Council declined to exercise that right.

BACKGROUND

6. The approved premises, the Italian Australian Social and Sporting Club of Gippsland ("Club"), is located at 499 - 501 Princes Highway in Morwell in the City of Latrobe.
7. The Applicant was formed in 1960 by a small group of Italians and Australians to 'cater for the social and cultural needs of the growing Italian population of the area, as well as helping the integration process with the community at large.'¹
8. In 1962, the Applicant purchased land on the Princes Highway and purchased a shed to use as the clubhouse. The Club has operated continuously on the site since.²

PROFILE OF THE CITY OF LATROBE

9. Information on the City was provided by Mr Nick Anderson, of NBA Group, who prepared a Social and Economic Impact Assessment ("SEIA") for the Applicant, and by the Commission's Policy and Assessment Unit in an Economic and Social Impact Report ("ESIR").
10. The City of Latrobe is a regional municipality located approximately 120 kilometres east of Melbourne and covers an area of 1,426 km².

¹ NBA Group, *VCGR Application for an Additional 6 Gaming Machines*, [34]

² *Ibid*, [41]

11. The Latrobe City Local Government Area (“LGA”) is comprised of four Statistical Local Areas (“SLAs”): Latrobe (C) - Moe, Latrobe (C) - Morwell, Latrobe (C) – Traralgon and Latrobe (C) - Balance. The Club is located in the Morwell SLA.
12. Latrobe City is subject to a municipal limit of 522 egms and currently operates at that limit.
13. There was some disagreement between the SEIA and the ESIR. The SEIA treated Latrobe as metropolitan, rather than regional and different figures were supplied for the Socio-Economic Index For Areas (“SEIFA”) in respect of the same area.
14. Nonetheless, a consideration of both the SEIA and the ESIR shows the Latrobe LGA and Morwell SLA are relatively disadvantaged. In particular:
 - (a) The ESIR ranks Morwell SLA as 38th out of 41 regional SLAs in terms of disadvantage, where 41st is the most disadvantaged.
 - (b) The SEIA appears to have treated LaTrobe as metropolitan, rather than rural. Nonetheless, it noted that LaTrobe City was ranked 71st out of 78 metropolitan LGAs in terms of disadvantage, where 78th is the most disadvantaged.

- (c) In addition, the ESIR notes that 69% of collector districts within a 5km radius of the Club are within the first quintile of disadvantage and a further 9% within the second quintile.

15. Nonetheless, the relatively low SEIFA scores are a relevant consideration. Given the relative disadvantage in the area, the Commission must be particularly careful in scrutinising applications in order to ensure that the grant of an application does not cause a net detriment.

EVIDENCE AND WITNESSES

16. The Applicant called four witnesses. These were:

- (a) Mr Richard Whitehouse, of Progressive Venue Services, who gave expert evidence on the anticipated financial impact of the proposal;
- (b) Mr Nick Anderson, of NBA Group, who gave expert evidence on the anticipated social and economic impact of the proposal;
- (c) Mr Stephen Hodge, the General Manager of the Applicant; and
- (d) Mr Frank D'Urbano, the President of the Applicant.

17. In addition, as noted above, the Commission had before it the ESIR and the SEIA.

18. The central issue in this application is whether, in light of Latrobe's low SEIFA scores, the Commission is satisfied that the variation will not result in a net detriment to the well-being of the community.

SUMMARY OF DECISION

19. In this case, the Commission is satisfied that the variation will not result in a net detriment. There are two reasons for reaching this conclusion:

- (a) Changes in the nature of the Latrobe gaming market means that, notwithstanding the small increase in spending associated with this proposal, overall gaming spending in Latrobe is unlikely to increase; and
- (b) The grant of the variation will result in community benefits, principally in the form of the continued operation of the Club and the making of community contributions.

DISCUSSION OF ISSUES

Transfer of Machines / Reduction in Expenditure

20. Latrobe is currently operating at its regional limit of 522 machines. As 522 gaming machine entitlements were allocated in Latrobe, it is likely that the City will continue to operate at its limit for the foreseeable future. The effect of this is that the variation cannot result in a net increase in the number of egms in the City.

21. Despite the absence of any overall increase in the number of machines in the LGA, Mr Whitehouse gave evidence that he expected expenditure at the Club to increase by \$65,759.
22. Mr Whitehouse stated, however, that it was ‘firmly my opinion that expenditure overall in Latrobe will decline.’ As he explained, one potential outcome of the auction and approval processes is that all the egms currently housed in hotels in Latrobe will be transferred to clubs. Mr Whitehouse said in evidence that clubs typically have lower net revenue per machine (*NMR*) than a hotel with the same number of machines. As such, Mr Whitehouse concluded:

Overall regardless of the increase in expenditure as a result of this application the net impact within the LGA will either be neutral or result in a small decline.³

23. We are satisfied that grant of the variation in this case is unlikely to result in any overall increase in the level of gaming expenditure in Latrobe.

Responsible Service of Gaming

24. The Commission is satisfied that the Applicant has taken appropriate steps to ensure the responsible service of gaming. The Applicant has adopted the Victorian Gaming Machine Industry Code of Practice for Responsible Gambling and the Australian Hospitality Association Self-

³ PVS Expenditure Report, Italian Australian Club of Gippsland, [33].

Exclusion Program.⁴ There was no evidence before the Commission that the Club's arrangements were inadequate. The Commission also notes the result of the utilisation surveys which shows that peak usage occurred around meal times, suggesting that most gamblers at the Club are using gaming as an adjunct to eating and socialising, rather than an exclusive activity.⁵

COMMUNITY BENEFITS

25. The Applicant identified three benefits associated with the proposal:

- (a) Increased consumer choice in gaming;
- (b) It would place the Club in a better financial position, helping to ensure its continued operation; and
- (c) It would permit the Club to continue making community contributions.

Increased Consumer Choice

26. The Commission accepts that the introduction of additional machines is likely to lead to increased consumer choice at the Club.⁶ Both the Act and the case law recognise that the provision of increased consumer choice in gambling is a good in itself.⁷

⁴ NBA Group, *VCGR Application for an Additional 6 Gaming Machines*, [194]

⁵ *Ibid*, [57]

⁶ NBA Group, *VCGR Application for an Additional 6 Gaming Machines*, [56]

⁷ See, e.g., *Branbeau PL v Victorian Commission of Gambling Regulation* [2005] VCAT 2606, [78] – [79]; *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation & Anor* [2009] VCAT 2275, [377], [433]

27. In addition, the Commission notes the utilisation survey establishes that utilisation rates of egms regularly reach 70%.⁸ This suggests there is a degree of unmet demand among Club patrons. Providing additional machines will go some way to meeting that demand.

Continued Operation of the Club

28. The Commission is satisfied that the continued operation of the Club is a community benefit. It has operated since 1962 and clearly plays a valuable role in the community. Since 1998, the Applicant has refurbished and improved various aspects of the Club, at a cost of approximately \$3.4m.⁹ In particular, the Applicant has undertaken a three-stage renovation of much of the Club.¹⁰

29. In their evidence before the Commission, Mr Hodge and Mr D'Urbano indicated that the Club had taken out significant borrowings to undertake the renovations, but had been adversely affected by a downturn in the regional economy and the removal of machines to comply with the regional cap. Mr D'Urbano explained that, in recent years, the Club had found it difficult to service its debt and that its cash flow remained 'very tight'. He explained that the change in the Club's financial situation had also prevented it from completing its renovations, although the Commission notes that the Applicant does not, in its application form, identify completion of the renovations as a benefit of granting the proposed variation.

⁸ NBA Group, *VCGR Application for an Additional 6 Gaming Machines*, [59]

⁹ *Ibid*, Table 1, p 13

¹⁰ *Ibid*, [29]

30. The Commission accepts the evidence of Mr Hodge and Mr D'Urbano. As such, it accepts that the additional machines will make it easier for the Club to service its debt and, hence, to continue to operate. As already stated, the Commission views the continued operation of the Club as a community benefit.

Community Contributions

31. The Applicant led evidence that it made contributions of approximately \$80,000 per annum.¹¹ As set out in the SEIA, however, slightly less than 10% of these contributions were monetary contributions.¹² The remaining contributions were 'in kind' contributions, such as meal vouchers, dinners and room hire. Fully \$30,000 of these contributions was in the form of a 'subsidy on catering' on the Seniors Lunch Menu.¹³
32. The Commission is satisfied that these contributions provide benefit to the local community, although it notes the 'in kind' contributions have some element of commercial interest for the Club in terms of encouraging visitors.

Reporting Conditions

33. In the course of the inquiry, the question arose of whether the Commission should impose a condition on the Applicant's venue operator's licence requiring the Applicant to report on the community contributions they have made.

¹¹ Ibid, Table 2, pp. 16 – 18

¹² Ibid.

¹³ Ibid.

34. Mr Curtis, who appeared for the Applicant, and Mr D'Urbano both stated that the Applicant was amenable to the imposition of such a condition.

35. The Commission considers that it is open to it to impose such a condition, in an appropriate case:

(a) Section 3.4.20(3) of the Act permits the Commission to grant an amendment to a venue operator's licence 'subject to any conditions that the Commission thinks fit';

(b) The language of s 3.4.20(3) of the Act is similar to that of s 62(2) of the *Planning and Environment Act 1987* (Vic), which permits the imposition of any condition that a Responsible Authority 'thinks fit';

(c) Section 62(2) has been recognised as granting a broad, but not unlimited, power to impose conditions. As stated by Walsh J in *Allen Commercial Constructions Pty Ltd v North Sydney Municipal Council*, it is power to impose conditions

“which are reasonably capable of being regarded as related to the purpose for which the function of the authority is being exercised, as ascertained from a

consideration of the scheme and of the Act under which it is made”.¹⁴

- (d) The Commission sees no reason the same statement, *mutatis mutandis*, would not apply to the power under s 3.4.20(3). This is consistent with the observations of Bell P in *Romsey Hotel v Victorian Commission on Gambling Regulation* on the scope of the power to impose conditions under s 3.3.7.¹⁵
- (e) Applying the *Allen* test, we consider a condition imposing reporting requirements would be within power. Where a venue operator relies on community contributions to justify an amendment to their licence, it is reasonable to expect those contributions will be made. Imposing a reporting condition furthers the purposes of the Act by providing a mechanism to ensure that operators honour their promises. In the event of non-compliance, it would be open to the Commission to commence disciplinary action under s 3.4.25.

36. The Commission notes it has the power to impose such conditions but decided not to do so in this instance.

¹⁴ (1970) 123 CLR 490, 499 – 500. The Supreme Court has affirmed the application of *Allen* on a number of occasions, including most recently *Casey City Council v Seventh Day Adventist Church (Victorian Conference) Ltd* [2010] VSC 625, [58]

¹⁵ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation & Anor* [2009] VCAT 2275, [339] – [340]

The preceding 36 paragraphs are a true copy of the reasons for decision herein of –

Mr M. Brennan, Chair

Ms K. Hamond, Commissioner

Mr R. Kerr, Commissioner

Date of Hearing: 20 March 2012

Date of Decision: 11 April 2012

Date of Reasons for Decision: 11 April 2012

Counsel for the Applicant: Dale Curtis, Solicitor

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