



# Victorian Commission for Gambling and Liquor Regulation

## REASONS FOR DECISION

In the matter of an application by the Maryborough Highland Society Inc Sub-Branch Inc under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* for amendment to it's venue operator's licence to vary the number of gaming machines at the approved premises, the Maryborough Highland Society Inc, 35 High Street, Maryborough, Victoria from fifty six (56) to fifty nine (59).

**Commission:** At a public meeting of the Commission

**Date of Reasons:** 22 August 2012

**Decision:** That the application be refused

**Signed:**

**Mark Brennan**

Chair

## REASONS FOR DECISION

### Application

1. By application dated 11 April 2012, and pursuant to section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* (the **Act**), the Maryborough Highland Society Inc Sub-Branch Inc (the **Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) for amendment of its gaming venue operator licence to vary the number of Electronic Gaming Machines (**EGMs**) at the Maryborough Highland Society Inc, located at 35 High Street, Maryborough, Victoria (the **premises**) from 56 to 59.
2. The Commission refused to grant the application at a Public Meeting of the Commission held on **27 June 2012**. All Commissioners, excluding Mr Robert Kerr, were in attendance.
3. The Commission provides its Reasons for Decision in respect of the application below.

### Materials

4. The Commission was provided with the following documentation by the Applicant in support of its application:
  - 4.1. Maryborough Highland Society Inc Social and Economic Impact Report, prepared by Urbis Pty Ltd, dated April 2012;
  - 4.2. Maryborough Highland Society Inc Gaming Expenditure Report, prepared by Michael Clyne, General Manager, Mercury Group Victoria Inc dated April 2012;
  - 4.3. Witness Statement of Malcolm Graeme Blandthorn, General Manager, Maryborough Highland Society Inc, dated 17 February 2012;
  - 4.4. Witness Statement of John Inglis, President, Maryborough Highland Society Inc, dated 20 February 2012; and

4.5. Witness Statement of Jacqueline Anne Hutchison, Compliance Officer, Mercury Group Victoria Inc, dated 10 April 2012.

5. The Commission received an email from Marie McNamara, Mental Health Social Worker, dated 25 May 2012 outlining an objection to the application.
6. Additionally, the Commission has considered an Economic and Social Impact Report and Region Map (the **Commission report**) prepared by Commission staff, dated June 2012.

### **Municipal Council Submission**

7. The relevant municipal council in respect of this application is the Central Goldfields Shire.
8. The Commission received notification that the Central Goldfields Shire did not intend to make a submission in regard to this application on 21 May 2012.

### **Relevant Legislation**

9. Pursuant to section 3.4.17 of the Act, a venue operator may apply, in writing, to the Commission for amendment to the conditions of the venue operator's licence, including a variation to the number of EGMs permitted in the approved venue.
10. Section 3.4.19 provides that, on receiving notification by the Applicant of an application of this type (as required by the Act), the relevant municipal council may make a submission to the Commission:
  - 10.1. addressing the economic and social impact of the proposed amendment to the venue operator's licence on the well-being of the community in which the approved venue is located; and
  - 10.2. taking into account the impact of the proposed amendment on the surrounding municipal districts.



11. Determination of an application of this type is governed by section 3.4.20 of the Act which states that the Commission must not amend a venue operator's licence unless the Commission is satisfied that:
- 11.1. amendment of the licence does not conflict with a Ministerial direction given under section 3.2.3 of the Act;
  - 11.2. the Rural limit or municipal limit for EGMs for the region or municipal district in which the venue is located will not be exceeded by the making of the amendment; and
  - 11.3. 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.
12. After consideration of the matters set out above (and any other matters the Commission considers relevant), the Commission must decide whether or not to grant the application and must notify the venue operator of its decision.
13. The Commission must use reasonable endeavours to decide the application within 60 days of:
- 13.1. receiving notification from the relevant municipal council that it does not intend to make a submission in respect of the application; or
  - 13.2. the making of a submission by the relevant municipal council.
14. Should the Commission be minded to grant the application, the amendment to the venue operator's licence takes effect:
- 14.1. at the time the venue operator is given notice of the Commission's decision; or
  - 14.2. at any later time that is specified in the notice of the Commission's decision.

### **Ministerial Direction**

15. The granting of this application would not conflict with any Ministerial Direction given pursuant to section 3.2.3 of the Act.

### **Rural Limit on Electronic Gaming Machines**

16. The Central Goldfields Shire is subject to a Rural cap of 99 EGMs.
17. Currently, there are 96 licensed gaming machines operating in the Central Goldfields Shire and 99 gaming machine entitlements have been allocated in the Central Goldfields Shire.
18. One other venue operates EGMs within Maryborough, being the Maryborough Golf Club (the **Golf Club**). Up until 27 April 2012 the Golf Club operated 43 EGMs, however it subsequently removed three EGMs from its venue as it had only bought 40 gaming entitlements in the 2010 Gaming Entitlement Auction (the **Auction**).
19. The granting of this application would lead to an increase in the number of EGMs in the Central Goldfields region from 96 to 99 EGMs.

### **Net Economic and Social Detriment**

20. In assessing whether the granting of this application would result in a net economic and social detriment to the local community, the Commission took into account the following factors:

#### ***Maryborough Highland Society Inc***

21. The Applicant has 703 general members and 174 bowling members.
22. The Applicant has a multi-purpose venue providing hospitality services including a bistro, conference and event facilities, members lounge, TAB area and a dedicated gaming room which currently has 56 EGMs installed. The applicant describes the venue as primarily a bowling club with 7 pennant bowling teams.

23. The Applicant runs numerous activities, functions and initiatives for the benefit of its members and the Maryborough community in general, including the Highland Gathering on New Years Day, attended by 5,000-10,000 people annually. The venue also holds various sporting activities for the community including weekly darts, snooker and billiards competitions, line dancing classes, bingo, card games and morning melodies sing-a-longs.
24. The Applicant is forecasted to make cash community contributions of \$44,400 for 2012. In kind contributions to other not-for-profit organisations for the calendar year ending 2011 were valued at \$84,630.
25. The Applicant is committed to being a responsible gaming provider and has its own Responsible Gambling Code of Conduct. The Applicant also adopts and enforces the Australian Hotels Association (Victoria) Self-Exclusion Program. Further, the written submission provided by Ms Hutchison concluded that the venue exceeds its mandatory responsibilities in respect of delivering responsible gambling.
26. The Applicant seeks approval to increase the number of EGMs permitted in the venue to continue with its contributions to the community. Further, the President of the Applicant has submitted in his statement that if this application was successful their cash community contributions would increase to \$80,000 annually.

### ***The Central Goldfields Shire***

27. The approved premises are situated in the town of Maryborough which lies within the Rural Local Government Area of the Central Goldfields, located approximately 180 kilometres north-west of Melbourne.
28. Central Goldfields has an adult population of 10,214 which is the 23rd highest adult population of the 35 rural municipalities in Victoria and has a projected population growth rate of 0.1% over the next four years.



### ***Economic and Social Impact Key Indicators***

29. The Equivalised Household Income of the area immediately surrounding the approved premises is approximately 20% lower than the average for Rural Collection Districts within Victoria indicating that the economic resources available to a standard household in Maryborough are 20% lower than the average standard household in Rural Victoria.
30. Maryborough has a higher proportion of housing stress compared to the average in Rural Victoria. This indicates that the number of households in Maryborough with housing costs (rent or mortgage) greater than 30% of the household's total income is higher than the average of Rural Victoria.
31. Maryborough has the highest ranking on the scale of social-economic disadvantage when compared to Rural Victoria under the SEIFA score.<sup>1</sup> It is ranked 84 out of 84 indicating a very high proportion (75% of local government area) of people with relative socio-economic disadvantage in the area immediate to the approved premises.
32. The unemployment rate for the Statistical Local of Area of Central Goldfields is 7.36%, which is considerably higher than the average rate of unemployed for Rural Victoria, being 4.36%.

### ***Gaming Specific Key Indicators***

33. Central Goldfields currently has 9.4 EGMs per thousand adults and is ranked four out of the 26 Rural Municipalities in Victoria in terms of EGMs per thousand adults. According to the Commission report, it is noted that approval of this application would result in a 3.09% increase in the number of EGMs per thousand adults in Central Goldfields.

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<sup>1</sup> SEIFA is a measure of relative socio-economic disadvantage produced by the Australia Bureau of Statistics. The index is created by combining a number of indicators of disadvantage including low educational attainment, high employment, proportion of the population in unskilled occupations and low equivalised household income levels.

34. Central Goldfields currently has an adult population per gaming venue of 5,107 which is approximately 21% less than the average in Rural Victoria and 40% less than the State average. As this is not a new premises, approval of this application would have no effect on the adult population per gaming venue in Central Goldfields.
35. Central Goldfields has the highest gaming expenditure per adult of the 26 Rural Municipalities in Victoria with an average expenditure of \$781 per adult per year (compared to the rural average of \$356 and the State average of \$613). The Applicant estimates that approval of the application would result in a 1.92% increase in expenditure per adult.
36. Gaming expenditure in Central Goldfields has decreased by 1.3% in real terms (indexed to CPI) over the past five years. Gaming expenditure in Rural Victoria has decreased by 5.28% in real terms over the past five years. This indicates that gaming expenditure in the Central Goldfields has decreased at a significantly lower rate than that of Rural Victoria generally.

### ***Gaming Expenditure***

37. The Applicant submits that, should the application be granted, the total increased gaming expenditure for the additional 3 EGMs at the venue at the conclusion of the first twelve months of trade post transition to the new industry structure in August 2012, and applying CPI of 2.3%, would be between \$151,276 and \$302,553.
38. The applicant estimates that approximately 50% of the increased gaming expenditure will be transferred from the other venue within Central Goldfields, and 16.7% transferred from other venues outside Central Goldfields.
39. Therefore, taking into account estimated transfer from the other venue, and the estimated transfer from venues outside Central Goldfields, the estimated new gaming expenditure for this venue as a result of the additional 3 EGMs is \$100,750. The estimated gaming expenditure for this venue is based on the highest estimated increase in revenue of \$302,553.



40. The total gaming expenditure for Central Goldfields for the financial year ending 30 June 2011 was \$7,979,387.82. The impact of granting the application is therefore estimated (by the Applicant) to increase the total gaming expenditure for Central Goldfields by a figure of 1.8%.

## Decision

41. The no net detriment test requires the Commission to weigh the likely positive economic and social impacts of an application against the likely negative economic and social 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.<sup>2</sup>
42. The Act recognises that, notwithstanding individual rights of self-determination and gaming's recreational legitimacy, gaming on EGMs causes harm to some communities and some members of some communities.<sup>3</sup> It is for this reason that the Act includes safeguards to ensure that an appropriate balance is struck between a lawful and legitimate recreational activity for some and harm for others.
43. The applicant seeks approval of an additional 3 EGMs to be permitted in the approved venue. This represents an increase in EGMs in the venue of less than 10% however the Commission notes that, in real terms, the applicant is seeking to increase the overall number of EGMs in the Central Goldfields Shire, back to the level that they were prior to April 2012 when the Maryborough Golf Club reduced its number of EGMs by 3.
44. While the Commission accepts that an increase in EGMs brings with it an inherent risk of an increase in problem gambling, however the Commission considers this risk has to be balanced against the relevant community that will be affected. Based on the SEIFA index for the Central Goldfields and the immediate surroundings, the Commission determines that the relevant community has the highest level of relative disadvantage when compared to the other 84 rural SLA's. Of particular significance, 70% of the

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<sup>2</sup> *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435 ("Romsey").

<sup>3</sup> See section 1.1(2) of the Act.

collection district within a 5km radius around the approved premises was rated in the first quintile of disadvantage. While the Commission recognises that not all the premises patrons are derived from this area, these figures present a great concern to the Commission.

45. The Commission considers that the possibility of problem gambling and its negative effect on the community is ever present. In broad terms, the Productivity Commission has put the number of problem gamblers in Victoria at 1.5% to 2% of the adult population.<sup>4</sup> While the link between accessibility and the incidence of problem gambling remains controversial “some studies do find strong apparent links between accessibility across regions and harm (and certainly between accessibility and gaming expenditure), with even small changes to already high levels of accessibility apparently still having effects”.<sup>5</sup>
46. The Central Goldfields area, when compared with all Rural Municipalities in Victoria, has significantly higher gaming expenditure per adult. Further, the expenditure (\$781 per adult per year) is also higher than the State average. The Commission considers this to be another area of concern, particularly in an area of high social disadvantage.
47. The Commission considers that it has an obligation to be extremely cautious if the community, or relevant parts of the affected community, exhibit signs of high levels of disadvantage. In determining like applications, the Commission agrees with the approach taken by Justice Bell in *Romsey* that while:

*‘the test is concerned with marginal (not existing or average) impacts, this is not to say an added venue in a district, or additional machines at an existing venue, might not exceed the tipping point in terms of detrimental net impact on community well-being.’<sup>6</sup>*

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<sup>4</sup> Productivity Commission Inquiry Report (*Gambling*) No 50, 26 February 2010.

<sup>5</sup> Productivity Commission Inquiry Report (*Gambling*) No 50, 26 February 2010.

<sup>6</sup> *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation & Anor* [2009] VCAT 2275

48. The Commission accepts that the additional EGMs are estimated to increase the total gaming expenditure in Central Goldfields by 1.8%. While the Commission determines that this increase is minimal, the Commission cannot be satisfied that the net economic and social impact of approval would not be detrimental to the well-being of the community.
49. The Commission has determined to refuse to grant the Applicant's application to amend its venue operator's licence to vary the number of EGMs at the Maryborough Highland Society Inc from 56 to 59.

**Mark Brennan**  
**Chair**  
**(on behalf of the Commission)**