



Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by Murray Downs Golf and Country Club Ltd for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises, The Swan Hill Club, 5-17 McCallum Street, Swan Hill from 35 to 55 gaming machines.

Commission

Mr Bruce Thompson, Chairman

Mr Robbie Kerr, Commissioner

Appearances

Mr Dale Curtis of Tresola Legal for the Applicant

Ms Brooke Hutchins as Counsel Assisting the Commission

Date of Hearing

29 July 2014

Date of Decision

20 August 2014

Decision

That the application be granted

Signed

A handwritten signature in blue ink, appearing to read 'B Thompson', written over a faint circular stamp.

Bruce Thompson

Chairman



REASONS FOR DECISION

INTRODUCTION

1. This is an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* (the **Act**) by Murray Downs Golf and Country Club Ltd (the **Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Swan Hill Club, located at 5-17 McCallum Street, Swan Hill (the **Venue**) from 35 to 55 EGMs (the **Application**).
2. The relevant municipal authority is the Rural City of Swan Hill Council. The Council did not lodge a submission in respect of 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 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 increase the number of EGMs at a venue to satisfy the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) of the "no net detriment test" and the other matters set out in section 3.4.20(1) 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
5. In addition to the requirements under the Act, the Commission has an unfettered and overriding discretion to grant or refuse an application, subject to the condition stipulated in the Act that requires that the Commission not grant an application unless it is satisfied that the net economic and social impact of approval is not detrimental to the wellbeing of the municipality

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).

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



in which the premises are located.

THE RURAL CITY OF SWAN HILL AND THE SWAN HILL CLUB

6. The Rural City of Swan Hill is a regional municipality located approximately 320 km north-west of Melbourne and it covers an area of 6,115 square kilometres. Major centres in the Rural City of Swan Hill are the township of Swan Hill (**Swan Hill**), Robinvale and Nyah West.
7. The Rural City of Swan Hill is comprised of three Statistical Local Areas (**SLA**);⁴ Swan Hill – Central, Swan Hill – Robinvale and Swan Hill – Balance. The Venue is located the Swan Hill – Central SLA.
8. The Rural City of Swan Hill LGA is ranked 10th of the 79 LGAs in the State on the SEIFA scale of disadvantage,⁵ indicating signs of relative social and economic disadvantage in the area in which the Venue is located. It is generally accepted that a majority of a venue's gaming patrons will be drawn from residences within a 5 kilometre radius of the venue. Notably, 26.7% of Statistical Area Level 1 (**SA1**)⁶ within a 5 kilometre radius of the Venue is in the first quintile of disadvantage (the most disadvantaged relative to all Victorian SA1s), and 36.7% is in the second quintile of disadvantage.
9. The Commission notes that there are two other gaming venues operating within 5 kilometres of the Venue, being the Commercial Hotel and the Swan Hill RSL. There is also another gaming venue located some 100 kilometres from the Venue in Robinvale, which falls within the Rural City of Swan Hill.
10. The municipal limit for the maximum permissible number of gaming entitlements for the Rural City of Swan Hill is 161.⁷ Currently there are four gaming venues in the Rural City of Swan Hill with approvals to operate a total of 134 EGMs. Approval of the Application will take the number of EGMs operating in the area to 154.
11. The Rural City of Swan Hill has a density of 7.82 EGMs per 1,000 adults (slightly more than the regional average and about a third more than the State average). EGM expenditure for the 2012-13 financial year was in the sum of \$7,079,880.72 which equates to an average

⁴ The Statistical Local Area (SLA) is an Australian Standard Geographical Classification (ASGC) defined area which consists of one or more Collection Districts (CDs). SLAs are Local Government Areas (LGAs), or parts thereof. Where there is no incorporated body of local government, SLAs are defined to cover the unincorporated areas. SLAs cover, in aggregate, the whole of Australia without gaps or overlaps.

⁵ Socio-Economic Indexes for Areas (**SEIFA**) is a product developed by the ABS to assist in the assessment of the welfare of Australian communities. SEIFA allows the ranking of regions/areas, providing a method of determining the level of relative social and economic well-being in each region. The SEIFA scale of disadvantage ranks municipalities from least disadvantaged to most disadvantaged on a relative basis.

⁶ The SA1s have been designed as the smallest unit of release of the 2011 Census data and usually have a population of 200 to 800 persons, with an average of 400 persons.



EGM annual expenditure per adult of \$413 (nearly 30% less than the rural average and 24.8% less than the State average).

12. Further, expenditure in the municipality is declining and has decreased by about 15%⁸ over the last five years. Declining expenditure is common in regional municipalities, and it is noted that regional gambling expenditure has decreased by 18% in real terms over the last five years.
13. The Venue was founded in 1911 and fell under the operation of the Applicant approximately four and a half years ago as a result of an amalgamation of the Swan Hill Club and Murray Downs Golf and Country Club (**Murray Downs Club**). The Applicant currently operates the Venue.
14. The Venue is located on the corner of McCallum and Curlewis Streets, some distance from the main shopping strip and the main shopping plazas. The Venue consists of bistro and dining facilities, a main bar with lounge area, function room, courtyard, gaming room and billiards room.

THE MATERIAL BEFORE THE COMMISSION

15. The Applicant provided the Commission with the following material to assist in the assessment of the social and economic impact of the Application:
 - 15.1. Witness Statement of Mr Gregory Francis Roberts, Chief Executive Officer of the Applicant, dated 17 March 2014;
 - 15.2. Expert Report, prepared by Mr Tim Stillwell of Moore Stephens Melbourne (**Moore Stephens**), dated 27 March 2014 (the **Expenditure Report**); and
 - 15.3. Social & Economic Impact Report, prepared by Mr Rhys Quick of Urbis Pty Ltd (**Urbis**), dated 16 January 2014 (the **Impact Report**).
16. Additionally, the following material, prepared by Commission officers, was considered by the Commission:
 - 16.1. Economic and Social Impact Report dated July 2014; and
 - 16.2. Pre-Hearing Inspection and Compliance Report dated 16 July 2014.

⁷ Pursuant to s 3.4A.5(3A)(b) of the Act, the Commission 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.

⁸ Indexed to CPI.



Moore Stephens Expenditure Report – Mr Timothy Stillwell

17. The Applicant engaged Mr Timothy Stillwell of Moore Stephens, a gaming expenditure consultant, to prepare the Expenditure Report which provides an estimate of the expenditure that is likely to be generated by the addition of 20 EGMs at the Venue. Mr Stillwell gave evidence at the hearing of the Application and was cross-examined. The Commission accepts that Mr Stillwell is qualified to give opinion on matters of gaming expenditure.
18. The Expenditure Report contains Mr Stillwell's opinion that the additional 20 EGMs will generate an estimated additional \$504,217 in gross gaming expenditure. To reach this estimate, Mr Stillwell conducted a benchmarking analysis using expenditure data from Benella Bowls Club, Robinvale Golf Club, Kyabram Club and Numurkah Golf and Bowls. These clubs were said to have been selected as points of comparison due to a number of similarities they share with the Venue. The similarities cited include the number of EGMs in operation, the relevant SEIFA ranking, the location of the clubs in respect of the size of the relevant town, the number of competing venues within the LGA/SLA, EGM density and the local population.
19. While granting the Application will result in an increase in the number of EGMs at the Venue of 57%, Mr Stillwell predicts an increase in gaming expenditure of only 25%. This result was explained by Mr Stillwell as being reflective of the experience previously seen in instances where EGM numbers are increased at similar low to mid performing venues.
20. Mr Stillwell told the Commission that of the additional gross gaming expenditure expected to be derived from the additional 20 EGMs at the Venue, approximately 50% will be drawn from other venues within the Rural City of Swan Hill. Further, Mr Stillwell told the Commission that of the new revenue, 20% is likely to be transferred revenue from the Murray Downs Golf Club.⁹

Urbis Social & Economic Impact Report – Mr Rhys Quick

21. The Applicant engaged Mr Rhys Quick of Urbis to prepare the Impact Report to accompany the Application. Mr Quick gave evidence at the hearing of the Application and was cross-examined. The Commission accepts that Mr Quick is qualified to give opinion on the likely social and economic impacts of the Application.
22. In terms of the social and economic profile of the Rural City of Swan Hill, Mr Quick told the Commission that key characteristics of the residents of the Rural City of Swan Hill, compared to non-metropolitan Victorian averages include:

⁹ This is classified as new revenue as it will be new to the State of Victoria, having originally been in New South Wales.



- 22.1. lower incomes, with per capita income 7.9% below the average and household incomes 7.2% below;
 - 22.2. a higher proportion of white collar workers, being 2% higher than the average; and
 - 22.3. a higher proportion of renters, with 6% more than the average of all households being renter occupied.
23. Mr Quick explained to the Commission that these figures should be examined in light of the variance in the demographic characteristics between the various City of Swan Hill SLAs. In particular, the Robinvale SLA experiences greater levels of disadvantage than the Swan Hill Central SLA where the Venue is located. Mr Quick told the Commission that the patron survey conducted at the Venue showed that, due to its distance from the Venue, very few people who attended the Venue were from Robinvale and this should be taken into consideration when assessing the social and economic profile of Venue patrons. Of note, in relation to the differences in the SLAs:
 - 23.1. Swan Hill Central SLA has an average household income 6.6% less than the average whereas Robinvale is 9.7% less;
 - 23.2. Swan Hill Central SLA's average per capita income is 1.8% less than the average whereas Robinvale is 18.4% less;
 - 23.3. 2.3% of the households are in mortgage stress in Swan Hill Central SLA compared to 3.4% in Robinvale; and
 - 23.4. 3.86% of the labour force in Swan Hill Central SLA is unemployed, compared to 6.45% in Robinvale.
24. The population in the Rural City of Swan Hill is projected to grow at 0.6% per annum over the three year period of 2013 to 2016. The Central SLA is projected to grow at 1.0% per annum. Mr Quick recognises that these growth figures are lower than the predicted 1.3% per annum growth for all non-metropolitan Victoria over the same period.
25. As part of Urbis' assessment of the social and economic impacts of the Application, a patron survey of the diners in the bistro was undertaken between 17 November and 15 December 2014. The results of the survey show that the majority of the Venue patrons (57%) are residents of the township of Swan Hill. 67% of diners reside in localities within the Rural City of Swan Hill.
26. For a two week period a count of patrons in the Venue gaming room was undertaken to



assess the levels of utilisation of the current EGMs. It was found that throughout the two week period, use of EGMs at the Venue never reached full capacity. Mr Quick told the Commission that the purpose of the proposal to increase the number of EGMs is therefore designed to provide greater choice to patrons and make the Venue more competitive. At the same time, the large number of EGMs will bring a taxation benefit to the Venue.

Mr Gregory Roberts

27. The Applicant called Mr Roberts to give evidence in support of the Application. Mr Roberts has held the position of Chief Executive Officer of the Applicant since June 2008. Mr Roberts explained the process of the amalgamation of the Venue with the Murray Downs Club, which is located approximately 6 kilometres from the Swan Hill township in New South Wales.
28. Mr Roberts told the Commission that prior to the amalgamation with the Applicant, the Venue was suffering financially and was at risk of closure. Since the amalgamation over \$150,000 has been spent by the Applicant on improvements to the Venue, however substantially more work is still required. Mr Roberts told the Commission that the Venue needs to become profitable in its own right, rather than dependant on the profitability of the Murray Downs Club. It is Mr Roberts' stated belief that the additional 20 EGMs would enable the Venue to generate enough additional revenue to achieve this result. The additional EGMs will also bring a tax benefit to the Venue.
29. Mr Roberts told the Commission that, should the Application be granted, is intended that the Applicant will undertake further renovations to the Venue with an estimated cost of \$600,000. These renovations are indented to commence immediately upon acquiring the additional EGMs. Mr Roberts advised the Commission that local businesses will be used for these works.
30. Mr Roberts explained to the Commission that through the Murray Downs Club the Applicant has made significant cash donations to local community groups and projects, totalling over \$280,000 cash in the last four years. Due to the poor financial position of the Venue in recent years, it has not been in a position to do likewise. As the Venue becomes more profitable it is intended that this will change and the same focus on community sponsorships will be adopted. Mr Roberts told the Commission that the Venue recently committed to the local cricket association to donate \$3,000 per year for the next three years and that it is intended that more sponsorships will be given as the Venue begins to perform financially.
31. The Applicant currently employs 28 employees at the Venue. Mr Roberts told the Commission that approval of the Application will result in employment of up to four additional



full-time equivalent employees. The majority of current staff reside in the township of Swan Hill.

32. In terms of responsible service of gaming, Mr Roberts told the Commission that the Venue undertakes a number of relevant practices including:-

- 32.1. compliance with regulations and industry code of conduct;
- 32.2. offering a range of entertainment and recreational options to customers;
- 32.3. having a well-developed venue orientated responsible gambling policy and procedures in place that are well known by all staff;
- 32.4. being a signatory to the relevant Gambling Code of Conduct and Self Exclusion program; and
- 32.5. demonstrating commitment to ongoing staff professional development in conjunction with local Gambler's Help services.

33. Based on first-hand observations and a review of the Responsible Gambling Incident Register, Mr Roberts told the Commission that there are low instances of problem gambling at the Venue. Mr Roberts advised that incidents recorded in the Register generally relate to non-gambling incidents involving tourists at peak holiday times.

34. Mr Roberts gave evidence that the Venue has a cork board with photographs of all self-excluded patrons. All staff are required to check the board at the start of each shift and should a self-excluded person enter the Venue, policy requires that the manager is notified immediately to attend to the issue.

35. Mr Roberts told the Commission that, although utilisation of the existing EGMs is not at capacity, the addition of 20 EGMs would provide patrons with a greater ability to play their preferred games, increasing the attractiveness of the Venue.

LIKELY ECONOMIC IMPACT OF APPROVAL

36. There is often a large degree of overlap between economic and social impacts of applications to operate or increase the number of EGMs at a particular venue. The Commission considers it useful for the purpose of balancing community benefits and detriments that a thorough analysis and identification of the economic and social impact on the community be undertaken.

37. The Commission notes that it is never possible to quantify with absolute certainty the amount



of expenditure that will occur as a result of approval of an application. Mr Stillwell's opinion is that the additional 20 EGMs will generate an estimated additional \$504,217 in gross gaming expenditure. This prediction is made in circumstances where the existing EGMs in the Venue are not being used to their full capacity, and evidence suggests that in regional areas it is not uncommon that an increase in the number of EGMs has a lesser impact on the level of expenditure.

38. Despite this, the Commission considers there is likely to be a marginal economic benefit associated with the Application through an increase in gaming expenditure in the municipality.
39. The Commission accepts the evidence provided that transfer expenditure is likely to be around 50%, with 20% of new spending being transferred expenditure from the Murray Downs Club.
40. The Commission considers that the capital works associated with the Venue will bring small economic stimulus, and thus a marginal benefit, both in the construction phase and the ongoing operation of the improved Venue.
41. Ultimately, the Commission considers there will be a neutral to slightly positive economic impact on the community with approval of the Application.

LIKELY SOCIAL IMPACT OF APPROVAL

42. Wherever accessibility to EGMs is increased, a risk of an increase in problem gambling is present. Problem gambling leads to a range of economic costs such as lost productivity, increased health and social service requirements and other social costs. The Commission accepts that there is a small potential for a negative social impact as a consequence of granting the Application in the form of increased problem gambling expenditure. While noting the evidence about venue scale and problem gambling, the Commission considers that this particular proposed increase does not carry the threshold risk.
43. The Commission notes that statistically, the Rural City of Swan Hill presents as a disadvantaged area. However the Commission accepts the evidence that the overall figures for the LGA are somewhat affected by the Robinvale SLA, and that township of Swan Hill where the majority of patrons originate from is comparably less disadvantaged.
44. The Commission found Mr Roberts to be a reliable witness, and accepts the evidence that the Applicant operates the Venue in accordance with the appropriate standards, has a sound history of compliance and will ensure that the Applicant honours its commitment to undertake the additional works at the Venue upon acquisition of additional EGMs, and continue with



community contributions.

45. The Commission accepts that the amalgamation of the Venue with the Murray Downs Club is likely to have enabled this 100 year old Venue to remain in operation, providing a social benefit to the community. The Commission considers that the ongoing operation of the Venue and the forthcoming redevelopment works will provide a social benefit to the community.
46. Further, the increase in community contributions promised when the Venue reaches profitability will have a positive social benefit.
47. The Commission considers that a positive social benefit arises from the contribution the Application makes to the community through the Murray Downs Club, and its intention to do likewise through the Venue when it becomes more financially viable.
48. On balance, the Commission considers that the likely social impact of the Application will be positive.

CONCLUSION

49. As outlined at the commencement of these Reasons, 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 wellbeing of the relevant community will be either neutral or positive.¹⁰
50. After consideration of the evidence presented in the Application, the Commission is satisfied that, on balance, the net economic and social impacts of approval on the Macedon Ranges are likely to be marginally positive. The Commission is therefore satisfied the Application should be granted.

The preceding paragraphs are a true copy of the Reasons for Decision herein of Mr Bruce Thompson (Chairman) and Mr Des Powell (Commissioner).