



## Victorian Commission for Gambling and Liquor Regulation

### REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by Hoppers Crossing Sports Club Inc for amendment of the venue operator's licence to vary the number of gaming machines at the approved premises, Hoppers Crossing Sports Club, Hogans Reserve, Hogans Road, Hoppers Crossing, from 35 to 55.

**Commission:** Bruce Thompson, Deputy Chairman  
Kate Hamond, Commissioner

**Date of Decision:** 14 September 2012

**Date of Reasons:** 18 September 2012

**Decision:** That the application be granted.

**Signed:**

**Bruce Thompson**  
Deputy Chairman

## REASONS FOR DECISION

### BACKGROUND

1. This is an application by Hoppers Crossing Sports Club Inc (the **Applicant**) under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* (the **Act**) for amendment of the venue operator's licence to vary the number of electronic gaming machines (**EGMs**) at the approved premises, Hoppers Crossing Sports Club, Hogans Reserve, Hogans Road, Hoppers Crossing from 35 to 55.
2. The relevant municipal council in respect of this application is the City of Wyndham (the **Council**). On 13 July 2012 the Council provided the Commission and the Applicant with a written submission in opposition of the application.
3. The Commission held a public inquiry to consider the application pursuant to section 28(2)(g)(iii) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* on 6 August 2012.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Determination of this application is governed by section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* (the **Act**) which states that the Commission must determine an application by either granting or refusing an application to amend a condition of the venue operator's licence.
5. Section 3.4.20 of the Act sets out the matters to which the Commission must have regard in determining an application of this nature, and provides (relevantly):
  - (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—
    - (a) the Commission is satisfied that the amendment of the licence does not conflict with a direction, if any, given under section 3.2.3; and
    - (b) 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 regional limit or

municipal limit for gaming machines for the region or municipal district in which the approved venue is located will not be exceeded by the making of the amendment; and

- (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.

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6. The Council has the right, by virtue of section 3.4.19(1) of the Act, to make a submission to the Commission which addresses the economic and social impact of the proposed amendment on the wellbeing of the community of the municipal district, taking into account the impact of the proposed amendment on surrounding districts. The Commission is bound to take this submission into consideration when applying the 'no net detriment test'.<sup>1</sup>
7. 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>
8. 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.

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<sup>1</sup> See *Gambling Regulation Act 2003* (Vic), s 3.4.19(5).

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

<sup>3</sup> See *Gambling Regulation Act 2003* (Vic), s 1.1(2).

## THE MATERIAL BEFORE THE COMMISSION

9. The Applicant filed the following documents in support of its application:
  - a. Social and Economic Impact Report, prepared by HarvestData, dated 31 May 2012;
  - b. Expenditure Report, prepared by Mr David Baldi of Mercury Group, dated May 2012;
  - c. Financial Forecasts, prepared by Mr Baldi, dated May 2012;
  - d. Patron Counts and Predictions;
  - e. Expert Report of Ms Jacqueline Hutchison, Compliance Officer of Mercury Group;
  - f. Witness Statement of Mr Darren Hellman, the Club President, dated 11 May 2012;
  - g. Witness Statement of George Csifo, General Manager of the Club.
10. The Council relied on its written submission, and also a survey prepared by Ms Kim Burgess entitled "Hoppers Crossing Sports Club Electronic Gaming Machine Survey 2012".
11. Additionally, a statistical report prepared by Commission officers, titled Economic and Social Impact Report (the **Commission Report**), dated July 2012 was considered by the Commission.

## THE HOPPERS CROSSING SPORTS CLUB AND THE CITY OF WYNDHAM

12. Based on the material in the Commission Report:
  - a. The Hoppers Crossing Sports Club (the **Club**) is located at Hogans Reserve, Hogans Road, Hoppers Crossing. The Club is located within the Local Government of Area (LGA) of the City of Wyndham.
  - b. The City of Wyndham is located approximately 40 kilometers south-west of Melbourne, covers an area of 542 km<sup>2</sup> and is made up of three Statistical



Local Areas (**SLAs**). The premises are located in the Wyndham (C) - North SLA (**North**).

- c. The City of Wyndham has a Municipal Limit of 952 EGMs in the Local Government Area (**LGA**). There are currently ten venues operating EGMs within Wyndham offering 654 EGMs in total.
- d. The City of Wyndham has an adult population of 117,796. The annual rate of population growth projected by the Department of Planning and Community Development is 6.5% over the next five years.<sup>4</sup>
- e. Overall, the material provided to the Commission shows that both the municipality and the area surrounding the premises are not particularly disadvantaged although there are some pockets of disadvantage in the surrounding area. For example, the SEIFA<sup>5</sup> score (based on 2006 data) for North is 1006.18, which is ranked 60 out of 79 metropolitan municipalities (with 79 being the most disadvantaged). However the Wyndham (C) - South and Wyndham (C) - West SLAs were ranked 9<sup>th</sup> and 53<sup>rd</sup> of 79 respectively.

#### ***Social and Economic Impact Statement – HarvestData***

- 13. The Applicant called Ms Gwyneth Howell, of HarvestData, to give evidence regarding the social and economic impact of the application on the City of Wyndham and the surrounding area.
- 14. In Ms Howell's opinion, the additional 20 EGMs sought in this application will not be detrimental to the well-being of the community of Wyndham. Her reasons for this can be summarised as follows:<sup>6</sup>

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<sup>4</sup> *Victoria in Future 2008*, Department of Planning and Community Development.

<sup>5</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.

<sup>6</sup> Taken from Social and Economic Impact Report, HarvestData, 31 May 2012, pp 62-66.

- a. The Club plays a "pronounced social, sporting and cultural role in the Hoppers Crossing area";
- b. "Overt attention needs to be placed on the social capital and infrastructure to provide for the ongoing well-being of communities" and the Club "contributes to the health and well-being of the Wyndham community by supporting active living, active and passive recreation opportunities, and social connectivity.";
- c. 100 per cent of the Club's surplus is applied to the Club's sporting and social purposes, and no member receives a dividend;
- d. Subsidised meals and drinks and free room hire are provided to local groups and organisations;
- e. "Clubs are an integral part of Australia's social and economic fabric, especially in communities where hospitality venues are important economic engines";
- f. EGMs are the main driver of club revenue and contribute significantly to a Club's ability to "provide jobs and other services";
- g. Direct economic benefits of the application include:
  - i. Creation of ten new full-time jobs across the proposed cafe, bar, bistro and gaming areas and 12 new full-time jobs in the function area;
  - ii. An increase in work for local builders and trades;
  - iii. More availability of part-time work may increase work participation rates in the area or allow workers to undertake training while working part-time; and
  - iv. "Revitalisation of a hospitality venue in a precinct heavily dependent on tourism and hospitality visitors".

### ***Evidence of Likely Expenditure***

15. The Applicant provided a report prepared by Mr David Baldi of Mercury Group which commented on the likely EGM expenditure which would result from the proposed additional 20 EGMs at the premises.
16. Mr Baldi's evidence was, inter alia, that between \$450,000 and \$750,000 in new total expenditure would flow to the Club as a result of the 20 additional EGMs in the first 12 months of operation, and that 75.2%<sup>7</sup> of that total revenue would be transferred from other venues. The transferred expenditure figure was calculated by Mr Baldi by taking the average of the transferred expenditure figure across recent approvals by the Commission in the Wyndham area.<sup>8</sup>
17. It is noted that the Council, as part of its submission, produced a commentary by Mr Colin Gill of Ferrier Hodgson. It is also noted that the calculations performed by Mr Gill therein were preliminary and did not constitute an expert's report. Mr Gill stated that the application would result in between \$657,000 and \$876,000 in total new expenditure flowing to the Club in the first 12 months of operation, with no more than 50%<sup>9</sup> of this being transferred from other venues.
18. During the course of the inquiry, the Applicant and the Council engaged in discussions regarding the expenditure evidence and an agreed position was put to the Commission that between \$600,000 and \$800,000 in total new expenditure would be generated by the 20 additional EGMs sought in this application in the first 12 months of operation, and 75.2%<sup>10</sup> of this would be transferred from other venues.
19. As a result, no oral evidence regarding expenditure was called by either party at the inquiry. The Commission therefore regards the agreed position as indicative of the

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<sup>7</sup> Between \$338,400 and \$564,000.

<sup>8</sup> Tigers Clubhouse (10 additional EGMs) – 82%, Italian Sports Club of Werribee (13 additional EGMs) – 85.6%, Tarneit Tavern (65 EGMs) – 72%, Hoppers Crossing Club (21 additional EGMs) – 80% and Werribee Plaza (relocation) – 69.5%.

<sup>9</sup> Between \$328,500 and \$438,000.

<sup>10</sup> Between \$451,200 and \$601,600.

likely impact on EGM expenditure as a result of this application, and notes that this would result in a net increase in Wyndham of between 0.32% and 0.43%.

***Evidence from the Applicant***

20. The Commission heard evidence from Mr Darren Hellman, President of the Club since 2004. Mr Hellman gave evidence of the Club's primary purposes, which are to run football and cricket clubs, along with netball, golf, swimming, darts, angling and ladies basketball teams. The Club was formed in 1992 through the merger of the Hoppers Crossing Cricket and Football Clubs, and these two clubs are known as the "foundation clubs", attracting prominence in the Club's constitution and operation. Mr Hellman detailed in his evidence the number of teams that the Club supports:

- a. Football – two senior teams, 16 junior teams and 200 Auskick participants;
- b. Cricket – seven senior turf sides, 15 junior sides, 85 children participating in the "Milo Have a Go" program;
- c. Netball – around 180 registered netball players playing in 13 senior teams and 12 junior teams;
- d. Golf – around 50 members;
- e. Swimming – around 60 participants;
- f. Darts – 2 teams each comprising 10 participants;
- g. Angling – around 15 members; and
- h. Ladies Basketball – one A grade team playing on Sunday nights.

21. Mr Hellman also gave evidence of the Club's previous business partnership with the Footscray Football Club (**FFC**), who approached the Club in 1993 with a joint venture proposal to operate EGMs at the Club. Mr Hellman indicated that the relationship between the Club and FFC became tense and the joint venture agreement was not renewed in May 2001. This required the Club to buy out FFC's share in the gaming venture at a cost of \$1 million, with \$900,000 of that funded by a



bank loan.<sup>11</sup> That loan was repaid sometime during 2006 and, according to Mr Hellman, the loan repayments placed a significant limit on the ability of the Club to apply revenue to its constituent clubs and purposes.<sup>12</sup>

22. Mr Hellman also gave evidence regarding the Club's proposed development plans, which the EGMs sought in this application will partly fund:

	Description	Estimated time of completion	Estimated cost
<b>Stage 1</b> <sup>13</sup>	Building new sporting change rooms and associated amenities, community rooms, Gym storage and kiosk/canteen	End 2012	\$2,684,347
<b>Stage 2</b> <sup>14</sup>	Reconfiguration of gaming room and installation of a bistro and sports bar	Mid 2013	\$2,811,500
<b>Stage 3</b> <sup>15</sup>	Construction of function rooms, board room and satellite kitchen	Mid 2015	\$2,739,000
<b>Total Estimated Cost</b>			<b>\$8,234,847</b>

23. Copies of plans in respect of the above proposal were provided to the Commission at the inquiry.

24. The next person to give evidence on behalf of the Applicant was Mr George Csifo, the Club's General Manager since 2009. Mr Csifo corroborated the evidence of Mr

<sup>11</sup> Ibid, para 14; though it is noted Mr Hellman gave oral evidence that the Club ended up borrowing approximately \$1.5 million so as to have a 'fall-back' cash reserve.

<sup>12</sup> Ibid, para 22.

<sup>13</sup> Stage 1 is currently in progress and will be completed regardless of the outcome of this application.

<sup>14</sup> Conditional upon approval of this application.

<sup>15</sup> Conditional upon approval of this application.

Hellman insofar as the completion of Stages 2 and 3 of the proposed works were conditional upon this application being approved, as he believed that the Club could not sustain its current level of EGM revenue and remain competitive with other venues in the area following recent Commission approvals. Mr Csifo believes that the gaming environment in Wyndham is about to become more competitive in light of recent approvals by the Commission for additional EGMs to be operated at Tigers Clubhouse, Italian Sports Club of Werribee, Tarneit Tavern, Hoppers Crossing Club and Werribee Plaza.

25. Mr Csifo also prepared financial forecasts in consultation with Mr Baldi, which were annexed to his witness statement. These forecasts showed, inter alia, that any loan repayments in respect of the proposed works would have a significant impact on the Club's future financial position, especially when combined with EGM entitlement repayments, monitoring and other associated costs of hosting gaming that the Club will bear in the post-2012 regulatory environment.
26. According to Mr Csifo, the Club will employ an additional 20 full-time employees once the redevelopment is completed, with the sports bar employing four, the bistro employing ten, the function rooms employing four and an additional two administration positions across the whole complex.
27. Mr Csifo outlined the contributions, both cash and in-kind, made to the community in the 2010/11 financial year. The constituent clubs received a total of \$98,400, other local not-for-profit organisations received a total of \$25,350 and non-local organisations received \$38,400. Mr Csifo also estimated that in-kind contributions (such as member discounts, free room hire and volunteer hours) during this period amounted to approximately \$42,976. If this application is approved, Mr Csifo's evidence was that about one-third of the Club's increased annual surplus (about \$350,000 in the first 12 months and predicted to increase) would be available for distribution directly to constituent clubs and this is in addition to any capital investment and redevelopment to facilities already completed and that the Club may undertake in the future.

28. Ms Jacqueline Hutchison then gave evidence on behalf of the Applicant in relation to the responsible gambling practices employed. Ms Hutchison is the Compliance Officer at Mercury Group Victoria Inc. Ms Hutchison's evidence was that the Applicant exceeded its mandatory requirements for responsible gambling measures and adopts best practice in this regard. Examples given included that the Applicant regularly conducts training of its gaming staff involving local Venue Support Workers, adopts the Mercury Group Responsible Gambling Initiative including the displaying of gambler's help messages and literature, adopting of a self-exclusion program and Responsible Gambling Code of Conduct, and continually review its procedures. Ms Hutchison also commented generally on the fact that the lack of anonymity provided by clubs, through the sign-in rules and the sense of belonging promoted by a club environment, presented a lesser risk of problem gambling than a hotel environment.

#### ***Evidence from the Council***

29. The sole witness called by the Council was Ms Kim Burgess, the author of the community attitudinal survey conducted by the Council. The survey was conducted by telephone between 14 June and 4 July 2012 with a random selection of 500 Hoppers Crossing, Tarneit and Werribee residents. Most relevantly, 23% of respondents indicated that they would support this application (with 2% saying they would strongly support it) and 61% saying they opposed the application (with 32% saying they strongly opposed it). 15% of respondents indicated that they did not have an opinion.

30. Furthermore, 45% of respondents indicated they would support the application if it were part of an upgrade to the Club's facilities<sup>16</sup> (11% said they would strongly support it), while half said that they would oppose the application (23% said that they would strongly oppose it). 6% of respondents indicated that they did not have an opinion.

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<sup>16</sup> Including the provision of a bistro and new sporting facilities, such as change rooms.

31. In cross examination, the Applicant's counsel Mr Caillard put to Ms Burgess that the respondents to the survey were not appropriately informed of the details of the upgrade to the Club's facilities that this application would bring. In Mr Caillard's submission, the survey undertaken by Council was inadequate and should be afforded little weight for this reason, consistent with *Romsey Hotel (No 2)*.<sup>17</sup>

32. Irrespective of the weight to be given to such a survey, the Commission is bound to take the survey and the 'in-principle' opposition to gaming into account.<sup>18</sup>

### FINDING BY THE COMMISSION

33. The 'no net detriment test' in section 3.4.20(1)(c) of the Act 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 concludes that the net economic and social impact of approval on the well-being of the relevant community will be either neutral or positive.<sup>19</sup>

34. Furthermore an application of this nature must be refused unless the Applicant can satisfy the Commission that there is an "absence of detriment to the community".<sup>20</sup>

35. There is frequently a large degree of overlap between economic and social impacts of applications to operate EGMs. However, the Commission considers that it is useful for the purpose of the balancing exercise to identify and analyse the economic and social impacts separately to arrive at a net position for each before reaching the final determination.<sup>21</sup>

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<sup>17</sup> *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, paras 268-269.

<sup>18</sup> *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, paras 40 to 45.

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

<sup>20</sup> *New Theme Pty Ltd v Victorian Casino & Gaming Authority* [2002] VSCA 80, para 65.

<sup>21</sup> This is consistent with the approach undertaken by Justice Bell in *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275.



### ***Social impact of approval***

36. If this application is approved, there will be no increase to the number of gaming venues in Wyndham. Taking into account recent approvals by the Commission in respect of venues that have not yet implemented the approved additional EGMs,<sup>22</sup> the current number of EGMs in Wyndham per 1,000 adults is 7.41, 21% more than the metropolitan LGA average of 6.13 and 19% above the state-wide average of 6.23. This level of EGM density is predicted to increase by 2.29% to 7.58 if this application is approved.
37. In terms of risk to problem gambling, the Commission considers that this risk is mitigated by the Applicant's business planning incorporating appropriate responsible gambling practices and its commitment to constant training and development of its staff in order to ensure that best practice regarding identification and management of problem gambling is implemented. The evidence of Ms Hutchison also provides the Commission with some comfort that the Applicant is taking substantial steps to ensure that the risk of problem gambling is appropriately managed, particularly in relation to staff interaction with customers.<sup>23</sup>
38. A relevant consideration for the Commission was the community attitudinal survey undertaken by the Council. The Commission takes into account that there is a significant opposition to the application, with or without the upgrades. This may stem from opposition to EGMs in principle, as opposed to this particular application, as is evidenced from the additional verbatim comments annexed to the survey report. The Commission accepts the argument put forward by the Applicant that the respondents to the survey were not as well informed of the application as they could have been, particularly indicating that Stage 1 of the proposed works was to go ahead regardless of the outcome of this application. This affects the weight that the Commission can afford the survey.

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<sup>22</sup> Point Cook Hotel – 50 EGMs (new venue), Sanctuary Lakes Hotel – 70 EGMs (new venue), Tarneit Tavern – 65 EGMs (new venue), Hoppers Crossing Club – 21 additional EGMs and Italian Sports Club of Werribee – 13 additional EGMs.

<sup>23</sup> *In the Matter of the Wantirna Club (Richmond Football Club Ltd)*, 21 April 2010.

39. The Commission accepts that a social benefit arises where a club makes contributions to constituent and sub-clubs. There is a positive effect in relation to recreation opportunities available to the community,<sup>24</sup> as well providing the community with a social outlet. This community contribution by way of sport, coupled with the cash and in-kind donations made by the Applicant to the local community, is regarded as a positive social benefit.
40. The proposed works are seen by the Commission as a significant contribution to the community through the availability of a modern and functional sport, social and function facility. In turn, constituent clubs will benefit as a result of renovated facilities and the community will benefit through the use of a more modern and competitive venue.
41. The Commission is satisfied that there will be a net social impact outcome on Wyndham that is either neutral or positive as a result of this application.

### ***Economic impact***

42. The Commission considers that there will be a likely positive economic impact on the relevant community, albeit a modest impact.
43. The proposal will result in an increase in gaming expenditure in Wyndham of between 0.32% and 0.43%. The Commission's calculations, which include the aforementioned venues in Wyndham that have EGMs approved but not yet implemented, show the current level of EGM expenditure per adult in Wyndham is \$730, 12% above the metropolitan average of \$651 and 19% above the State average of \$613, and this will rise to \$731 if this application is approved and the EGMs become active. This, in the Commission's view, is a modest increase on EGM expenditure in the Wyndham LGA given the higher than State average population growth in the Wyndham LGA of 6.5% over the next 5 years.

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<sup>24</sup> *In the Matter of St Albans Sports Club (St Albans Sports Club Inc)*, 5 August 2011.

### ***Conclusion***

44. The Commission has considered the likely social and economic impacts of the proposal and is satisfied that the net economic and social impact of approving this application will not be detrimental to the well-being of the community of the City of Wyndham.
45. Based on the material provided to the Commission prior to, and at the time of the public inquiry, the Commission is satisfied that the Applicant has the authority to make the application.
46. The Commission is satisfied that the Applicant understands its obligations to take measures to prevent problem gambling. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the application.<sup>25</sup>

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

<b><i>Date of Inquiry:</i></b>	<b><i>6 August 2012</i></b>
<b><i>Date of Decision:</i></b>	<b><i>14 September 2012</i></b>
<b><i>Date of Reasons:</i></b>	<b><i>18 September 2012</i></b>
<b><i>Counsel for the Applicant:</i></b>	<b><i>Mr Peter Caillard</i></b>
<b><i>Counsel for the Council:</i></b>	<b><i>Ms Louise Hicks</i></b>
<b><i>Counsel Assisting the Commission:</i></b>	<b><i>Mr James McIntyre</i></b>

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<sup>25</sup> The administrative process of amending the licence will take place at a time subsequent to this decision as allowed by section 3.4.20 of the Act.