



Victorian Commission for Gambling Regulation

DECISION AND REASONS FOR DECISION

In the matter of the *Gambling Regulation Act 2003*

– and –

In the matter of an application by **Sebastopol Bowling Club** under section 3.4.17(1)(b) of the Act for amendment of the venue operator's licence to vary the number of gaming machines at the approved premises at 213-219 Albert Street, Sebastopol from fifty (50) to fifty five (55).

DECISION

Commission: Mr I. Dunn, Chair
Mr R. Smith, Sessional Commissioner

Date: 20 October 2005

Decision: That the application be refused.

Sgd Mr I. Dunn, Chair

REASONS FOR DECISION

Mr I. Dunn, Chair

Mr R. Smith, Sessional Commissioner

BACKGROUND

1. On 25, 26 and 27 July 2005 the Commission conducted public inquiries into applications brought by Sebastopol Bowling Club, the Ballarat and District Trotting Club, and the Ballarat Golf Club respectively. The first two of the applicants referred to above applied for variations to their venue operator's licences to permit an increased number of Electronic Gaming Machines (EGMs) at their venues.
2. The third applicant, the Golf Club, sought both a licence approval, together with a variation to permit an additional 8 EGMs. The Golf Club is in the early stages of a proposal which would lead to relocation of the club house in which the gaming venue is situated, as part of an overall proposal which would lead to the building of a new championship golf course.
3. The role of the relevant local government authority, the City of Ballarat, is discussed in more detail subsequently. Because of its role it took part in a number of directions hearings conducted by telephone as a result of which a procedure was agreed by all parties for the hearing of the three matters.
4. Because all of the witnesses desired to be called by the Council were to give evidence at least in relation to the first and third matters (and were arguably of relevance to the second matter also) it was resolved

that at the commencement of the inquiry the Council would call its witnesses who would give evidence in relation to all of the matters. At the conclusion of each of the witnesses' evidence he or she was cross-examined by counsel for the respective applicants.

5. Thereafter, the applicants presented their cases individually in the normal manner and the witnesses called by the applicants were subject to cross-examination by the Council's representatives. Submissions were made in respect to each matter at the conclusion of the evidence relating to that matter. In substance, the application by the Bowling Club was heard on 25 July and for a period on the morning of 26 July. The application by the Trotting Club was then heard on 26 July and concluded with some formal matters on 27 July, when it was followed by the application by the Golf Club.
6. In each case orders were made permitting the parties to tender written submissions to which the Commission has given consideration in reaching the conclusions set out below.

SEBASTOPOL BOWLING CLUB

7. In the subject application brought by the Sebastopol Bowling Club, the application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* (the Act) is for amendment of its venue operators licence to vary the number of gaming machines at its premises at 213-219 Albert Street, Sebastopol from 50 to 55.

THE LEGISLATION

8. Section 10.1.22 of the Act provides that an application to amend a venue operator's licence to increase the number of Electronic Gaming

Machines (EGM's) permitted at an approved 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 10.1.20 of the Act.

9. Determination of the application is governed by section 3.4.20 of the Act. In terms of the inquiry itself and the evidence brought, the most relevant part of the section is paragraph (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 wellbeing of the community of the municipal district in which the approved venue is located;”

10. At the inquiry the applicant was represented by Ms S Brennan of counsel instructed by Williams Winter solicitors. The Council did not engage legal representation but Ms S Howard and Mr A Diamond represented the Council and took a full role in the inquiry. The solicitor assisting the Commission was Ms M Johnson.

THE ROLE OF THE CITY OF BALLARAT

11. Before proceeding with more detail as to the application it may be useful if we set out the position of the City of Ballarat (Ballarat) in some detail.

12. This application was brought on 4 April 2005. In common with the other two applications referred to above, the attitude of the applicant was that in seeking an additional 5 EGMs, it was seeking, effectively, a transfer of EGMs from within the municipality. It was asserted by the applicant (for example, in the social & economic impact assessment prepared by the applicant's consultants ERM) that:

“It is noted that 25 EGMs have been recently removed from the Grand Hotel in Ballarat. The additional 5 EGMs applied for in this application are effectively replacing 5 of the 25 EGMs previously removed from the Grand Hotel. The proposal will therefore not result in a net gain to the number of EGMs previously approved in the City of Ballarat. Rather it will result in a redistribution of the existing EGMs within the municipality.”

13. Once the application was served upon the Council, as required by the Act, it was plain that the Council took a different view as to the question of the 25 EGMs from the Grand Hotel. The Council asserted, and we believe correctly that consequent upon decisions by this Commission in October of 2004 the Grand Hotel no longer held a licence for any EGMs. Once this had become the case it was no longer appropriate, according to the Council, to treat the subject application as amounting to a transfer of any portion of the EGMs

previously held at the Grand Hotel. Rather, it was asserted, that the application, if granted, would lead to an additional 5 EGMs being introduced to Ballarat.

14. No doubt because it was concerned that the Commission might well adopt the view that the Council's submission as to this aspect was correct, the applicant's position subsequently changed. We do not need to go into detail about the various changes, suffice it to say that by the time of the hearing the application was predicated on the basis that the 5 EGMs would, indeed, be transferred from within the municipality, but on the basis that 4 would be transferred from the midland Golf Club, and one from the George Hotel. In summary, therefore, we dealt with the matter on the basis that if the application was granted, there would be no increase in the number of EGMs within Ballarat.

GAMING AND OTHER STATISTICS RELEVANT TO THIS APPLICATION

15. A critical issue affecting the three applications was that of the existing position in relation to gaming within Ballarat. In the economic and social impact report prepared by officers of this Commission it was revealed that within Ballarat there are 15 venues offering at total of 659 EGMs. This leads to the result that within Ballarat there are 10.11 EGMs per thousand adults, compared with a state average of 7.11. Thus, Ballarat has 42 per cent more EGMs than the state average (this figure would not change if this application was granted).

16. Expenditure in Ballarat is also considerably higher than average. Net EGM expenditure within the city is \$48,711,311, which amounts to \$747 per adult (we are referring to figures for the year 2003/4). The figure in Ballarat compares with a state average of \$600, or the country average of \$474. (In our view it is more appropriate to compare Ballarat with the rest of Victoria rather than with country municipalities). If the application was approved, expenditure within Ballarat would increase very slightly.
17. The figures above may be explained by the fact that within Ballarat there are 4,347 adults per venue offering EGMs. This compares with a state average of 7,284 or the country average of 5,516.
18. Apart from the gaming statistics, reference should also be made to a number of other statistical details. The Australian Bureau of Statistics SEIFA Index of relative socio economic disadvantage provides a score for Ballarat of 993.48. This is slightly below the Victorian average of 1,014.59, although is almost as high as the average for country municipalities.
19. There is also significantly higher unemployment in Ballarat compared with other Victorian municipalities. By the time of the inquiry Ballarat's unemployment rate was 9 per cent compared with the Victorian rate of 5.7 per cent. On this occasion a more worthwhile comparison may be with the rate applicable to other major country towns which have an unemployment rate of 7 per cent. Thus the Ballarat rate is considerably higher – some 50 per cent higher than for Victoria as a whole, or approximately 30 per cent higher than the rate for other comparable municipalities.

Incidentally, at the time of the inquiry the unemployment rate was rising, a trend which had commenced in the June quarter 2004.

THE COUNCIL'S SUBMISSION

20. Ballarat's decision to oppose this application (confirmed as recently as June of this year by a 7/1 vote within the Council) appears to have been based, as much as anything, upon the statistics referred to above.

21. In August 2004 the Council adopted four policy principles:
 - i That the number of Electronic Gaming Machines in Ballarat should be capped and that they should be reduced over time toward the median level.

 - ii That Electronic Gaming Machines should be discouraged from being located close to neighbourhoods with low SEIFA measures and that in general gaming machines should be encouraged to be located in entertainment precincts or the central business area.

 - iii That guidelines for a community benefit fund be established for gaming premises on Council owned or controlled land and for clubs and hotels.

 - iv That the collaborative work of the responsible gaming interest group continue to be supported by Council.

22. The Council's written submission highlighted the fact that within Ballarat there are great disparities in wealth. As an example, a property near Lake Wendouree can cost well over \$1m, but less than three kilometres away in Wendouree West a 3 bedroom house can be purchased for \$150,000.

23. The further analysis of the SEIFA index confirms the validity of this aspect of the Council's submission. A number of areas within Ballarat (and in the region of the applicant's venue) have very low SEIFA indexes, including Sebastopol, Wendouree and Wendouree West. Indeed, some regions close to the subject venue have SEIFA index scores in the lowest 5 per cent of the state.

24. The statistics, of themselves, were said to support the Council's position that a considerable number of Ballarat residents are at risk of having problems with their gambling. Various studies, since the Australian Productivity Commission's 1999 study have reached slightly different conclusions as to the number of problem gamblers in Australia or in Victoria, with percentages varying between 1 per cent and 2.14 per cent. Adopting the most recent measure from the Gambling Research Panel's study, in which it concluded that about 1.12 per cent of Victoria's adult population were problem gamblers, with another 1 per cent at moderate risk, the Ballarat submission suggested that such a percentage would lead to the conclusion that there were over 1,300 individuals in Ballarat who are harmed by or at risk of being harmed by problem gambling behaviour on EGMs. The report also cited a survey conducted for Tattersalls by the actuarial consultants Newton Wayman Chong and Associates in 2001. In a survey of 1,000 Ballarat residents conducted as part of

that study, the report concluded that 5.7 per cent of Ballarat residents were perceived to have a problem and that this was a higher figure than other estimates of numbers of problem gamblers in Australia.

25. Effectively, the Council's position was stated as being one in which any further applications for EGMs would be opposed until such time as the number of EGMs in Ballarat coincided with the Victorian average.
26. The Commission believes that such a policy position is quite understandable having regard to the somewhat alarming statistics referred to above, although it does believe that some flexibility should always be retained. If the policy of the Council is to be interpreted as requiring opposition even to a transfer of EGMs within the municipality, this may conceivably lead to the result that a transfer of EGMs which might produce benefits to the community which outweigh the disadvantages would nevertheless be opposed.
27. The Council also called four witnesses to back up its written submission. They were Mr Clifford Barclay, Chief Executive Officer of Uniting Care Ballarat, Ms Claire Ryan, Coordinator of Gambler's Help Grampians region (and a team leader for Ballarat with Relationships Australia), Ms Lorraine Clarke a financial councillor at Child and Family Services at Ballarat, and Ms Yvonne Dichieri, a gambler's help access worker at Child and Family Services Ballarat.
28. The Commission was impressed by each of these witnesses and the evidence which they provided strengthened the Council's position

considerably. It is perhaps unnecessary to refer to all of the matters about which they gave evidence. It is fair to say that in each case there was an element of opposition to EGM activity generally although all disagreed with the proposition put to them in cross-examination, that they were opposed to people using EGMs in any circumstances.

29. A common theme of their evidence was their concern about the location of the subject venue, in the midst of areas of considerable social disadvantage. All had had experience in dealing with clients from the Sebastopol region. All were concerned that the huge majority of problem gamblers are still not seeking assistance. Several were convinced that the volume of clients being referred to them is increasing. All had concluded their witness statements by commenting on ways and means by which problem gambling could be reduced. These were extremely interesting although of limited relevance to this inquiry.
30. A problem which did confront the four witnesses was that they had not seen the material filed by the applicant. They were, therefore, unaware of the considerable detail contained in the application as to a number of the more positive aspects of the applicant's activity, its responsible gambling policies, contributions which the applicant believes that it makes to various aspects of community activity, and indeed the uncontradicted assertion of some witnesses for the applicant that Sebastopol is poorly served for what might be described as a community centre, and that to a very real extent the Bowling Club provides such a resource. It might have been desirable if the witnesses had been able to comment more adequately

on both the positive and negative aspects of the application but, overall, their evidence was sincerely given and impressive and we have accepted it.

THE CASE PRESENTED BY THE APPLICANT

31. There were several aspects to the applicant's case. As previously mentioned, a report had been provided at the time of the original application by ERM (Environmental Resources Management Australia) and shortly before the hearing Mr Cook of that firm produced a further report.

32. From these reports the following information was provided, and accepted by the Commission:

- The club has approximately 220 full bowling members, 64 social bowling members, and 1,056 gaming members.
- The average age of bowling members is generally over 60.
- In addition to lawn bowls and the gaming, the club also operates a successful bistro, which is open for lunch 7 days a week, and for dinner from Tuesday to Saturday (details of other activities were provided by witnesses from the club to whom reference is made subsequently).
- That the club had existed in its current location since 1943.

- That EGMs had first been installed in 1994, with additional EGMs added in 1997, 1998, and 2000.
 - A significant expansion of the bowling greens had been carried out in 2003, to include a new synthetic surface.
 - That the club had a detailed responsible gaming strategy, having recently received awards of 100 per cent in two audits carried out by Tattersalls in December 2004 and February 2005.
 - That the club, in 2003/2004, provided funding of some \$2,650 to various community groups and a further \$2,500 to the local football club and had contributed “voluntary services to the community worth \$92,620 (including supply of coaches and equipment to school children)”. It had also provided considerable subsidisation of club activities for members, and had offered the free use of its function rooms to a vast number of organisations within the community including churches, the RSPCA, Neighbourhood Watch, the CWA and many others.
33. In both of his reports Mr Cook dealt with the difficulties confronting the application caused by the high number of EGMs within Ballarat, and the high gaming expenditure. Particularly in his second report he attempted to provide an explanation which, if accepted by the Commission, might enable the Commission to feel more comfortable about the high level of EGMs and gaming expenditure. He pointed out (and the Commission accepts as a fact) that Ballarat is the centre of an important tourist region in Victoria. In summary, as to this point, he said:

“Ballarat is an important tourist destination which undoubtedly has some impact in inflating spending on EGMs by comparison to other municipalities. It is estimated that Ballarat attracts some 2.47m day and overnight tourist visits per annum and Council has estimated that tourism contributes around \$300m annually to the Ballarat economy.”

34. In evidence provided in other inquiries relating to venues within Ballarat, this point had also been highlighted. The tourism statistics are by no means even, showing large “spikes” from one year to another. Overall, impact of tourism upon Ballarat (or the Goldfields region of which it is the centre) does not appear to have increased over the last 5 years. Further, unlike other matters with which the Commission has recently dealt neither the statistics supplied by the Council nor those which could be provided by the gaming industry, are of assistance in assessing the extent to which the tourists contribute to gaming expenditure. By contrast, in the three matters with which the Commission has recently dealt relating to venues on the Mornington Peninsula, the statistics provided both by the Council and the gaming industry show a huge lift in gaming expenditure at peak holiday periods. Counsel appearing for the various applicants before us at this inquiry have suggested that the effect of tourism within Ballarat is more constant than seasonal and we accept that this is the case. Our conclusion as to this subject is that we believe that expenditure figures within Ballarat are contributed to by the number of overnight visitors to the city, although it is impossible for us to reach any firm conclusion as to the extent of such an increase. Whilst we accept that tourism is a significant economic factor within

Ballarat, there was no evidence to suggest that an additional 5 EGMs at this venue would lead to an increase in tourism.

35. Another point made by Mr Cook in his second report was that in a number of other major regional cities within Victoria, numbers of EGMs and gaming expenditure are also well above average. Because we consider that a comparison between Ballarat and other major regional cities within Victoria is of such relevance to this inquiry we set out the details provided by Mr Cook:

	Ballarat	Bendigo	Geelong	Shepparton	W'bool	Mildura	Wodonga	Country Vic
Total Population	86,963	94,380	202,719	60,403	30,767	51,293	34,494	1,369,947
Population Aged 18+	65,210	70,909	155,073	44,115	22,776	37,362	25,124	1,026,003
EGM numbers	659	534	1,392	339	252	290	130	7,341
Total gaming expend	\$48.7M	\$38.5M	104.2M	25.4M	16.2M	18.2M	8.4M	\$486.6M
Gaming expend per adult	\$747	\$543	\$672	\$575	\$711	\$487	\$333	\$474
EGMs/1000 adults	10.11	7.53	8.98	8.98	11.06	7.76	5.17	7.11

36. Mr Cook's contention was that the table referred to above does demonstrate that with the exception of Wodonga, all of the larger regional centres in Victoria do have EGM expenditure and concentration at levels above the average for country Victoria as a whole.

37. We consider that this point has validity but it must, nevertheless, be conceded that even in comparison with the other regional cities, perhaps with the exception of Warrnambool, both concentration of EGMs and gaming expenditure is significantly higher in Ballarat than in the other cities to which reference is made.
38. A point appropriately made by Mr Cook was that the club had put to good use the additional revenue which it had gained from gaming. For example, since the last increase in EGMs (an additional 8 in 2000) the club had constructed a large kitchen and the bistro area now accommodating around 160 people, had expanded its bowling greens, and had constructed an additional function room (much used by the community groups referred to previously). From this basis the witness commented that it was appropriate to consider that an additional 5 EGMs at the club's premises "will have an indirect impact on the club's proposals to improve and enhance its facilities for members and patrons in the future".
39. The applicant also called two witnesses from within the club. Messrs Rinaldi and Gorman who are respectively the Manager and Chairman of the Board both gave evidence. The Commission had no doubt as to the truthfulness of their evidence and indeed was impressed by the warmth of the feelings which they displayed towards the club and their consciousness of its role in the community.
40. The picture which was presented was one of very significant growth since 1995. It was conceded that at that time the club was in difficulty. The number of bowling members was dropping, but has

since improved significantly. Bistro activity now involves 1,250 meals per week in addition to light snacks. Seven teams are fielded in the men's pennant bowls competition, together with three ladies teams. There is a strong indoor bowls section conducted throughout the year. The Chairman of the Board, Mr Gorman, has a background as a social worker and commented that given his background in welfare work he has taken it upon himself to deal with many of the life issues facing members. We accept without reservation his view that the club has a role as a community club which extends to ensuring that members, who are experiencing difficulties in life, whether for economic or social reasons, have a community organisation which they can turn to. He pointed out that many members are elderly and live alone and that the club provides a social outlet for these people.

41. Mr Rinaldi gave more specific evidence about the subsidised meals which are provided. He stated that on Friday and Saturday evenings the bistro is booked out and that Sunday lunch has become a family day with families often staying into the afternoon. As a consequence of the big increase in bistro and other activity at the club, the gaming lounge has also become more heavily patronised and the witness commented that there are a number of peak periods, particularly at lunchtimes and in the evenings, when it is often difficult for members or guests to gain access to gaming machines. There are many bowling visitors to the club, a number of whom like to enjoy the gaming machines as an adjunct to their bowling.

42. Mr Rinaldi, in particular, provided detailed evidence as to the club's attitude to problem gambling. He produced a register in which

incidents relating to problem gambling are recorded. These included details as to some 18 incidents since 2003, most of which involved the detection of people who had entered into agreements whereby they were self-excluded from gaming venues in Ballarat and elsewhere.

43. In the evidence given by the witnesses for the Council there were some rather unspecified suggestions that the club might not be doing all that it could in relation to problem gambling. Although pressed, the witnesses felt unable to supply any further detail because of their concerns about client confidentiality. The Commission must say that this is disappointing because we would have thought that, in many instances, the witnesses to whom we have referred above and who have vast experience in their areas of expertise would have been able to provide information to office bearers of the club without divulging the identity of particular clients. In all the circumstances, and having heard the specific evidence as to these subjects from the witnesses called on behalf of the applicant, the Commission is of the view that this applicant places a higher degree of importance on the issue of problem gambling than is the case with many other venues, and is particularly conscious of the fact that its location is one which brings this issue into constant consideration.
44. A problem which confronted the applicant and to which a good deal of attention was directed during the inquiry was that it appeared that there was no very clear purpose for which the additional EGMs were required.

45. In cases in which there is a higher than usual concentration of EGMs or in circumstances in which a transfer of EGMs within a municipality will lead to a higher degree of gaming expenditure, the Commission will be concerned to establish what countervailing benefits might be associated with the proposal. High levels of gaming expenditure may not be fatal to an application if it can be seen that significant benefits will result from the proposal. Usually such benefits will accrue both to the members of the club operating at the venue, and also to members of the community who may have some involvement with the venue. A problem which concerned the Commission throughout this inquiry was that we did not feel certain that we could identify any significant benefits which might outweigh the obvious disadvantages associated with the proposal. In his witness statement Mr Rinaldi stated that there were now plans for redevelopment of the premises “to provide the jewel in the crown for bowling members”. He commented that, thus far, many of the benefits had been for others using the venue and that the members’ lounge and bowling facility had suffered in comparison. The Commission had the opportunity to visit the venue and would agree with this observation. The facilities available to bowling members whilst not unattractive are somewhat dated. Mr Rinaldi said that current plans involved:

- Expansion and updating of the members’ lounge, construction of an additional kitchen for provision of afternoon teas in the members’ lounge, the creation of further office space.
- Construction of larger change rooms and restrooms for the bowling members, the construction of further meeting rooms with views over

the bowling green, the enlargement of a billiard room area, and the provision of a small low impact gymnasium for the members.

46. When pressed, the witness agreed that these plans would be carried out in any event. He pointed out that the club does have some \$600,000 in debt and that the additional revenue from the EGMs which were sought would enable the club to move more quickly with its proposals.

47. The matters referred to above are by no means unimportant but it is hard to discern any particular benefit other than for the bowling members, who already enjoy the benefit of considerable subsidisation in their membership fees. The Chairman of the Board confirmed that the membership fees for bowling members at Sebastopol are \$72 whereas other clubs charged as much as \$150. The Commission is concerned that the applicant should see an increase in gaming revenue as a means of servicing and reducing its debt whilst those primarily benefiting from its facilities, the members, are paying less than the going membership rate.

48. Reference should also be made to another witness called by the applicant, Mr Douglas Higgins, who is the President of the Sebastopol RSL sub-branch. It was Mr Higgins who, in his witness statement, particularly highlighted his view about the overall benefit which the applicant provides for the Sebastopol community. He said:

“I believe that the club is offering a great social facility for the more mature aged person in Sebastopol. The hotels in Sebastopol are not

the same standard as the club. One of the hotels is known as a 'bikies pub' and the other hotel is marketed towards a younger crowd. There is nowhere else in Sebastopol for mature aged people to go for social activities. I would say that the Ballarat Trots Club is the nearest venue offering a similar type of facility."

49. He pointed out that the RSL in a joint venture with the Victorian Government had established aged care units only a few metres from the applicant and that there were other aged care facilities nearby also. The RSL Club's own premises are inadequate for its major functions and for that reason these functions are held at the applicant's venue. We are certain that the applicant's venue is a great adjunct to the RSL and that it is very much in the interests of the community of Sebastopol that the RSL is assisted in this way. But Mr Higgins also, when pressed as to what additional benefits could be conferred by the applicant upon the RSL, if this application were granted, commented that in his view there was nothing further which the applicant could do for the RSL – it was already providing an excellent service.
50. Finally, the applicant called Mr Michael Clyne of Tattersalls to provide evidence as to the likely gaming expenditure associated with this application. In Mr Clyne's analysis, he calculated that the likely increased expenditure at the applicant's venue was likely to be approximately \$155,000 (of this sum the applicant would retain one third).
51. Of this sum of \$155,000, in his view only some 23 per cent would be transferred expenditure leaving the result that approximately

\$120,000 would be new gaming expenditure within the City of Ballarat.

52. Unfortunately, and for reasons which were not altogether clear, Mr Clyne was not able to provide an opinion about the reduction in gaming expenditure from the two venues from which the 5 proposed EGMs are to be sourced. What is clear, however, is that there would be some reduction in expenditure at both of those venues, so that the net increase in gaming expenditure within Ballarat as a whole would be under \$120,000, and in our view likely to be less than \$100,000. It is, therefore, a very minor percentage increase.
53. Ms Brennan on behalf of the applicant provided detailed written submissions. In dealing with the Council's opposition to the proposal, she suggested that the Commission should regard the Council's position as illogical and inconsistent. She pointed out, correctly, that the Council was not opposing an application by the Ballarat Trotting Club in circumstances in which the application if granted would lead to an increase in the number of EGMs within Ballarat, whereas the Bowling Club's application required no increase. We accept the accuracy and logic of Ms Brennan's submission but consider that there are many aspects of the Council's policy which are very relevant to this application. In particular, its belief that there should be no further concentration of EGMs in vulnerable areas within the municipality is a view which might be adopted by many.
54. She suggested that the Council's policy should be regarded as one of preparation for the capping of machines by the government, which, it

is suggested, may occur within the next 12 months. As to this, the Commission must say that it has not been influenced by this factor, one way or another, in the conduct of this inquiry.

55. Ms Brennan also pointed out that the overall level of increased expenditure associated with this application (about 0.3 per cent increased expenditure) is modest compared with a number of matters which the Commission had dealt with, and in which applications for an increase in the number of EGMs had been permitted. She cited in particular, our decisions in matters including the Berwick Springs Hotel, the Lilydale Hotel, and the Yarram Country Club.

56. We accept the validity of this submission, but in none of the cases to which she referred in her submission, were the gaming statistics, either as to concentration or expenditure as extreme as in the current application. She made the point, and we accept it, that the evidence has established that the Club recognises that it is in a vulnerable area and is taking appropriate steps in recognition of this.

CONCLUSION

57. Our predecessor, the Victorian Casino and Gaming Authority in its 2001 decision in the matter of Werribee Football Club Inc., commented that each application must be determined on its own merits and must involve a balancing exercise recognising that gambling in its various forms is a pastime that appeals to many Australians who, without harm to themselves or others, ought to be able to exercise a generally unfettered choice to engage in it.

58. In this case the Commission has been impressed by many aspects of the applicant's submission and presentation. The decision which we reach should not be viewed by office bearers of the applicant as indicating that in any way their evidence has not been accepted. The Commission has a great deal of respect for the manner in which they have conducted the venue with the assistance of gaming revenue. The Commission takes the view that the provision of lawn bowling facilities is a very worthwhile adjunct to community life within Ballarat and that it is to the Club's credit that it has been able to increase the number of bowling members. There is nothing unworthy about the Club's intentions to further enhance the facilities available to bowlers. We do not find such intentions as being in any way inconsistent with the community interest.
59. However, in order for the Commission to decide this application in favour of the applicant, the Commission must be satisfied, in accordance with the Act, that there will be no net economic or social detriment to the residents of the City of Ballarat if the application is granted. In this case we cannot be so satisfied.
60. The applicant already operates a large gaming venue within one of the most disadvantaged areas within Ballarat. Notably, on a number of prior occasions it has increased the number of EGMs, at times when it was unnecessary to undertake the type of inquiry which has been required in this instance. As a consequence, centred as it is in a vulnerable area, and confronted with the statistics to which we have referred on many occasions during these Reasons, it would be incumbent upon the applicant to satisfy the Commission that there are such social and/or economic benefits associated with the proposal

that in carrying out the balancing exercise the Commission could be satisfied that there is no net detriment. In this instance the applicant has not been able to do so.

61. The applicant's position might be contrasted with, for example, a RSL sub-branch wishing to purchase a bus to enable older members of its community to be transported for medical purposes, or to upgrade facilities available to widows living in premises subsidised by that sub-branch. These are but illustrations of the type of purpose which might satisfy the Commission that, even in the face of higher than usual gaming density and expenditure, an application for additional EGMs might be warranted. It will be readily seen that no such purpose has emerged during this inquiry and the matter becomes even clearer when it is remembered that the Club has indicated that it will proceed with the proposed enhancement of facilities for bowlers in any event, and not depending upon the outcome of this application.

62. Whilst, as indicated earlier, we have some concerns about the absence of flexibility in the Council's gaming policy we believe the position as advanced by the Council is one to which the Commission must give considerable respect. The Council's policies have clearly been worked out over a period of time and with considerable input from various parties.

63. There is one other matter to which we should refer. Whilst it is true that this is an application for a transfer of EGMs from within the municipality, it must be conceded that the venues from which the EGMs are to be sourced are from areas very different to those

constituting the neighbourhood in which the applicant's venue is located. Having inspected the Midland Golf Club and its surroundings, the Commission is of the view that the likelihood of problem gambling at that venue is somewhat lower than is the case at the applicant's venue.

64. For these reasons this application is refused.

The preceding 64 paragraphs are a true copy of the reasons of decision herein of –

*Mr I. Dunn, Chair
Mr R. Smith, Sessional Commissioner*

<i>Date of Hearing:</i>	<i>25, 26 July 2005</i>
<i>Date of Decision:</i>	<i>20 October 2005</i>
<i>Counsel for the Applicant:</i>	<i>Ms. S. Brennan</i>
<i>Solicitors for the Applicant</i>	<i>Williams Winter</i>
<i>For the City of Ballarat</i>	<i>Ms S. Howard & Mr A. Diamond</i>
<i>Counsel Assisting the Commission:</i>	<i>Ms M. Johnson</i>