

Our Reference: 100/10/05/A



27 March 2007

The Secretary
Legislative Council Select Committee on Gaming Licensing
Parliament of Victoria
Spring Street
MELBOURNE VIC 3000

Dear Mr Willis,

Submission to the Select Committee on Gaming Licensing

Maroondah City Council supports the Legislative Council's inquiry into the probity of gaming licensing in Victoria and other related matters. Council welcomes this opportunity to provide comment to the Select Committee regarding the matters included in the Committee's Terms of Reference.

The Maroondah City Council submission to the inquiry is enclosed. The submission addresses a number of issues that have impact on the local Maroondah community.

Should you require further information, please feel free to contact Vivian Tee on 9298 4220.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a horizontal line.

Michael J. Marasco
Chief Executive Officer
Maroondah City Council

enc. Maroondah City Council Submission (8 pages)



Maroondah City Council Submission
to the
Select Committee on Gaming Licensing
March 2007

1. Introduction

Maroondah City Council welcomes this opportunity to provide input to the Select Committee on Gaming Licensing. The following comments are made in relation to the Select Committee's Terms of Reference and the *Gaming Machine Licence Arrangements Post-2012 Issues Paper* released by the Department of Justice in March 2006.

This document is intended to detail key local issues of particular concern to Council in regards to the EGM licensing structure; EGM locations, numbers and distribution; the Community Support Fund and Community Benefits Statements; the State legislative and regulatory framework pertaining to gaming; and responsible gambling measures. The positions articulated in this submission are consistent with the Maroondah Gaming Policy and Statement of Practice 2007.

2. Review Areas & Summary of Submission

Within the scope of the Terms of Reference, Council has identified five key areas that have particular pertinence to gaming in the City of Maroondah and that impact on the Maroondah community. The following lists the five key areas and highlights Council's main points under each area. These points are further discussed in the body of this submission.

- ⇒ **Revenue distribution** – The current distribution of revenue for community purposes through the Community Support Fund and the Community Benefits Statements does not provide for the transparent, proportional and recognisable distribution of gaming revenue. Council supports the replacement of this system with a 'community trust' model of administration.
- ⇒ **Distribution of gaming machines and venues** – Access to gaming opportunities is a significant factor in problem gambling. Consideration of the most appropriate model of gaming machine and venue distribution is only possible when conducted in conjunction with a review of the statewide gaming machine cap. Additionally, Council calls on the State Government to provide an explanation for the setting of the universal cap at 10 machines per thousand adults.
- ⇒ **Legislative and regulatory framework** – The current planning and regulatory systems represent a duplication of function and allow the continuation of inconsistencies in

decision making bases. Council calls on the State Government to review the roles of the Victorian Commission for Gambling Regulation and the Victorian Civil and Administrative Tribunal in gaming and planning applications.

- ⇒ **Transparency and access to information** – It is imperative that local government has reliable access to data relating to gaming patterns, expenditure and the efficacy of responsible gambling measures in order to inform effective local-area planning and policy development. Council insists on the timely and public release of such information by the gaming industry, gaming operators and State Government.
- ⇒ **Measures to minimise problem gambling** – Although there is now greater recognition of the inherently harmful nature of the gaming product and moves towards creating a safer product, Council considers these strategies to be limited and insufficient. Council requests that the State Government commit to further exploration of the effectiveness of additional measures to ensure that gaming environments and products do not directly or indirectly encourage excessive gambling.

3. Maroondah City Council Responses

Review Area 1: Revenue Distribution

Community Support Fund

The current taxation arrangements in relation to direct economic community benefit requires hotel venues to contribute 8.33% of the gaming machine revenue to the Community Support Fund (CSF) and for club venues to provide a minimum of 8.33% of gaming revenue for ‘community purpose’.

Council regards the current taxation arrangements in relation to the CSF and Community Benefit Statements (CBS) to be inconsistent with the State Government’s principles of ensuring ‘that the legitimate financial benefits of gambling (both private and public) are transparent, appropriately recognisable and fairly distributed to the Victorian community’ (Department of Justice Issues Paper, page 3).

The purposes to which CSF money may be applied are listed in section 10.3.3 of the *Gambling Regulation Act 2003*. Council considers the parameters prescribed in this section to be overly broad. Section 10.3.3(b) lists ten types of programs to which CSF money can be allocated. While there is a clear link between some of the listed program types and social disadvantage (eg prevention of excessive gambling or drug abuse, and families in crisis), the links between addressing social disadvantage through the funding of other program types appear to be more tenuous (eg programs for the benefit of sport or recreation, programs for the promotion or benefit of the arts, and programs establishing or developing tourist destinations or facilities or services or for the purposes of promoting tourism).

Under the current system, public access to information on the amount of revenue that flows into the CSF and the dollar value of projects/purposes funded from the CSF is not readily available. Council strongly believes that the community should be afforded easy access to this information and that the information provided should be sufficiently detailed to enable a

thorough understanding of each project/purpose funded and the dollar value allocated, and to enable determination of the geographic distribution of funding. Further, to ensure the fair distribution of the financial benefits of gambling, the annual distribution of CSF funding to each local government area needs to be proportionate to the recorded net gaming expenditure from the municipality. Public information regarding the CSF could take the form of a detailed Annual Report published on the Government website.

Council requests a full review of the CSF and concordant amendments to the *Gambling Regulation Act 2003*. The review should examine the stated purposes for which CSF money can be applied and develop a framework to ensure that CSF funding is dispensed to local government areas in a manner that is directly proportional to the inputs from each municipality.

Community Benefits Statements

In relation to the CBS, Council is of the view that the activities and purposes that constitute community purposes (as specified in the Minister's Determination dated 24 June 2003) are too broad and the level of information required for completion of a CBS is insufficient to ensure that the financial benefits of gambling are appropriately recognisable. For example, the employment expenses of all staff employed by venue operators (including staff in non-gaming areas) and the value of fixed assets provided for non-gaming purposes have been approved by the Minister as activities constituting community purpose. Accordingly, club venues can claim these expenses as part or all of their required 8.33% contribution. Council is aware that some club venues in the City of Maroondah have claimed the total of their annual 'community benefit' under the categories of staff expenses and/or fixed assets. Such items should be considered part of the commercial operating costs and not as 'community benefits' (unlike activities such as donations, sponsorships and subsidised activities which represent a tangible and recognisable benefit to the community).

An alternate proposition to the above is the direct allocation of the 8.33% contribution from both club and hotel venues in each municipal district to a specific fund administered by the local government authority of the municipality. Local government is the level of democracy closest to the community and its key role continues to be the promotion of the wellbeing of its local community. Thus, such a mechanism for the distribution of gaming revenue will more appropriately ensure that local gaming revenue is distributed in an equitable and transparent way for means that best improve the health and wellbeing outcomes of the local community.

Review Area 2: Distribution of Gaming Machines and Venues

Destination Versus Convenience Style Gaming Venues

There is a proliferation of research validating the links between problem gambling and the dimensions of accessibility (see Blaszczynski, 1998; Productivity Commission, 1999; Marsden Jacobs Associates, 2000; Svensen, 2001; Hallebone & Marsh, 2001; Ronalds, 2002; SA Centre for Economic Studies, 2005). The Productivity Commission inquiry identified multiple dimensions of accessibility that may affect problem gambling in different ways. These dimensions include:

- Number of venues
- Opportunities to gamble per venue
- Opening hours
- Conditions of entry
- Ease of use
- Social accessibility
- Location of venues.

The State Government's October 2006 problem gambling strategy, *Taking Action on Problem Gambling* (page 28), provides recognition of the significant correlation between greater accessibility and the increased prevalence of problem gambling. Additionally, the 2006 report of the Gambling Licences Review project team (the 'Kirby report', page 14) states that 'Size, access and amenity are important considerations in terms of responsible gambling'.

As it is now widely recognised that these multiple dimensions of accessibility can have a significant impact on problem gambling in the community, neither of the proposed scenarios (ie a growth in large venues dispersed throughout the state or a higher number of smaller venues) provides a satisfactory and responsible approach to gambling in Victoria. Council appreciates the predicament of the State Government in having to come to a decision about appropriate venue size and distribution in the context of the current statewide EGM cap. It is Council's view that a comprehensive and prudent assessment of this question cannot be achieved while the existing ceiling on gaming machines remains. Such an assessment is only possible when conducted in conjunction with an earnest review of the statewide cap based on a comprehensive assessment of social and wellbeing outcomes. This review of the statewide cap and the most appropriate model of gaming machine and venue distribution must be based on research findings and actively involve the local government sector and other key stakeholders. However, in view of the existing evidence, Council strongly advocates for the elimination of gaming venues situated within residential areas and in entertainment and retail areas that are generally patronised by local or regional residents.

Caps on Gaming Machine Density

In its October 2006 problem gambling strategy (page 30), the State Government announced a universal cap on all local government areas that are not subject to a regional cap. This cap has been set at 10 gaming machines per thousand adults, in spite of the recommendations of the Regional Electronic Gaming Machine Caps Review Panel for the universal cap to be set at 8 gaming machines per thousand adults.

Council is unclear about the basis of the State Government's determination of the universal cap density which seems to disregard the extensive research and ensuing recommendation of the Regional Electronic Gaming Machine Caps Review Panel. Council requests that the State Government provide a sound justification for the density it has established for the universal cap or, in the absence of satisfactory reasoning, that it reduces the universal cap for the year 2010 to the recommended level of 8 gaming machines per thousand adults.

Review Area 3: Legislative and Regulatory Framework

Duplication of Roles

With the recent amendment to the Victorian Planning Provisions (VC39), a planning permit is now required for all requests to install or use a gaming machine. Maroondah City Council welcomes this amendment which provides local government with greater planning controls over gaming machines in their respective municipalities. However, Council is highly concerned and dissatisfied with the present process for the approval of new gaming venues and increases in the number of machines at existing gaming venues in Victoria.

In effect, the VC39 amendment requires local municipal authorities to assess applications for planning permits in relation to gaming venues under their respective planning schemes and subject to the *Planning and Environment Act 1987*. This Act authorises councils to consider social and economic matters in deciding on planning permit applications. Once a planning permit has been issued, the applicant must then apply to the Victorian Commission for Gambling Regulation (VCGR) for licensing approval. Under the *Gambling Regulation Act 2003* (sections 3.3.7 and 3.4.20), the VCGR must not approve the application unless it is satisfied that the net economic and social impact of approval will not be detrimental to the wellbeing of the community of the municipal district. The requirement for both the local government authority and the VCGR to consider social and economic impacts in their respective decisions represents a duplication of function, whereby this aspect is assessed by both bodies usually on the basis of the same, or very similar, evidence and other relevant material.

The regulatory function of the VCGR should be amended to be similar to the Liquor Licensing Commission which assesses licensing applications from a probity perspective and functions as a referral body for local government planning matters.

Inconsistencies in VCGR and VCAT Decisions

Added to the apparent duplication of roles discussed above, the *Planning and Environment Act 1987* and the *Gambling Regulation Act 2003* both provide for the right of appeal to the Victorian Civil and Administrative Tribunal (VCAT). On many of the recent decisions of the VCAT where the VCAT has overturned the planning decision of local government or the licensing decision of the VCGR, the VCAT's reasons for decision indicate that the decisions have placed overwhelming emphasis on extremely broad State policy objectives, with little apparent regard to local planning schemes and complementary local policies. As the planning schemes and policies of councils are explicit reflections of the aspirations of local communities and consistent with State policy frameworks, Council strongly believes that these local policies must form the primary basis of decision making by both the Local and State governments. The role of the VCAT, as a panel of review, should be isolated to the assessment of local government compliance to local planning policies and processes. In going beyond this role, as the VCAT has recurrently demonstrated in recent decisions, the VCAT supplants the role of the council as the local planning authority. The role of the VCAT

should be to deal with planning matters that are of regional significance or that relate to a failure of the council to comply with due process and local planning policies.

Council is deeply concerned that the roles of both the VCGR and the VCAT destructively undermine the decision making authority of local government. Under the *Local Government (Democratic Reform) Act 2003*, the primary objective of local government is 'to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions.' This objective underpins the local policies and decisions of councils. However, the current function of the VCGR and decision making basis of the VCAT obstructs the local government sector in its work in maximising the achievement of its primary objective.

Council requests that the State Government undertake a review of the role of the VCGR in decisions over the location of gaming machines and of the role of the VCAT in the review of planning matters to ensure a more streamlined, efficient and effective provision of gaming.

Review Area 4: Transparency and Access to Information

There are a number of reasons that local governments require information about aspects related to the gambling industry such as responsible gambling practices, the profile of gamblers and gaming expenditure. The key uses by local government of such information include:

- To develop effective and up-to-date gambling policies
- To inform planning decisions through enabling the comprehensive analysis of community impacts arising from gaming applications (ie proposals for a new gaming venue or an increase in the number of EGMs)
- To gain an understanding of the population groups that experience or are at-risk of experiencing problem gambling and the impacts of problem gambling on individuals, families and the community
- To better comprehend the efficacy of measures intended to minimise the harms caused by gambling.

The value of an evidence-based approach to governance and planning is becoming increasingly evident and essential. Clearly, it is imperative that local government has access to this data and information to inform effective local-area planning and policy development. Access to such information is particularly crucial in light of the VC39 amendment. In order to make appropriate and informed planning decisions on gaming applications, councils must have access to a greater range of gaming-related information than is currently available.

In 2005, Maroondah City Council prepared an Economic and Social Impact Submission in response to an application to the VCGR for new premises approval. In the process of developing this Submission, it became clear that much of the data and information required for Council to make a comprehensive assessment of the community impacts of the application was lacking. Such information included:

- Profile of venue patrons – what are the sociodemographic characteristics of people who use EGMs in Maroondah, when and to what extent do they visit gaming venues? When are the peak periods of usage and in which venues?
- The models and assumptions used by the gaming industry to estimate the projected impacts on gaming expenditure (new, transferred and reduced expenditure)
- The extent to which responsible gambling practices (both legislated and additional measures) are implemented and the efficacy of such measures.

There is little doubt that ready access by local government to such information is essential to enable councils to carry out their mandated responsibilities and roles, particularly in facilitating the best social, economic, health and wellbeing outcomes for the community. Access by the general public to such information is also fundamental to a policy and legislative framework premised on the principles of transparency and probity.

Council, therefore, insists that the timely and public release of such information by the gaming industry, gaming operators and the State Government must form one of the central obligations of the post-2012 licensing arrangements.

Review Area 5: Measures to Minimise Problem Gambling

In addition to the issues discussed above relating to the distribution of gaming revenue, distribution of gaming machines and venues, access to information and the streamlining of the planning process, Council regards the past and current strategies of the State Government to be insufficient in addressing the issue of problem gambling.

Council commends the State Government for its recent recognition of the potentially harmful nature of the gaming product (refer to Action Area 5 in the State Government's 2006 problem gambling strategy) and its commitment to introducing measures such as reducing bet limits and maximum starting credits, limiting cash access and restricting signage outside the gaming area. However, Council feels that there is enough research evidence to require an investigation of additional player protection and product safety measures to ensure a safer gambling product. Such measures include the removal of bank note acceptors, more player information displayed on machines, gaming venue design and expenditure pre-commitment mechanisms.

Council calls on the State Government to commit to further and rigorous exploration of the effectiveness of additional measures to create gaming environments and products that do not encourage excessive gambling. As recommended in the Kirby report (page 27), 'The Government will want to consider these suggestions [regarding measures and the regulatory approach that would reduce problem gambling and provide the player with greater control over decisions on spending or terminating play] carefully, as they all have some potential to reduce problem gambling in the future, particularly if viewed as part of the broader responsible gambling regulatory approach and licensing arrangements post-2012'.

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