



Victorian Commission for Gambling and Liquor Regulation

DECISION

In the matter of an application under section 3.3.4 of the *Gambling Regulation Act 2003* by the Pakenham Racing Club Inc. for approval of a proposed premises to be located at the southwest corner of Bridge and Cardinia Roads, Officer as suitable for gaming with 60 gaming machines.

Commission:

Mr Bruce Thompson, Chairman
Mr Robert Kerr, Commissioner

Appearances:

Mr John Larkins of Counsel for the Applicant
(instructed by John Nolan of Wisewould Mahony Lawyers)

Mr Bronte Campbell as Counsel Assisting the Commission

Date of Hearing:

27 November 2013

Date of Decision:

27 November 2013

Decision:

That the premises be approved as suitable for gaming with 60 gaming machines.

Signed:

Bruce Thompson

Chairman



REASONS FOR DECISION

INTRODUCTION

1. This is an application by the Pakenham Racing Club Incorporated (**the Club**) for approval of a proposed premises to be located at the southwest corner of Bridge and Cardinia Roads, Officer (**the Proposed Premises**) as suitable for gaming with 60 electronic gaming machines (**EGMs**).
2. The Club currently operates two gaming venues:
 - 2.1. the Pakenham Sports Club (38 EGMs), located at Pakenham Reserve, corner of John and Henry Streets, Pakenham; and
 - 2.2. the Cardinia Club (105 EGMs), located at 71 Racecourse Road, Pakenham.
3. The Club intends to relocate the Pakenham Sports Club to the Proposed Premises and transfer an additional 22 EGMs from the Cardinia Club to the new venue. The Proposed Premises will be built in two stages, with the first stage estimated to cost between \$10 million and \$11 million and to be completed in January 2016. The second stage is estimated to cost between \$1.5 million and \$2 million and be completed within 48 months of the completion of the first stage.
4. The relevant municipal authority is the Shire of Cardina Council (**the Council**). The Council chose not to make a submission with respect to the application. However, it is noted that the Council has granted a planning permit for the development of the Proposed Premises.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

5. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (**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

¹ See: s 1.1(2) of 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 Commission of the "no net detriment test" and the other matters set out in section 3.3.7 of the Act.²

6. 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

THE MATERIAL BEFORE THE COMMISSION

7. The Club provided the Commission with extensive material in support of its application, including:
 - 7.1. Social and Economic Impact Report and Addendum Report prepared by Mr Nick Anderson of NBA Group;
 - 7.2. Gaming Expenditure Estimate and Addendum Estimate prepared by Mr Michael Clyne;
 - 7.3. Notice of Decision to Grant a Planning Permit; and
 - 7.4. Witness Statements of:
 - 7.4.1. James Weston Bate, architect and Principal Director of Bate Design Strategies Pty Ltd;
 - 7.4.2. Leigh James Barrett, responsible service of gaming expert;
 - 7.4.3. Donald Fraser Grant Duffy, Chairman of the Club;
 - 7.4.4. Michael Francis Hodge, Chief Executive Officer of the Club; and
 - 7.4.5. Bradley Steven Ford, Gaming Operations Manager of the Club.
8. The Commission also prepared an Economic and Social Impact Assessment Report for the purposes of considering the application.

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).



REASONS FOR DECISION

9. The Commission determined to approve the application at a public hearing held on 27 November 2013 and gave its reasons for decision extemporaneously. For completeness, the Commission's reasons for decision are formally recorded below.

Having regard to the comprehensive material before us, the Commission is satisfied that approval of this application will not result in a net social and economic detriment to the community of the Shire of Cardinia.

In coming to this decision, the Commission has had regard to the following factors:

- approval of the application will not result in an increase in gaming machine numbers or gaming venues within the municipality;
- the Club has a good record of compliance in both gaming and liquor matters;
- the creation of a new venue of such a large scale and varied community facilities, has a clear social and economic benefit;
- any surplus funds generated by the Club will go to supporting the Tynong Race Course development or otherwise injected back into the community through sporting and social clubs;
- while approval of the application will result in an increase in gaming expenditure within the municipality, this largely reflects population growth and the Commission is satisfied that the responsible gaming practices of the Club will minimise the risk of any increase in problem gambling;
- an increase in gaming expenditure will have an economic stimulus within the region;
- the creation of a new venue, that is larger than the current venue, will create employment during the construction phase and on an on-going basis once the venue is established;
- the new venue will support the significant projected growth of the municipality; and
- the Shire of Cardinia Council has elected not to put in a submission with respect to this application. However, having regard to the planning permit granted by the Council, it is clear there is some level of support for the proposal.

Accordingly, the Commission considers that approval of this application will result in a net social and economic benefit to the municipality and it is appropriate to exercise our



discretion and approve the application.

10. The Commission notes that the Club will still be required to seek approval of its gaming room layout once the Proposed Premises is completed.

The preceding [10] paragraphs are a true copy of the Reasons for Decision herein of –

Mr Bruce Thompson, Chairman

Mr Robert Kerr, Commissioner