



# Victorian Commission for Gambling and Liquor Regulation

## REASONS FOR DECISION

In the matter of an application under section 3.3.4(1) of the *Gambling Regulation Act 2003* by Sale Community Bowls Club Incorporated, trading as the Lakeside Club, for approval of premises at the Lakeside Club, corner of Foster Street and Guthridge Parade, Sale, Victoria, as suitable for gaming with thirty-three (33) gaming machines.

**Commission:** Gail Owen, Deputy Chairman  
Robert Kerr, Commissioner

**Date of Decision:** 24 September 2012

**Date of Reasons:** 24 September 2012

**Decision:** That the application be granted

**Signed:**

**Gail Owen**  
Chair

## REASONS FOR DECISION

### BACKGROUND

1. This is an application by Sale Community Bowls Club Incorporated, trading as the Lakeside Club (the **Applicant**) for the approval of the Lakeside Club (the **Club**) located on the corner of Foster Street and Guthridge Street, Sale, Victoria, as suitable for gaming with 33 Electronic Gaming Machines (**EGMs**).
2. The Club is situated within the Shire of Wellington (the **Council**). On 16 August 2012, the Council advised the Commission that it did not intend to make a submission.
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 10 September 2012.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Determination of this application is governed by section 3.3.8(1) of the *Gambling Regulation Act 2003* (**the Act**) which states that the Commission must determine an application by either granting or refusing a premises as suitable for gaming.
5. Section 3.3.7 of the Act sets out the matters to which the Commission must have regard in determining an application, and provides that:
  - (1) The Commission must not grant an application for approval of premises as suitable for gaming unless satisfied that—
    - (a) the applicant has authority to make the application in respect of the premises; and
    - (b) the premises are or, on the completion of building works will be, suitable for the management and operation of gaming machines; and
    - (c) the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located.
  - (2) In particular, the Commission must consider whether the size, layout and facilities of the premises are or will be suitable.
  - (3) The Commission must also consider any submission made by the relevant responsible authority under section 3.3.6.

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- (5) The Commission cannot approve an area as a gaming machine area unless that area is wholly indoors.
6. The Commission has discretion to grant or refuse an application, regardless of whether it is satisfied of the matters in section 3.3.7(1). However, the Act provides no specific guidance as to the matters that the Commission should take into account when exercising its discretion (other than 3.3.7(2) and 3.3.7(3)).
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 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>1</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>2</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.

#### **THE MATERIAL BEFORE THE COMMISSION**

9. The Applicant filed the following documents in support of its application:
- a. Social and Economic Impact Statement prepared by Mr Nick Anderson of NBA Group Pty Ltd dated 18 June 2012;
  - b. Venue Operator's Agreement between Tattersall's Gaming Pty Ltd and Sale Community Sports Club Inc in respect of Sale Community Sports Club dated 20 July 1998;
  - c. Gaming Expenditure Estimate, Lakeside Club, prepared by Mr Michael Clyne, dated March 2012;
  - d. Witness Statement of Mr Wallace Reginald Evans, Secretary of the Applicant, dated 25 June 2012;

<sup>1</sup> *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435 ("Romsey").

<sup>2</sup> See section 1.1(2) of the Act.

- e. Witness Statement of Mr Peter Harper, proposed Gaming Manager of the Applicant, dated 30 August 2012.

10. The Commission also had before it a statistical report titled Economic and Social Impact Report dated March 2012 (Commission Report) and a Pre-hearing Inspection and Compliance Report both of which were prepared by Commission officers.

## THE LAKESIDE CLUB AND THE SHIRE OF WELLINGTON

11. Based on the material before the Commission:

- a. The Lakeside Club (the **Club**) is located on the corner of Foster Street and Guthridge Parade, Sale, Victoria within the rural Local Government Area (**LGA**) of the Shire of Wellington.
- b. The Shire of Wellington is approximately 200 kilometres east of Melbourne and covers an area of 10,817km<sup>2</sup>.
- c. The Shire of Wellington is subject to a municipal limit of 324 EGMs. Currently, there are 324 EGMs approved for premises within the LGA. However, there are only 314 attached entitlements in the LGA and 8 venues.
- d. As at the 2006 census, the Shire of Wellington had an adult population of 34,080 which is the second highest adult population of the 35 rural municipalities in Victoria. The annual rate of population growth projected by the Department of Planning and Community Development is 0.3% over the next five years.<sup>3</sup>
- e. Overall both the municipality and the area surrounding the Club are not socially and economically disadvantaged when compared with other rural Statistical Local Areas (**SLAs**). For example, the SEIFA<sup>4</sup> score (based on 2006 data) for Wellington-Sale is 972, which is ranked 54 out of 84 rural SLAs (with 84 being the most disadvantaged).

<sup>3</sup> *Victoria in Future 2008*, Department of Planning and Community Development

<sup>4</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.

### ***Social and Economic Impact Statement – NBA Group Pty Ltd***

12. Mr Nick Anderson, Managing Director of NBA Group Pty Ltd, gave evidence of the social and economic impact of the application on the Shire of Wellington.
13. Mr Anderson informed the Commission of the amalgamation between the Sale Bowls Club and the Sale Community Sports Club to form the Applicant. The Sale Community Sports Club currently has 33 EGMs in its venue which is approximately 300 metres from the site of the former Sale Bowls Club (now the Lakeside Club). The Applicant's intention, if this application is granted, is to transfer the 33 EGMs from the Sale Community Sports Club to the Lakeside Club. The premises occupied by the Sale Community Sports Club will be vacated and redeveloped by the Council.
14. The Club has recently completed Stage 1 of a \$5 million redevelopment, which has allowed the amalgamation of the two clubs, and, on completion, will provide a multi-use entertainment facility. Mr Anderson confirmed that while Stage 1 was merely a makeover rather than a formal renovation, Stage 2 would involve an extensive redevelopment.<sup>5</sup>
15. Currently the Club consists of a bistro area, members' lounge, public bar, function area, and now that Stage 1 has been completed, a new gaming lounge, toilets and children's play area. Further, televisions have been installed for patrons to watch sporting events and refurbishments to the kitchen and administrative areas have been completed.
16. The Club holds a full club liquor licence allowing consumption of liquor on the premises (subject to Sunday, Anzac Day and Christmas Day restrictions) by members, authorised gaming visitors and guests of members.
17. The Stage 2 redevelopment will result in a new bistro, kitchen, bowling green, function rooms and undercroft parking with the overall aim of creating a feature tourist destination. The Club is located within the sport and recreation precinct which includes the Aqua Energy Complex, Fauna Park, Botanic Gardens and Lake Guthridge. Mr Anderson gave evidence that the Council is supportive of the redevelopment as it envisages the

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<sup>5</sup> Mr Anderson noted that the existing planning permit for the redevelopment would expire in 2013. However, he advised the Commission that the Council was supportive of the redevelopment and would extend its approval.

Club becoming a regionally significant facility which will enhance the Council's ability to attract events to the area.

18. As the application is a transfer of 33 EGMs from one venue to another close by venue, Mr Anderson considered an increase in problem gambling unlikely and that the introduction of 33 EGMs to the Club would not increase access to EGMs by problem gamblers.
19. Mr Anderson noted that the introduction of the EGMs will create 2 to 3 full time equivalent (EFT) positions at the Club, with the possibility of a total of 7 EFT positions on the completion of Stage 2. He also indicated that the Club had made a commitment to use local tradespeople and businesses to undertake the redevelopment and estimated it could employ up to 40 local tradespeople during the construction phase.

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

20. The Applicant submitted a report prepared by Mr Michael Clyne estimating the expected increase in gaming expenditure on relocation of the existing 33 EGMs in the first year of operation at the Club.<sup>6</sup>
21. On the basis of an analysis of the recent trends in gaming expenditure in the Shire of Wellington, Mr Clyne concluded that the level of total gaming expenditure generated from the transfer of 33 EGMs at the Club would be between \$180,183 to \$252,256 in the first year of operation which is an increase of approximately 15 to 20% of current expenditure at the current venue
22. Mr Clyne estimated that approximately 95% of the total gaming expenditure would be transferred expenditure (being all expenditure at the current venue and 15% from other existing venues).
23. Mr Clyne estimated the total net impact on gaming expenditure in the Shire of Wellington for the first year of operation would be approximately \$10,811. This would equate to an expenditure increase in the Shire of Wellington of 0.045%.

#### ***Evidence from the Applicant***

24. Mr Wallace Reginald Evans, the Secretary of the Club, gave evidence regarding the redevelopment plans and the current management and

business practices of the Club. Prior to the amalgamation of the Sale Community Sports Club and the Sale Bowls Club, Mr Evans held the position of Secretary of the Sports Club since 1995.

25. The Club currently has 674 full members who have voting rights, 250 sporting members and 200 social members. The Club offers members and their guests a small range of facilities including a bistro, gaming lounge, players' lounge and a children's play area.
26. Mr Evans outlined to the Commission the Stage 1 and Stage 2 redevelopment plans for the Club. Stage 2, while approved by Council, will be further considered by the Club once it has consolidated its operations at the one venue and considered its financial circumstances.
27. Mr Evans told the Commission that, subject to this application being granted, the Sports Club premises would be shut down. The Club would then operate solely from the Bowls Club premises. Mr Evans said the success of the application is vital to the Club's future.
28. The Club intends to increase its contributions and donations to the community by \$20,000 per annum (CPI adjusted) with the increased revenue it expects to generate if this application is granted. Mr Evans told the Commission that in 2011 the Club made the following contributions:
  - \$10,000 sponsorship of the Sale Football/Netball Club
  - \$3000 sponsorship of the Sale Cricket Club
  - \$3000 donation to the Sale Amateur Basketball Clubplus donations totalling \$9000 to various organisations including the Bushfire Appeal and the Gippsland Centenary House.
29. Mr Harper, the Club's gaming manager and former gaming manager at the Sale Community Sports Club, told the Commission he had 15 years experience as a gaming supervisor, and over 18 years experience in the hospitality industry.
30. In Mr Harper's opinion there is likely to be an increase in patronage once the EGMs are moved to the Club's premises. Mr Harper told the Commission all the current gaming employees would be relocated to the Club's premises, if the application were granted.

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<sup>6</sup> Mr Clyne was unavailable to attend the public inquiry

31. Mr Harper stated that he supplies the Club's board with a monthly report based on financials only, but he regularly sees members of the board and discusses 'matters that happen in the gaming room'.

### **FINDING BY THE COMMISSION**

32. The 'no net detriment test' in section 3.3.4(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>7</sup>.

33. 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>8</sup>.

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

34. While the Commission accepts that a potential increase in EGM expenditure within a community brings with it an inherent risk of an increase in problem gambling, the Commission considers that, given approval of this application will result in the transfer and operation of 33 EGMs from one venue to another within close proximity, the modest increase in revenue is unlikely to lead to a rise in problem gambling within the Shire of Wellington.

35. Further, the Commission considers that approval of this application is likely have a minimal impact on gaming expenditure and gaming patterns and will not increase the availability of EGM's in the community.

36. The Commission accepts that amalgamation of the Sale Bowls Club and the Sale Community Sports Club was undertaken to achieve the primary purpose of consolidating facilities and finances to better provide the Club's members and the wider community. To achieve this goal, and to provide

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<sup>7</sup> Romsey (2008) 19 VR 422, 435



the local community and sporting groups with enhanced facilities, the financial future of the Club is reliant on the continued revenue derived from the 33 EGMs at the Sale Community Sports Club. The Commission accepts that the continued operations of this Club represents a benefit to the members of the community and others who chose to utilise its facilities.<sup>9</sup>

37. The Commission is satisfied that the Club, in its current form, provides a positive social benefit to the community. While the completion of the Stage 2 redevelopment will undoubtable enhance the Club's offering the Commission is unable to give any significant weight to that redevelopment given the uncertainty as to the Club's ability to complete those works in the short or medium term.

38. The Commission accepts that a social benefit arises where a club makes contributions to constituent and sporting groups. This Club's proposed increase in community cash contributions of \$20,000 and in-kind donations arising from the grant of this application is regarded as a positive benefit.

39. The Commission is satisfied that the net social impact outcome on the Shire of Wellington would be positive as a result of the grant of this application.

### ***Economic impact***

40. The Commission considers that there will be a neutral economic impact on the relevant community.

41. The Commission accepts that this proposal will result in an increase in gaming expenditure in the Shire of Wellington of approximately \$10,811 in its first year of operation which represents an increase in gaming expenditure of 0.045% within the Shire of Wellington. The Commission notes that the new gaming expenditure is minimal and will have little, if any, economic impact on the municipality.

42. There is no evidence of additional employment arising from the grant of this application, although if Stage 2 proceeds additional employment will occur.

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<sup>8</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

<sup>9</sup> In the matter of the Wantirna Club, 21 April 2010

## **Conclusion**

43. 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 Shire of Wellington.
44. 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.
45. The Commission notes that it is a condition of this approval that the Sale Sports Community Club ceases to operate the 33 EGMs, relinquishes the venue and, to the extent not effected by the amalgamation, transfers its entitlements to the Club.
46. The Commission notes that it is a condition of this approval that it does not take effect until the Commission has notified the Applicant in writing that the Club's premises have been inspected for the purpose of section 3.3.7(1)(b) and that the Commission is satisfied that they are suitable for the management and operation of gaming machines.
47. The Commission is satisfied that the Applicant understands its obligations to take measures to prevent problem gambling.
48. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the application.<sup>10</sup>

The preceding document is a true copy of the Reasons for Decision of Ms Gail Owen and Mr Robert Kerr.

<b><i>Date of Inquiry:</i></b>	<b><i>10 September 2012</i></b>
<b><i>Date of Decision:</i></b>	<b><i>24 September 2012</i></b>
<b><i>Date of Reasons:</i></b>	<b><i>24 September 2012</i></b>
<b><i>Counsel for the Applicant:</i></b>	<b><i>Ms Elizabeth Edwards</i></b>
<b><i>Counsel Assisting the Commission:</i></b>	<b><i>Ms Anna Clarke</i></b>

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<sup>10</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.