

DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by Sporting Legends Inc for amendment of its venue operator's licence to vary the number of electronic gaming machines at the approved premises, the Sporting Legends Club, located at 233 York Street, Sale from seventy-four (74) to eighty (80).

Commission: Ms Helen Versey, Deputy Chair
Mr Des Powell, Commissioner

Appearances: Mr Dale Curtis, Solicitor for the Applicant

Ms Frances Ford for the Shire of Wellington Council

Ms Amy Rudolph as Counsel Assisting the Commission

Date of Hearing: 9 November 2015

Date of Decision: 23 December 2015

Date of Reasons: 23 December 2015

Decision: The application is refused

Signed:

Helen Versey
Deputy Chair



REASONS FOR DECISION

INTRODUCTION

1. This is an application by Sporting Legends Club, Inc (the **Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (EGMs) operating at the Sporting Legends Club, 233 York Street, Sale (the **Premises**), from 74 to 80 (the **Application**).
2. The relevant municipal authority is the Wellington Shire Council (the **Council**). By letter to the Commission dated 13 October 2015, the Council indicated that it would make submissions in opposition to the Application. On 26 October 2015, the Council lodged a submission addressing the economic and social impacts of the Application on the municipality.
3. The Commission considered the Application at a public inquiry conducted on 9 November 2015. The Applicant was represented by Mr Dale Curtis, Solicitor and the Council was represented by Ms Frances Ford, Manager Community Wellbeing at the hearing of the Application.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. 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. For this reason the Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some, and a potentially harmful activity for others.
5. The objectives of the Act are set out in s 1.1, which provides, *inter alia*:
...

- (2) *The main objectives of this Act are—*
 - (a) *to foster responsible gambling in order to—*
 - (i) *minimise harm caused by problem gambling; and*
 - (ii) *accommodate those who gamble without harming themselves or others;*
 - (ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*
 - (b) *to ensure that gaming on gaming machines is conducted honestly;*
 - (c) *to ensure that the management of gaming equipment and monitoring equipment is free from criminal influence and exploitation;*



- (d) to ensure that other forms of gambling permitted under this or any other Act are conducted honestly and that their management is free from criminal influence and exploitation;
- (e) to ensure that—
 - (i) community and charitable gaming benefits the community or charitable organisation concerned;
 - (ii) practices that could undermine public confidence in community and charitable gaming are eliminated;
 - (iii) bingo centre operators do not act unfairly in providing commercial services to community or charitable organisations;
- (f) to promote tourism, employment and economic development generally in the State.

6. Chapter 3 of the Act deals with the regulation of gaming machines. Section 3.1.1 of the Act sets out the purpose of Chapter 3 as follows:

- (1) The purpose of this Chapter is to establish a system for the regulation, supervision and control of gaming equipment and monitoring equipment with the aims of—
 - (a) ensuring that gaming on gaming machines is conducted honestly; and
 - (b) ensuring that the management of gaming equipment and monitoring equipment is free from criminal influence or exploitation; and
 - (c) regulating the use of gaming machines in casinos and other approved venues where liquor is sold; and
 - (d) regulating the activities of persons in the gaming machine industry; and
 - (e) promoting tourism, employment and economic development generally in the State; and
 - (f) fostering responsible gambling in order to—
 - (i) minimise harm caused by problem gambling;
 - (ii) accommodate those who gamble without harming themselves or others.
- (2) The purpose of this Chapter is also to—
 - (a) provide for the allocation of gaming machine entitlements in order to maximise the financial and social benefits to the Victorian community within the regulatory framework applying to the allocation of entitlements;
 - (b) promote a competitive gaming industry with the aim of providing financial and social benefits to the Victorian community.

7. The relevant provision concerning this Application is to be found in s 3.4.17(1)(b) of the Act, which states that variation of the number of EGMs permitted in an approved venue may be amended in accordance with this Division.

8. Section 3.4.18 to 3.4.19 of the Act provide for the manner in which requests for amendments under section 3.4.17(1)(b) are to be made. Relevantly for this Application, section 3.4.18 provides, *inter alia*, that:

- (1) A request by a venue operator for an amendment of licence conditions—
 - ...



- (c) *in the case of ... an amendment to increase the number of gaming machines permitted in an approved venue, must be accompanied by a submission—*
 - (i) *on the net economic and social benefit that will accrue to the community of the municipal district in which the approved venue is located as a result of the proposed amendment; and*
 - (ii) *taking into account the impact of the proposed amendment on surrounding municipal districts—*
in the form approved by the Commission and including the information specified in the form.

9. Further, section 3.4.19(1) of the Act provides:

- (1) *Subject to this section, after receiving a copy of a request for an amendment referred to in section 3.4.18(2), a municipal council may make a submission to the Commission—*
 - (a) *addressing the economic and social impact of the proposed amendment on the well-being of the community of the municipal district in which the approved venue is located; and*
 - (b) *taking into account the impact of the proposed amendment on surrounding municipal districts.*

10. Section 3.4.20 sets out matters that are for consideration before the Commission with respect to a proposed amendment. Relevantly for this Application that section provides, *inter alia*:

- (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—*
...
 - (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;*
...

11. Paragraph 3.4.20(1)(c) provides for what is now commonly described as the '*no net detriment*' test. It requires the Commission to be satisfied that there is no net detriment arising from the approval through positively and objectively establishing that the net economic and social impact will not be detrimental to the well-being of the community.¹

12. The Act does not specify the matters which the Commission must consider in deciding whether this '*no net detriment*' test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:



- (a) the likely economic impacts of approval;
- (b) the likely social impacts of approval; and
- (c) the net effect of those impacts on the well-being of the relevant community.²

13. As such, the '*no net detriment*' test is a composite test requiring consideration of a single net impact in economic and social terms on well-being of the community.³ 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.

14. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues, and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.⁴ On review, decisions in the Victorian Civil and Administrative Tribunal (VCAT) have held that for impacts that may be both economic and social – for example the benefits of gaming consumption – it does not matter whether the impact is considered on the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.⁵

15. The Commission also notes that on review, it has been indicated by VCAT that:

*A table of likely economic and social benefits and disbenefits, and with some comments relevant to the relative weight to be given to particular factors ... is a useful way of transparently dealing with the '*no net detriment*' test, and might perhaps be considered for wider application.⁶*

This approach has been adopted in a number of VCAT decisions.⁷ The Commission has adopted the same approach in this instance to add clarity to its decision making process.

¹ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.

² *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [42]-[43] per Warren CJ, Maxwell P and Osborn AJA.

³ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275, [332], [348] per Bell J cited in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [58] per Dwyer DP.

⁴ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [57] per Dwyer DP.

⁵ See *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275, [352] per Bell J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [58] per Dwyer DP.

⁶ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [60] per Dwyer DP.

⁷ See, for example: *Darebin CC v Victorian Commission for Gambling and Liquor Regulation & Anor* [2013] VCAT 1389; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Monash CC v L'Unico Pty Ltd* [2013] VCAT 1545; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.



16. If the Commission is not satisfied that the '*no net detriment*' test is met, then an application must fail in accordance with the opening words of s 3.4.20(1) of the Act. The test is a mandatory precondition to approval. However, although s 3.4.20(1) sets out certain mandatory considerations for the Commission, the provision is not cast in exhaustive terms. If the Commission is satisfied that the '*no net detriment*' test is met, it still has an ultimate discretion as to whether or not to grant the approval.⁸ The Commission must decide whether to make the proposed amendment, with or without any changes from that proposed by the Applicant, even where the applicant has satisfied the minimum threshold of the '*no net detriment*' test.⁹
17. In considering the exercise of this discretion:
 - (a) it must be exercised having regard to the purposes of the Act and, in particular, the specific purposes of Chapter 3 of the Act dealing with the regulation, supervision and control of gaming machines;¹⁰ and
 - (b) it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the Act as a whole.¹¹
18. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*¹² that if all of the mandatory considerations under the Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval - other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.
19. The Commission notes that one category of matters which has been a relevant consideration in this exercise of discretion has been the impact that an increase in gaming machines may have on surrounding municipalities. This approach was taken by VCAT in *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation*,¹³ and also previously by the

⁸ See *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M; see also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [97] and following per Dwyer DP (with respect to s. 3.3.7).

⁹ *Gambling Regulation Act 2003*, section 3.4.20(2).

¹⁰ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [98] per Dwyer DP.

¹¹ *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M. As to policy principles identified for consideration, see *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

¹² [2013] VCAT 101, [98].

¹³ [2014] VCAT 1192, [127] per Code PM and Nelthorpe M.



Commission.¹⁴ The impact on surrounding municipalities as a relevant consideration for the Commission is also reflected in the requirement under section 3.1.18(1)(c)(ii) for submissions to be provided by the Applicant on this issue, and for the relevant municipal council to make similar submissions pursuant to section 3.1.19(1)(b).

MATERIAL BEFORE THE COMMISSION

20. The Applicant provided the Commission with the following material in support of its Application:
 - (a) Social and Economic Impact Assessment, prepared by Nick Anderson of the NBA Group (**NBA**), dated June 2015 (the **NBA Report**);
 - (b) Expenditure Report, prepared by Tim Stillwell of ShineWing Australia (**ShineWing**), dated 15 July 2015 (the **ShineWing Report**);
 - (c) Witness Statement of Kenneth John Bailey, Chief Executive Officer, General Manager, Nominee and Authorised Officer of the Applicant, dated 16 July 2015;
 - (d) Witness Statement of Leigh James Barrett, Director and Principal Consultant of Leigh Barrett and Associates Pty Ltd, dated 12 July 2015;
21. In opposition to the Application the Council provided their Social and Economic Impact Assessment Submission and report dated 26 October 2015 and a further report dated 6 November 2015 (the **Council Report**).
22. The following material, prepared by Commission officers, was provided to the Applicant and considered by the Commission:
 - (a) Report titled *Economic and Social Impact Report*, dated November 2015 (the **VCGLR Report**); and
 - (b) Report titled *Pre-Hearing Inspection and Compliance Report*, dated 27 October 2015 (the **Inspection Report**).
23. On the day of the hearing, the Commission was provided with:
 - (a) Written submissions dated 11 November 2015 prepared by Mr Dale Curtis, Solicitor for the Applicant;
 - (b) A document containing a four-premises comparison table prepared by Tim Stillwell;

¹⁴ In the matter of an application from the Bakers Arms Hotel Pty Ltd to amend the venue operator licence to vary the



- (c) A breakdown of the increased gaming revenue and associated costs that would be generated if the Application is successful prepared by Tim Stillwell;
- (d) Written submissions dated 10 November 2015 prepared by Frances Ford, Manager of Community Wellbeing at the Council;
- (e) A document setting out the corrections to the Council Report;
- (f) Map and statistical data document titled "Wellington Shire Geographical Area" from the Council;
- (g) EGM Density Report from the Council;
- (h) Curriculum Vitae of Karen McLennan;
- (i) Copies of the newspaper, email and website process for informing the public about the community survey provided by the Council; and
- (j) Closing Address from the Council.

SHIRE OF WELLINGTON AND THE SPORTING LEGENDS CLUB

- 24. The Premises are located at 233 York Street, Sale, Victoria. The Premises are located on the west side of York Street (also known as the Princes Highway) which is the major arterial servicing the township of Sale. They are located within a commercial area on the north edge of the Sale central business district that abuts the balance of the Sale commercial area and they are opposite the mixed-use zone and peripheral to the main retail shopping precinct.
- 25. Sale is located in the Shire of Wellington (**Wellington**) approximately 200 kilometres to the east of Melbourne. Sale is on the way to the Gippsland Lakes area and within close proximity to the Latrobe Valley and Ninety Mile Beach.
- 26. The Premises comprises a range of facilities, including:
 - (a) a bistro with capacity for 160 patrons;
 - (b) a sports bar with TAB facilities;
 - (c) a gaming room with 74 EGMs;
 - (d) a versatile function room with capacity for large groups and capability of being partitioned off into separate rooms;



- (e) a cafe area;
- (f) an alfresco area; and
- (g) large on-site parking.

27. As detailed in the VCGLR Report:

- (a) Wellington is a rural Local Government Area (**LGA**) located approximately 200 kilometres east of Melbourne and covers an area of approximately 10,817 square kilometres. It incorporates major centres such as Sale, Maffra, Yarram and Heyfield;
- (b) The SEIFA score for Wellington as a whole LGA is 974.1. This means Wellington is ranked 25th out of 79 LGAs across Victoria, where 1 is the most disadvantaged LGA;
- (c) Wellington consists of five statistical local areas (**SLA**)¹⁵ and the Premises is located in the Sale SLA;
- (d) It is generally accepted that a majority of a venue's gaming patrons will be drawn from residences in the immediate surrounding area. As Wellington is a rural LGA, the immediate surrounding area considered includes all Statistical Area Level 1 (**SA1s**)¹⁶ within a 5km radius. The immediate surrounding area for these Premises consists of 42 SA1s and the estimated usual resident population for this area is 16,526;
- (e) The estimated adult population of Wellington is 32,660 which ranks 4 out of 35 rural LGAs, with 1 being the most populated. The annual rate of population growth was projected by the then Victorian Department of Transport, Planning and Local Infrastructure to be 0.7% for the period 2016 to 2021, as compared with the Victorian average of 1.7%;
- (f) Wellington is subject to a municipal limit of 324 EGMs.¹⁷ Currently, there are seven gaming venues within the municipality with approvals to operate a total of 314 EGMs. However, the number of EGMs actually in operation in these venues, as opposed to the number permitted to be operated, is 308 EGMs;
- (g) Wellington has an EGM density of 9.4 EGMs per 1000 adults, which is 76.4% higher than the rural average (5.3) and 65.0% higher than the State average (5.7). This ranks it as

¹⁵ The Statistical Local Area (**SLA**) is an Australian Standard Geographical Classification (ASGC) defined area which consists of one or more Collection Districts (CDs). One or more SLA makes and LGA. SLAs, in aggregate, cover the whole of Australia without gaps or overlaps. SLAs are now termed SA2s by the Australian Bureau of Statistics.

¹⁶ Statistical Area Level 1 (**SA1**) has been designed by the ABS as the smallest unit for the release of Census data.



having the 4th highest of 26 rural LGAs in terms of EGM density per 1000 adults. If the Application is approved, this would rise by 1.9% to 9.6 EGMs per 1000 adults which would raise it to 3rd highest of 26 rural LGAs in terms of EGM density per 1000 adults;

- (h) The average gaming expenditure in Wellington is approximately \$657 per adult, which is 96% more than the rural average (\$335) and 18.7% more than the State average (\$553). Wellington is ranked 2nd highest of 26 rural LGAs in terms of expenditure per adult;
- (i) Applying the estimate of increased gaming expenditure received from the Applicant, approval of the Application would result in an increase in average gaming expenditure per adult of 0.2%. Overall gaming expenditure within Wellington has decreased by 24.8% in real terms over the past five years (to June 2015), whilst the rural average has experienced a decrease by 18.2% in real terms over the past five years;
- (j) In relation to the area immediately surrounding the Premises, 53.6% of SA1s within 5.0km of the Premises are in the most or second most disadvantaged quintile of the SEIFA¹⁷ index of relative socio-economic disadvantage scores; and
- (k) The unemployment rate in Wellington is 4.6%, which is below the rural unemployment rate of 5.1%. Unemployment in Wellington has decreased from 4.8% to 4.6% over the past 12 months.

28. The Commission is satisfied that in accordance with section 3.4.20(1)(b) of the Act, approval of this Application would result in an increase in the number of EGMs within Wellington that would not exceed the municipal limit.

APPLICANT'S SUBMISSIONS AND WITNESSES

29. The Applicant, in its opening submissions, stated that the main area of assessment before the Commission is the '*no net detriment*' test. The Applicant stated that the application is marginal, if not nominal, taking into account:

- (a) the number of EGMs sought;
- (b) the anticipated level of increased expenditure; and

¹⁷ Pursuant to section 3.4A.5(3A)(b) of the Act, the Commission determined, in accordance with the criteria specified in the Minister for Gaming's Order on 15 August 2012, the maximum permissible number of gaming machine entitlements under which gaming may be conducted in each municipality.

¹⁸ Socio-Economic Indexes for Areas (SEIFA) is a product developed by the ABS that ranks areas in Australia according to relative socio-economic advantage and disadvantage. It consists of four different indexes, including the Index of Relative Socio-economic Disadvantage. A higher SEIFA score indicates a lower level of disadvantage.



(c) the lack of discernible increase in commercial activity at the Premises.

The Applicant stated that the proposed contribution of \$30,000 to the Seaspray Surf Club if the Application is approved is a significant benefit to the community and therefore when taken as a whole, this allows the Commission to conclude that there will be no net detriment if the Application is approved.

Mr Nicholas Barry Anderson

30. Mr Anderson is the Managing Director of NBA, which is a planning and development consultancy. He is a qualified town planner and urban development professional. The Commission accepts Mr Anderson has the experience to undertake and provide expert opinion on the assessment of socio-economic impact he has done for this Application.
31. Mr Anderson prepared the NBA Report. He adopted the NBA Report as well as giving oral evidence to the Commission in relation to the Application.
32. Mr Anderson gave evidence that the Commission should consider the SEIFA for the LGA as a whole rather than in smaller SLAs because the SEIFA fluctuates across the LGA. He gave evidence that there are pockets of disadvantage within the CBD of Sale, some of which is due to public housing, however the majority of which is due to the wetlands and industrial precincts within the area surrounding the Premises. Mr Anderson gave further evidence that there are also pockets of residential areas in Sale that are highly advantaged as well.
33. Mr Anderson also gave evidence that the location of Sale, and the Premises, on the Princes Highway means that there is a significant amount of tourist traffic and travelling salesmen and the like who use Sale as a mid-point for their eastern Victorian travel. Mr Anderson also gave evidence that there are a number of people that work in town that don't live in the LGA, for example fly-in-fly-out type workers. He stated that these categories of people are likely to be advantaged in terms of SEIFA ranking and they are likely to use the Premises however they are not represented in the Census data that is utilised to generate the socio-economic data for the Sale area as they do not live permanently in the Sale area.
34. Mr Anderson gave evidence that '*additional employment*' associated with the Application would be a '*neutral positive*' economic benefit. He stated that '*an increase in funds will assist in the maintenance of existing staff levels*'.
35. Mr Anderson gave evidence that the Applicant and its management are well regarded within the local community. Mr Anderson gave evidence that the Applicant has a membership that



represents a very significant percentage of the overall local community which is indicative of the positive community attitude towards the Applicant. However, Mr Anderson accepted that there was no survey or anything similar undertaken by the Applicant to gauge the community attitude, rather that his opinion that the community attitude is positive towards the Applicant was formed on the basis that the large number of members would not be members if they didn't support the Applicant.

36. Further he stated that the Premises is an award-winning venue that operates the Sporting Legends ClubzPool system (the **ClubzPool system**) which has been recognised as being industry-leading. This ClubzPool system attracts patrons to use the Premises as the purchases they make at the venue on non-gaming items, such as bistro and beverage purchases, result in a monetary benefit to their selected local sporting club.
37. Mr Anderson stated that through the ClubzPool system, the Applicant contributes funds to the local community. In the last year, the community benefited from over \$118,000 in contributions from the Applicant through this ClubzPool system.
38. In relation to the issue of the potential harm caused by problem gambling, Mr Anderson gave evidence that a distinction needs to be made between a club and pub. He stated that these Premises are a club and they are a destination venue. He stated that the Premises is community focussed. Mr Anderson stated that patrons are going to visit the Premises whether they like gaming or not as they will go there for the cheap bistro, the roast night and all the different facilities that are on offer in a modern, clean venue. The ClubzPool system provides patrons with a discount as well as enabling them to give back to clubs they are involved in. Thus in a place like Sale, with limited outlets, it will attract people to it.
39. Mr Anderson stated that in his opinion the Council policy relating to gaming (the **Council's Gaming Policy**) doesn't acknowledge the State Government's position on EGM caps and doesn't follow the usual approach of looking at the overall LGA statistics in relation to EGM density and expenditure. Further, Mr Anderson questioned the validity of having a policy that is not currently achievable.
40. Mr Anderson submitted that the addition of 6 EGMs is generally consistent with the Council's policy in relation to gaming, in that the EGMs are being installed in a Premises that has a good track record with regards to responsible service of gambling and the machines are within the municipal cap for EGMs.
41. Mr Anderson questioned the Council's approach in looking at the disadvantage of Sale as opposed to the whole LGA. He gave evidence that he looked at 9 other LGAs where there is



one major service centre, such as Wellington, and that in those 9 LGAs, the EGM density in that service centre was always double that of the balance of the LGA. He stated that this is because the service centre is where all the services are located, including the majority of the EGMs. On that basis, Mr Anderson contended that it was not an appropriate approach to break up the LGA and look at the effect of the Application on Sale and identify it as a 'no-go-zone'.

42. Mr Anderson gave evidence that the additional 6 EGMs would only be used during peak periods and therefore he is not surprised that the estimated transferred expenditure is low. Mr Anderson gave evidence that due to the existing utilisation rates for EGMs at the Premises, the six additional EGMs are not needed for the purposes of keeping up with community and patron demand. Rather, the Premises is seeking the additional six EGMs so as to obtain the tax benefits associated with such an increase in EGM numbers so that the overall result for the Premises is that it creates additional revenue. Mr Anderson did however give evidence that the additional 6 EGMs will result in improved recreational opportunities for patrons during peak periods.
43. Mr Anderson gave evidence that the additional revenue the Applicant would receive as a result of the Application would provide a significant amount of important funding for the local Seaspray Surf Club. Mr Anderson stated that if \$30,000 of the new expenditure resulting from the additional 6 EGMs is to be given directly to the Seaspray Surf Club then that is a significant benefit for the community. Mr Anderson went on to say the \$30,000 contribution represents anywhere between 50% and 80% of the projected new and transferred EGM expenditure arising out the additional 6 EGMs which is a significant community contribution. Mr Anderson did however concede that the possible total increase in revenue to the Premises may be around \$100,000 once the reduction in tax is also taken into account.

Mr Timothy James Stillwell

44. Mr Stillwell is a director and partner of ShineWing Australia. He has 18 years' experience in accountancy across a broad range of industries, including gaming and hospitality, and has developed an intricate knowledge of gaming industry performance and regulatory requirements. The Commission accepts that Mr Stillwell is qualified to give expert opinion on gaming expenditure predictions.
45. Mr Stillwell adopted his written report dated 15 July 2015 and gave oral evidence to the Commission at the hearing of the Application. Mr Stillwell gave background evidence that Wellington has experienced a decrease of 1.57% per annum in gaming expenditure over the last 6 years and that the Premises has experienced a decrease of 0.04% per annum in gaming



expenditure over the last 6 years.

46. Mr Stillwell stated that evidence in other cases suggests there is no direct correlation between the increase in EGMs and the increase in gaming expenditure. Mr Stillwell went on to state that the addition of 6 EGMs at these Premises may not necessarily increase gross gaming expenditure at these Premises due to the under-utilisation of EGMs (based on existing utilisation).
47. Mr Stillwell gave evidence that it is generally accepted that utilisation of EGMs above 70% is indicative of periods of peak utilisation (where ostensible demand for the machines exceed supply). The Commission understand this to mean that utilisation of above 70% of the EGMs is indicative of periods where the demand for machines has the potential to exceed supply. Mr Stillwell gave evidence that a survey was conducted at the Premises to determine the percentage of the EGMs being utilised during the period 1 February 2015 to 28 February 2015. From the survey results, Mr Stillwell calculated that peak utilisation occurred in 19.69% of the hours surveyed.
48. Mr Stillwell gave evidence as to the likely effect that a further 6 EGMs would have on the Applicant's gross gaming expenditure. He based this on the existing net machine revenue (NMR) at the Premises and the current peak utilisation rates. He explained that based on utilisation statistics and analysis of historical trends and recent trends in gaming expenditure, a reasonable conclusion would be that the additional 6 EGMs at the Premises would generate increased gaming expenditure in the region of \$0 to \$86,680 per annum.
49. Mr Stillwell gave further evidence that, of this increased expenditure, it is likely that 50% would be from transferred expenditure from within the LGA, and the remaining would be from new expenditure. Mr Stillwell explained that the transfer rate of 50% is appropriate in this instance as there are multiple competitor venues within direct proximity to the Premises and that due to the Premises being located in a regional area, it is likely there would also be patrons who would travel from outside of the usual 5 kilometre catchment area. Mr Stillwell therefore estimates that the additional 6 EGMs at the Premises would generate in the region of \$0 to \$43,340 per annum new gaming expenditure to the LGA.
50. Mr Stillwell also gave evidence of the financial viability of the proposed addition of 6 EGMs at these Premises. Mr Stillwell explained that due to the gaming tax framework, there will be an additional financial benefit to the Premises by having more EGMs and that the tax benefit combined with the transferred and new EGM expenditure would result in a \$104,000 per annum bottom line improvement at the Premises.



51. Mr Stillwell said in response to the Council's suggestion that there could be a \$476,000 increase in gaming expenditure by the addition of the 6 EGMs at these Premises, that the Council had used a linear method of calculation and this was not an accurate or logical estimate because there is no lineal relationship with venues in terms of increasing EGMs and increasing expenditure. He further stated that this is due to the existing demand and supply equation and that there is significant amounts of evidence that support the position that there is not a one-to-one matching of increase in machines to increase in expenditure.¹⁹

Mr Leigh James Barrett

52. Mr Barrett is the Director and Principal Consultant of Leigh Barrett and Associates Pty Ltd who specialise in the provision of a range of regulatory compliance services and staff training for gaming venues in Victoria. He adopted his witness statement dated 12 July 2015 and gave oral evidence to the Commission in relation to the Application.
53. Mr Barrett was engaged by the Applicant to provide regulatory compliance services including the development and support of the Applicant's Gambling Policies and Procedures Manual and the auditing of the Applicant's compliance with its regulatory requirements. Mr Barrett gave evidence that the Applicant has been audited since 2009 and has been found to be strongly compliant.
54. Mr Barrett gave evidence that the training and compliance procedures at the Premises are comprehensive. All gaming staff and front-of-house staff, as well as all members of the Committee of Management, are required to complete an approved Responsible Service of Gambling (RSG) course and Responsible Service of Alcohol (RSA) course. Further, all gaming staff are required to view the self-exclusion folder prior to each shift. Mr Barrett stated that the Applicant has a strong relationship with the local Gambler's Help service and meets with them on at least a 6-monthly basis.
55. Mr Barrett stated that a broad range of non-gambling, recreational opportunities on offer at a venue provides a protective factor against the potential for problem gambling to occur. He gave evidence that these Premises had a non-gambling recreational options of the large bistro, informal cafe, sports bar and meeting rooms.
56. Mr Barrett, however agreed that his view of these Premises tends to be around compliance to the processes and the systems rather than considering the particular aspects of the Premises and the local area and how the Application will impact on these in terms of problem gambling.

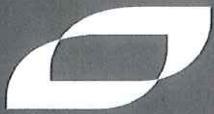
¹⁹ Mr Stillwell gave examples of previous cases that support his evidence being *Kilmore Trackside, Kangaroo Flat Sporting*



57. Mr Barrett further acknowledged that his witness statement was submitted prior to him sighting the Council Report and his view that the Application would not have any impact on the potential for problem gambling to occur at the Premises, was formed without considering any particular information relative to Wellington or the particular Premises site.

Mr Kenneth John Bailey

58. Mr Bailey is the Chief Executive Officer, General Manager, Nominee and Authorised Officer of the Premises. He has been General Manager of the Premises since it commenced operation in 1996. Prior to this Mr Bailey worked at another Club in Sale and has been involved in gaming since it commenced operation in Sale. Mr Bailey adopted his witness statement dated 16 July 2015 and gave oral evidence to the Commission.
59. Mr Bailey gave evidence that the Applicant is a community focussed, not-for-profit organisation. The Premises is the preeminent venue in Sale and provides a great venue for hospitality and social pursuits, employment opportunities and is a major economic contributor to the economy of Sale. He further stated the Applicant has spent approximately \$7 million on capital expenditure projects on the venue since 1999.
60. Mr Bailey confirmed that the Applicant's predominant focus of allocation of profits is to local sporting groups through the ClubzPool system. The ClubzPool system works by members scanning a membership card whenever they spend in the Premises and then a percentage of what they spend is contributed to their chosen charity. Mr Bailey confirmed that the ClubzPool system does not operate in relation to expenditure on EGMs but only on other expenditure, for example bistro and function sales in the Premises. In addition to this, Mr Bailey stated the Applicant also donates funds to other community organisations throughout the year.
61. Mr Bailey said that the Applicant has been a major sponsor of the Seaspray Surf Club for the past five years. The Applicant has committed to contribute a further \$30,000 to the Seaspray Surf Club and that these funds will be allocated from the additional revenue and tax benefits obtained by the Applicant if the additional EGMs are approved. The Applicant has guaranteed to pay the \$30,000 to Seaspray Surf Club no matter the outcome of this Application and that if this Application is refused, the Applicant will need to reduce its contributions to other organisations through the ClubzPool system by the \$30,000.
62. Mr Bailey stated that the Premises has over 10,000 members and that a lot of them come to the Premises for the bistro and other facilities and not to gamble. He stated that the Premises are



popular with tourists passing through on their way to Lakes Entrance and other places nearby.

63. Mr Bailey asserted that the Applicant takes its responsible gambling obligations seriously. The Premises implements a RSG policy and maintains an incident register. The Premises has even altered its opening time so as to dissuade gamblers from attending the Premises first thing in the morning. Mr Bailey stated that detection of problem gambling is assisted at the Premises by virtue of being located in a smaller town which makes it easier to recognise people. He acknowledged that in the past, the Board members of the Applicant had little understanding of issues relating to problem gambling but since they have obtained their RSG certificates their understanding has improved.
64. Mr Bailey gave evidence that the Premises has 72 persons currently on the self-exclusion register but that it was not possible to know where these persons resided. He went on to state that the Premises has an incident register and they adopt the processes suggested by Mr Barrett. In the last 12 months there have been 16 incidents reported at the Premises of which only 3 related to breaches of self-exclusion. All others related to problem behaviour rather than problem gambling.

THE COUNCIL'S SUBMISSIONS AND WITNESSES

65. The Wellington Shire Council filed the Council Report in response to the Application. The Council confirmed that Sale is the regional centre of Wellington and the Premises is located in Sale SLA which has a projected population of 15,132 people in 2015. The Council gave evidence that Wellington is about 11,000 square kilometres. The Council submitted that because Wellington is such a large LGA, that when referring to the '*local area*' it makes sense to look at an area more local than the LGA and it is therefore appropriate to refer to the Sale SLA.
66. The Sale SLA contains 236 of the EGMs within Wellington and the density of these EGMs is 19.2 per 1000 population which is nearly double the density allowed under the regional caps policy and is over three times the Victorian Country and state averages. The Council is concerned with the high density of EGMs in the Sale SLA and the negative social and economic impact they have on the local area.
67. The Council provided context for their position in relation to this Application. The Council submitted that under the *Public Health and Wellbeing Act 2008* the Council's legislative function is to '*seek to protect, improve and promote public health and wellbeing within the municipal district*' and that the '*precautionary principle*' should be applied to decision making. The Council



submitted that the Applicant has not provided evidence that demonstrates the introduction of 6 EGMs will not cause harm to the local community.

68. The Council gave evidence it has developed a gaming policy (the **Council's Gaming Policy**) in response to these legislative requirements that provides a framework for responsible gaming in Wellington. The Council's Gaming Policy is closely linked to the Municipal Public Health and Wellbeing plan. It is a long term policy that aims to reduce the number of EGMs in Wellington in the long term to bring them into alignment with state averages. The Council states that this is not disregarding the LGA cap but rather advocating that no new machines be added within Wellington. The Council is particularly concerned with the distribution of EGMs within the LGA and their concentration in the Sale SLA. The Council's responsibility under the Act is to make submissions regarding the economic and social impact of the Application on the wellbeing of the community and have adopted the same meaning of wellbeing as outlined in the Romsey Hotel case²⁰, that is the health, happiness and contentment of the community local to the gaming venue.
69. The Council gave evidence that Wellington, compared to the rest of Victoria, has many areas of vulnerability. These include; a significantly higher proportion of persons who did not complete year 12, a higher proportion of persons experiencing high levels of psychological distress, a higher proportion of the population between the ages of 45-54 and 65-84, a higher proportion of 15-24 year olds not in paid employment or enrolled in education and a significantly higher proportion of fly-in-fly-out workers. The Council submitted that these factors contribute to the potential negative impact on the wellbeing of the Community when high EGM density is coupled with high levels of disadvantage.
70. The Council also gave evidence that the Premises is located within a 2 minute walk from a large public housing complex in Marley Street, Sale and that there are numerous areas of lower socio-economic profile within a very short walk of the Premises.
71. The Council gave evidence that the gaming expenditure in Wellington is the 2nd highest of 26 rural LGAs and 96% more than the rural average and that at the Sale SLA level it is double this. The Council stated that \$16 million per year is lost on EGMs in Sale. Whether the additional expenditure estimated to result from the 6 additional EGMs is \$86,000 or higher as the Council estimates, it is further losses that the community cannot afford.

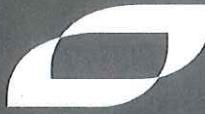
²⁰ See *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275, [354].



72. The Council gave evidence that there are a significant number of people who are problem gamblers in Wellington with 114 problem gamblers being referred to Latrobe Community Health Services over the last 3 years. Further, the Council gave evidence that research indicates that only 15% of problem gamblers seek help and therefore the real number is much higher. Adding further EGMs can only have a negative impact on these problem gamblers and their families.
73. The Council gave evidence about the community attitudes survey it conducted in response to this Application. There were 295 responses received which can be summarised as follows:
 - (a) Sale has enough EGMs;
 - (b) Additional EGMs will contribute to less money being spent in the broader local economy; and
 - (c) Whilst some responses provided details of some social benefits to visiting the Premises and using the EGMs, there were also a wide range of responses that referred to the negative impacts on those who use EGMs but do not have the financial capacity to do so. This includes impacts on these people's mental health as well as on their families.
74. The Council submitted that the approval of 6 EGMs at the Premises is likely to cause unhappiness or discontent within the community and this is a social impact that is detrimental to the wellbeing of the community. The Council submitted that the overall social and economic impact of the additional EGMs at the Premises would be negative.

Ms Karen McLennan

75. Ms Karen McLennan is the Coordinator of Social Planning and Policy at the Council and has been in the role for 4 years. She is responsible for the implementation of a municipal public health and wellbeing plan under the Public Health Act. Ms McLennan gave oral evidence to the Commission at the hearing of the Application.
76. Ms McLennan gave evidence that the Council prepared a community survey in relation to the Application. The survey contained 17 questions made up of some general questions and some questions that specifically related to the Premises and this Application. The survey was advertised widely and provided a four week period for responses. Ms McLennan stated that the majority of the community were not in favour of the EGMs.



77. Ms McLennan gave evidence that the location of the Premises provides for convenience gambling for and that people residing in the public housing areas of Sale have to travel straight past the Premises in order to get to the centre of town.
78. Ms McLennan calculated that the addition of 6 EGMs would result in 18 more people being impacted by problem gambling, 3 more people experiencing financial stress and 12 problem gamblers who might experience impacts on relationships.
79. Ms McLennan stated that in her opinion the detriment to the local community will be significant and the likelihood of the additional EGMs actually resulting in a negative impact is high due to the nature of Sale. Ms McLennan acknowledged that the \$30,000 would be a benefit to the community but went on to say that the Council also contributes significant funds to sporting clubs and other community organisations in Wellington. The Council in fact contributed \$270,000 to Seaspray Surf Club in November 2014. Further she stated that there are other examples of fundraising events in Sale that raise significant funds to support community organisations.

Ms Sandra Luxford

80. Ms Luxford is a social worker employed by Latrobe Community Health Service as a problem gambling counsellor. She has worked as a counsellor for about 20 years and the last 3 years of this she has worked as a problem gambling counsellor. The Latrobe Community Health Service problem gambling services covers all of Gippsland.
81. Ms Luxford gave evidence that the majority of the people who seek her help are from low socio-economic areas and they are often reliant on Centrelink benefits. If they are working, then they are often in low-end, manual labour type jobs and often these people have not graduated from high school. Ms Luxford stated that she also assists those related others who are affected by a person's problem gambling.
82. Ms Luxford gave evidence that in her experience a person will seek her counselling support when they have reached some sort of crisis point. They may owe a significant amount of debt, they may have taken out short-term loans with high interest or they may have spent their rent money.
83. Ms Luxford stated that if you limit the availability and access that a problem gambler has to EGMs, you will start to limit the associated risk of harm.



84. Ms Luxford gave evidence that she is experiencing an increase in the number of people seeking counselling for problem gambling. Recently Ms Luxford has observed a trend of more young people seeking her counselling services. Ms Luxford stated that the increase in numbers could be due to more problem gambling or an increase in people's awareness about problem gambling or their willingness to report problem gambling due to a decrease in the stigma associated with problem gambling.

'NO NET DETRIMENT' TEST

85. The Commission consideration of the '*no net detriment*' test (set out below and summarised in tabular form at Appendix One) is the assessment of the economic benefits and disbenefits and social benefits and disbenefits associated with this Application, including the weighting given to each of these impacts.

ECONOMIC IMPACTS

86. The Commission accepts the evidence of Mr Stillwell contained in the ShineWing Report, with particular reference to the new and transferred expenditure that is predicted to occur in Wellington if the additional 6 EGMs are installed at the Premises.

87. The Commission also notes the level of additional revenue that Mr Stillwell predicts would be generated by way of taxation benefits deriving from the current gaming taxation framework, as well as increased expenditure on EGMs at the Premises, would result in an increase to the "bottom line" at the Premises of approximately \$104,000 per annum.

88. The expected increase to the "bottom line" is reliant on several other matters. Firstly, and perhaps the simplest to determine, is the taxation benefit that is derived by way of the addition of six EGMs at the Premises. The Commission does not consider Mr Stillwell's estimate of this benefit to be unreasonable, and in any event, the approximate estimate is a modest saving for a venue of the size of the Premises.

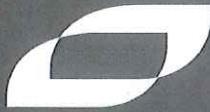
89. However, the Applicant is also reliant on the increase in EGMs at the Premises to realise a significant portion of the predicted increase to the "bottom line". Particularly, approximately \$86,000 per annum must be realised in new and transferred EGM expenditure for the Applicant to be in a position to deliver on the proposed community contributions that were discussed in the evidence of Mr Anderson.

90. To the extent of any additional expenditure (both new and transferred) that is not attributable to problem gambling, the Commission considers this to be an economic benefit. However, the



Commission also notes that the proposed increase in EGM expenditure is relatively modest, and as such, that economic benefit is assigned marginal weight.

91. Conversely, however, to the extent of any amount of additional expenditure derived from problem gambling, the Commission considers this to be an economic disbenefit. In this Application, the Commission has had regard to the above-average EGM expenditure in Wellington, as well as the already higher-than-average levels of disadvantage in Wellington.
92. In combination, above average levels of EGM expenditure and disadvantage are certainly grounds for Council to uphold their role as a community gatekeeper with legislative responsibilities regarding the wellbeing of the community and provide evidence as to the likely economic impact that an increase would have on the Wellington community.
93. Whilst the Commission acknowledges the modest increase in expenditure at the Premises, the Commission must weigh the risk of harm to the Wellington community as a result of increased expenditure derived from problem gambling, given the higher levels of disadvantage and EGM expenditure that already occurs at the Premises. As such, the Commission considers that, to the extent that additional expenditure is derived as a result of problem gambling, it is an economic disbenefit to the Wellington community that carries low weight.
94. The Commission accepts the evidence of Mr Anderson that approval of the Application would allow for the Applicant to derive a taxation benefit (as outlined by Mr Stillwell in his evidence) by way of increasing the number of EGMs permitted to operate at the Premises. This would have the consequence of creating additional revenue and the Applicant has committed to contribute \$30,000 to the Seaspray Surf Club from this additional revenue. The Commission notes however that this \$30,000 has been committed to the Seaspray Surf Club irrespective of whether this Application is approved and that if this Application is approved this \$30,000 will be transferred from other ClubzPool system commitments.
95. The evidence of Mr Anderson suggests that the operation of the EGMs at the Premises will not provide the Applicant with a certain path to allow for community contributions to be derived from any additional revenue that may result from a taxation benefit to the Applicant, and only that the additional revenue will '*provide the potential for*' the Applicant to make such contributions.
96. The Commission further notes the evidence of Mr Anderson with reference to the beneficiaries of donations derived from the ClubzPool system. In particular, the Commission notes that there was no evidence provided as to whether the existing ClubzPool system contributions will be effected as a result of the increased revenue to the Premises. The Commission therefore



cannot attribute weight to any community contribution other than the \$30,000 payment and as such the Commission assigns this evidence marginal weight.

97. The Commission notes the evidence of Mr Anderson contained in the NBA Report in relation to an appraisal of social and economic factors. In particular, Mr Anderson lists '*additional employment*' as a '*neutral positive*' economic benefit, and describes that '*an increase in funds will assist in the maintenance of existing staff levels*'.
98. The Commission rejects this evidence as being characterised as an economic benefit to the community of Wellington. The Commission does not consider that existing employees at the Premises ought be considered to be contributing to additional employment by virtue of the Premises being in an optimised financial position to continue to support that employment. The Commission assigns no weight to this proposed economic benefit.
99. Finally, the Commission heard evidence from Mr Bailey in relation to the intended path for the Applicant to provide contributions to community organisations in Wellington.
100. The Commission notes that it was the evidence of Mr Bailey that if the Commission were to refuse the Application, the Applicant would still make the \$30,000 in contributions to the Seaspray Surf Lifesaving Club. To the extent of the making of such a contribution, it would reduce the remaining revenue available to other organisations through the ClubzPool system by the amount of the contribution to the Seaspray Surf Lifesaving Club.
101. The Commission considers that the proposed contributions to the Seaspray Surf Lifesaving Club are a benefit to the community. The Commission however was not provided any evidence of what would occur in relation to the existing ClubzPool system contributions and on that basis the only contribution that can be attributed any weight is the \$30,000 commitment to Seaspray Surf Club. Due to this being a small sum which will be made irrespective of the success of the Application, the Commission attributes it marginal weight.
102. In relation to the economic impact that the Application would likely have on the community of Wellington, the Commission finds that the economic impact would likely be marginal at best, as stated by the Applicant's opening submissions.

SOCIAL IMPACTS

103. Wherever accessibility to EGMs is increased there is always a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, family breakdowns and



other social costs. Accordingly, the Commission accepts there is the potential for negative social impacts through possible increased problem gambling expenditure.

104. The Commission accepts the evidence of Mr Barrett that the Premises has in place a responsible gambling policy however it does not find that this policy is particularly tailored to these Premises or that it takes into account any of the specific factors relating to Sale. Further, the Commission does not find that there is a wide range of non-gambling activities at the Premises so as to provide a protective feature as was suggested by Mr Barrett.
105. Further, the Commission accepts that the Application will result in a very small increase in EGM density per adult in Wellington and that there will be a small increase to EGM expenditure per adult as a result of this Application. However, given the current high EGM expenditure in Wellington, the Commission finds that the additional 6 EGMs would have the potential to impact negatively on the risk of problem gambling in Wellington and the Commission attributes this low weight.
106. The Commission considers the significant level of disadvantage evident in the area surrounding the Premises to be a key concern. Whilst this is not determinative itself, this factor does increase the risk profile of the surrounding area and it is not apparent that this risk is held in check given the above average gaming expenditure in this community. The Applicant did not reflect a thorough understanding of the particular socio-economic situation and problem-gambling issues affecting the local community as exhibited by the evidence of Mr Bailey.
107. The Commission finds that the increased number of EGMs at the Premises would be so small that it would not have any real effect on providing a wider variety of EGMs from which to choose. Further, given that there are not significant levels of peak utilisation of EGMs currently experienced at the Premises, there is no basis for any weight to be attributed to this proposed benefit.
108. The Commission considers that additional community contributions could have a positive impact on local community organisations, which is a social benefit. However, given the small amount of the proposed contribution, the Commission attributes neutral to marginal weight to this impact. The Commission also notes that there is no certainty that previous cash contributions will continue to be made if this Application is granted and therefore there is the potential that the overall community benefit may in fact be less than in previous years.
109. The Commission accepts that Wellington is a relatively disadvantaged LGA with gaming statistics that are above rural and state averages. Further the Commission accepts that the Sale SLA has gaming statistics that are significantly above the rural and state averages. Such factors



are warning signs and suggestive of a community where problem gambling may be prevalent and the impacts of problem gambling felt, which leads to other disbenefits such as lost productivity, increased health and social costs and negative impacts on those associated with problem gamblers.

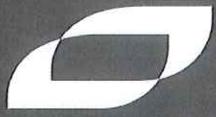
110. Finally, as was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,²¹ the Commission recognises that whilst community apprehension is not an over-riding factor (in the sense that the Application is not a referendum on gaming), it is certainly a relevant factor in the consideration of particular social impact 'within', and as part of, the 'no net detriment' test.
111. The Commission has taken into account the views of the community with respect to EGMs that were contained in the Council survey and outlined in the Council's oral submissions. The Commission notes that the survey was specific to the Premises and addressed the Application specifically and therefore the results of the survey were relevant to the Application. The Commission does however note that this Application relates to an increase in the number of EGMs, rather than the establishment of a new venue and hence the potential impact on community well-being in the sense discussed in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor* is different from what might otherwise be the case if there were no existing gaming venues. In all of these circumstances, the Commission considers it appropriate to attribute a low weighting to this impact.
112. After considering the social benefits of the proposal balanced against the disbenefits, the Commission considers that there is likely to be a minor, negative, social impact if the Application were granted.

NET ECONOMIC AND SOCIAL IMPACT

113. The 'no net detriment test' in section 3.4.20(1)(c) of the Act 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.²² If the net economic and social impact of approval will be negative then the Application must be refused.

²¹ (2008) 19 VR 422, [44] per Warren CJ, Maxwell P And Osborn AJA. See also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [73] per Dwyer DP.

²² *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.



114. After consideration of the material put forward by the Applicant and the Council, and after attributing weight to the relevant factors as outlined above and summarised in tabular form at Appendix One of these Reasons for Decision, the Commission has concluded that there is likely to be a marginal net negative social and economic impact to the well-being of the community in the municipal district in which the Premises is located if the Application were to be approved.

DECISION

115. After consideration of all the evidence presented in this matter, the Commission cannot be satisfied that there would be no net social and economic detriment to the immediately surrounding area or the wider community of Wellington. The Application is therefore refused.

The preceding one hundred and fifteen (115) paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey, Deputy Chair, and Mr Des Powell, Commissioner.

Appendix One

The following table is a summation of the economic and social benefits and disbenefits considered by the Commission in reaching its decision. It is to be read in conjunction with the main body of the Reasons for Decision, as the weight attributed to each factor is determined in light of the particular circumstances of the Application as detailed.

Summary of social and economic impacts

Economic impacts

	Impact	Para	Comment relevant to weight
Benefit	Increase in gaming expenditure not associated with problem gambling	90	Extent of additional gaming expenditure is not significant and therefore the proportion not associated with problem gambling is minimal. Marginal weight.
	Community contributions	96	Proposed community contributions could be an economic benefit to the community. However, the proposed contributions are not substantial. It is also proposed that the \$30,000 contribution will be made irrespective of the outcome of this Application and that if this Application is refused this would result in a subsequent decrease in the existing ClubzPool system payments. Marginal weight.
	Additional employment	98	No additional employees expected to be necessary as a result of the additional EGMs, however existing levels of staffing will be maintained. No weight.

	Impact	Paragraph	Comment relevant to weight
Disbenefit	Possibility of increased incidence and impact of problem gambling.	93	Low level of anticipated new expenditure is indicative of the potential increase in problem gambling being low. In assessing the extent of this disbenefit, the Commission recognises that it does not include transferred expenditure because such expenditure cannot be said to exacerbate problem gambling. Low weight.



Social impacts

	Impact	Par.	Comment relevant to weight
Benefit	Wider variety of choice of EGMs for recreational gamblers	107	An increase in number of EGMs at the premises may better serve the needs of recreational gaming patrons. However, given the low number of additional EGMs and the existing utilisation rates at the Premises this will have little or no impact. No weight.
	Community contributions	108	Additional community contributions could have a positive impact on local community organisations, which is a social benefit. However, the proposed additional contributions are minimal and are limited in the scope of their application. Neutral to marginal weight.
Disbenefit	Possible increase in risk of problem gambling, increased health and social service requirements and costs.	105	The Commission accepts there is potential for negative social costs through possible increased problem gambling expenditure which is heightened by the socio-economic profile of the catchment area. However, this risk is mitigated to some degree by the current levels of utilisation of the EGMs at the Premises. Low weight.

Community views	111	Recognise community concerns and note that the community survey addressed this Application and Premises specifically. The Commission notes that this Application relates to an increase in the number of gaming machines, rather than the establishment of a new venue, and notes the distinction between the general issues related to gambling as opposed to an attitude specifically related to the Applicant.
		Low weight