



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 Geelong RSL Sub-Branch Inc to amend its venue operator's licence to vary the number of electronic gaming machines at the approved premises located at Geelong RSL, 50 Barwon Heads Road, Belmont, from forty-two (42) to seventy-two (72).

Commission:

Ms Deirdre O'Donnell, Deputy Chair
Mr Des Powell AM, Commissioner

Appearances:

Ms Jennifer Trehwella of Counsel for the Applicant (instructed by Williams Winter Solicitors)

Ms Louise Hicks of Counsel for the Council

Mr Cameron Warfe, Counsel Assisting the Commission

Date of Hearing:

21 and 23 November 2018

Date of Decision:

10 December 2018

Date of Reasons:

1 February 2019

Decision:

The Application is approved, subject to the conditions set out in Appendix A.

Signed:

A handwritten signature in black ink, appearing to read 'Deirdre O'Donnell', written in a cursive style.

Deirdre O'Donnell

Deputy Chair

REASONS FOR DECISION

INTRODUCTION

1. This is an application by Geelong RSL Sub-Branch Inc (**Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**Commission**) to amend its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the approved premises located at Geelong RSL, 50 Barwon Heads Road, Belmont (**Geelong RSL**), from 42 to 72 (the **Application**).
2. The relevant municipal authority is the City of Greater Geelong (**Council**). By letter to the Commission dated 22 August 2018 and received on 31 August 2018, Council stated that it intended to make a written economic and social impact submission regarding the Application. It did so on 27 September 2018 (together with supporting documents),¹ in opposition to the Application.
3. The Commission considered the Application at a public inquiry conducted on 21 and 23 November 2018 (the **Hearing**). The Applicant was represented by Ms Jennifer Trehwella of Counsel, instructed by Williams Winter Solicitors. Council was represented by Ms Louise Hicks of Counsel.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Gaming 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* (**GR Act**). The GR 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 GR 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 GR Act are set out at section 1.1, which provides:

...

(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;*

¹ See paragraph 23 below.



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- (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 GR Act deals with the regulation of gaming machines. Section 3.1.1 of the GR 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*



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- (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. Section 9(3) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)* provides, inter alia:

The Commission must, when performing functions or duties or exercising its powers under the Gambling Regulation Act 2003 ... or any other Act, have regard to the objects of the Act conferring functions on the Commission.

8. The relevant provision concerning the Application is section 3.4.17(1)(b) of the GR Act, which states that variation of the number of EGMs permitted in an approved venue may be amended in accordance with Division 2, Part 4 of Chapter 3 of the GR Act.

9. Sections 3.4.18 to 3.4.19 of the GR Act provide for the manner in which requests for amendments under section 3.4.17(1)(b) are to be made. Relevantly for the 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.

10. Further, section 3.4.19(1) of the GR 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.*

11. Section 3.4.20 sets out matters that are required to be considered by the Commission with respect to such a proposed amendment, as follows:

- (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—*
- (a) *the Commission is satisfied that the amendment of the licence does not conflict with a direction, if any, given under section 3.2.3; and*
 - (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; and*
 - d) *if premises are proposed to be added to the licence as an approved venue and the premises are situated within 100 metres of an approved venue of which the applicant for the amendment, or an associate of the applicant, is the venue operator, the Commission is satisfied that the management*



and operation of the approved venue and the proposed approved venue are genuinely independent of each other.

12. Pursuant to section 3.4.20(1)(a) of the GR Act, the Commission must be satisfied that the proposed amendment does not conflict with a Ministerial direction, if any, given under section 3.2.3 of the GR Act. There is no relevant direction issued pursuant to section 3.2.3 of the GR Act that relates specifically to this Application.
13. Section 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.²
14. The GR Act does not specify the matters which the Commission must consider in deciding whether the ‘*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.³
15. As such, the ‘*no net detriment*’ test is a composite test requiring consideration of a single net impact in economic and social terms on the well-being of the community.⁴ 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.
16. 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.⁵ 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

² *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.

³ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [42]-[43] per Warren CJ, Maxwell P and Osborn AJA.

⁴ *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.

⁵ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [57] per Dwyer DP.



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.⁶

17. The Commission also notes the position taken 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.*⁷

The Commission has utilised this approach for the purpose of considering the 'no net detriment' test in this matter.

18. If the Commission is not satisfied that the 'no net detriment' test is met, that is clearly fatal to the application before it, as given the opening words of section 3.4.20(1) of the GR Act, satisfaction of the test is a mandatory pre-condition to approval. However, although section 3.4.20(1) sets out certain mandatory considerations for the Commission, the provision is not exhaustive. 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

19. In considering the exercise of this discretion:

- (a) it must be exercised having regard to the purposes of the GR Act and, in particular, the specific purposes of Chapter 3 of the GR 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

⁶ 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.

⁷ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [60] per Dwyer DP.

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 section 3.3.7 GR Act).

⁹ GR Act, 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.

the content and objectives of the GR Act as a whole.¹¹

20. 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 GR 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.
21. Finally, pursuant to section 9(4) of the VCGLR Act, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation. On 16 October 2013, a Ministerial guideline was published in the Victorian Government Gazette pursuant to section 5 of the VCGLR Act concerning applications for approvals of venues for EGMs and children’s play areas incorporated in the venue. This guideline concerned the assessment of the suitability of a premises for gaming. As such, it appears primarily to apply to a premises applying to be a new gaming venue, rather than an increase in the number of EGMs at an existing gaming venue. While this guideline is therefore not directly applicable to this Application, the Commission’s view is that it is proper for the Commission to have regard to the underlying policy intent of such a guideline (which in this instance appears to relate to the legislative objective under section 1.1(2)(ab) of the GR Act that minors are neither encouraged to gamble nor allowed to do so) when considering the Application.

MATERIAL BEFORE THE COMMISSION

22. The Applicant provided the Commission with the following material in support of the Application:
- (a) Application form – Amendment to venue operator’s licence – vary gaming machines, dated 30 July 2018;
 - (b) Social and Economic Impact Statement, prepared by Mr Nick Anderson, Managing Director of NBA Group, dated June 2018 (**NBA Report**) with appendices;
 - (c) Expenditure Report, prepared by Mr Michael Clyne for Progressive Venue Services (**PVS**), dated June 2018 (**PVS Report**);

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 the *Romsey* case (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

¹² *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [98].



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- (d) Witness Statement of Mr Andrew Liam George Hanns, President of the Applicant, dated 31 July 2018;
- (e) Addendum to Mr Hanns' Witness Statement, dated 18 November 2018, attaching:
 - (i) letters in support of the Geelong RSL;
 - (ii) a summary of the volunteer hours completed by the Geelong RSL during FY2017-18; and
 - (iii) a map outlining the Geelong RSL's welfare and charitable support region;
- (f) Witness Statement of Mr Ricky Wayne Cole, General Manager of the Applicant, dated 30 July 2018;
- (g) Addendum to Mr Cole's Witness Statement, dated 16 November 2018, attaching:
 - (i) a letter from the Department of Justice and Regulation dated 7 June 2017 regarding the Geelong RSL's YourPlay achievements;
 - (ii) a copy of the Geelong RSL's Responsible Service of Gaming (**RSG**) Register for the past 12 months;
 - (iii) bank account balance summary for the Geelong RSL as at 31 October 2018;
 - (iv) a summary of the Geelong RSL's cash contributions during FY2017-18, as well as additional welfare and charitable support during 2018;
 - (v) a letter from the Geelong RSL's contracted builder, Rubicon Design & Construct Pty Ltd, dated 14 November 2018;
 - (vi) letters in support of the Application from three individuals and two community organisations (Geelong Totally and Permanently Incapacitated (TPI) Welfare and Social Club and Geelong RSL Bowls); and
 - (vii) a copy of the results and details of a survey entitled '*Community Gaming Survey on Geelong RSL Sub-Branch Inc Gaming Application*' conducted between 6 and 19 September 2018;
- (h) Witness Statement of Mr Leigh James Barrett, Director and Principal Consultant of Leigh Barrett and Associates Pty Ltd, dated 9 July 2018, attaching:



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- (i) a copy of the Geelong RSL Sub-Branch Responsible Gambling Policies and Procedures Manual, dated January 2018; and
- (ii) compliance audit findings following an internal audit inspection of the Geelong RSL conducted on 10 July 2018;

(i) Addendum to Mr Barrett's Witness Statement, dated 15 October 2018.

23. The Council provided the following material in opposition to the Application:

- (a) written economic and social impact submission, dated 27 September 2018, referred to in paragraph 2 above; and
- (b) Social and Economic Impact Assessment prepared by Council staff, undated (**Council Report**).

24. The following material, prepared by Commission officers, was provided to the Applicant and Council and was considered by the Commission:

- (a) a report titled *Economic and Social Impact Report*, dated November 2018 (**VCGLR Report**); and
- (b) a report titled *Pre-Hearing Inspection and Compliance Report*, dated 26 October 2018 (**Inspection Report**).

25. In addition to the above material (in particular as referred to at paragraph 22(g)(vi)), the Commission also received:

- (a) correspondence in support of the Application from one individual and submissions from the following community organisations and associations operating in the City of Greater Geelong:
 - (i) Rotary Club of Belmont, dated 19 November 2018; and
 - (ii) Extremely Disabled War Veterans Association, undated;
- (b) correspondence in opposition to the Application from 14 individuals (nine of which were pro-forma objections submitted via the 'Do Gooder' website¹³) and submissions from the following community organisations operating in the City of Greater Geelong:
 - (i) Barwon Health, dated 12 November 2018; and
 - (ii) Geelong Inter-Church Social Justice Network, dated 8 November 2018.

¹³ Do Gooder is a web platform that allows individuals to send emails to organisations regarding issues they consider important.



26. Prior to the Hearing, Dr Tafadzwa Nyanhanda, on behalf of Barwon Health, and Mr Ian Yule, on behalf of the Geelong Inter-Church Social Justice Network, requested an opportunity to provide oral submissions at the Hearing. The Commission granted the request and provided Dr Nyanhanda and Mr Yule with an opportunity to make further submissions. The Applicant, the Council and the Commission were provided with the opportunity to ask questions of clarification to both Dr Nyanhanda and Mr Yule.
27. Both prior to and after the Hearing, Deputy Chair O'Donnell and Commissioner Powell separately visited the Geelong RSL.
28. During the Hearing, the following further material was provided by the Applicant to the Commission in relation to the Application:
 - (a) minutes of the Applicant's general meeting held on 21 March 2018 relating to the Applicant's schools assistance program;
 - (b) a summary of the staged timing of proposed works and employment of staff;
 - (c) various floor plans indicating the EGM layout and interim and permanent RSG measures to be included in the existing and new gaming rooms respectively;
 - (d) membership numbers by postcode as at June and November 2018;
 - (e) cash contributions made under the Applicant's Schools Assistance Program during 2016 and 2017; and
 - (f) satellite imagery of the area surrounding the Geelong RSL.
29. During the Hearing, the following further material was provided by the Council to the Commission in relation to the Application:
 - (a) a summary of 2017/18 gambling data by venue within the City of Greater Geelong;
 - (b) a number of maps demonstrating various levels of poverty within the Geelong area, generated from the Victorian Council of Social Services (VCOSS) website;
 - (c) a map titled 'Belmont Social Infrastructure Points', indicating the community services and recreational facilities within 2.5km of the Geelong RSL;
 - (d) a paper titled, 'Problem Gambling in Australian PTSD Treatment-Seeking Veterans' by Dirk Biddle et al, Australian Centre for Posttraumatic Mental Health, University of Melbourne, published in the Journal of Traumatic Stress on 6 December 2005;



- (e) a paper titled, 'The Australian Vietnam Veterans Health Study: III. Psychological Health of Australian Vietnam Veterans and its Relationship to Combat' by Brian O'Toole et al, Department of Psychiatry, University of Queensland, published in the International Journal of Epidemiology in October 1995; and
- (f) a report titled, 'Every suburb Every Town: Poverty in Victoria' by the National Centre for Social and Economic Modelling (NATSEM), commissioned by VCOSS, dated November 2018.

30. The following witnesses gave oral evidence at the Hearing on behalf of the Applicant:

- (a) Mr Anderson;
- (b) Mr Clyne;
- (c) Mr Barrett;
- (d) Mr Hanns; and
- (e) Mr Cole.

31. After the Hearing, written submissions were provided to the Commission for:

- (a) the Applicant, prepared by Ms Trewhella, dated 26 November 2018, attaching:
 - (i) a Geelong Planning Map for the area surrounding the Geelong RSL;
 - (ii) diagram of the Applicant's immediate works plan for the Geelong RSL;
 - (iii) existing floor plan of the Geelong RSL; and
 - (iv) proposed conditions of approval, in the event that the Commission determined to grant the Application (**Proposed Conditions**); and
- (b) the Council, prepared by Ms Hicks, dated 26 November 2018.

32. On 27 November 2018, the Council wrote to the Commission confirming that it had no further submissions in response to the Applicant's submissions or the Proposed Conditions.

DECISION AND REASONS FOR DECISION

Location

33. Geelong RSL is located in the City of Greater Geelong (**Greater Geelong**) at 50 Barwon Heads Road, Belmont. Geelong RSL is in the eastern side of Belmont, adjacent to the Princes Highway which provides access to the Geelong city centre to the north and the southern suburbs of Greater



Geelong to the south. The immediately surrounding area of the Premises is predominantly residential and commercial areas to the west and south and parklands and light industrial to the east.

34. Greater Geelong is a regional LGA located approximately 75 kilometres south-west of Melbourne and covers an area of 1,247 square kilometres. Major centres in Greater Geelong include Geelong, Lara and Ocean Grove. According to the VCGLR Report, Greater Geelong has an adult population of 196,065 which ranks it at 1 of the 13 regional municipalities, the most populous in Victoria. The annual rate of population growth of 2.6% in 2018 is higher than the Victorian average of 2.3%. Greater Geelong's percentage of population over 50 of 35% in 2018 is projected by DELWP to be higher than the Victorian average of 31.3%.

Current gaming in Greater Geelong

35. Greater Geelong (together with the Borough of Queenscliffe) is subject to a limit on the maximum permissible number of gaming entitlements, in accordance with a Ministerial Order pursuant to sections 3.2.4 and 3.4A.5(3A) of the GR Act. The maximum permissible number of gaming machine entitlements is 1,421.¹⁴ Currently, there are 26 gaming venues operating within Greater Geelong¹⁵ (and one venue within the Borough of Queenscliffe) with approvals to operate a total of 1,467 EGMs.
36. Greater Geelong has an EGM density of 6.6 EGMs per 1,000 adults, which is 9.4% lower than the regional average (7.3) yet 25.3% higher than the Victorian average (5.3). This gives Greater Geelong the 4th lowest EGM density per 1,000 adults of the 13 regional municipalities.
37. The VCGLR Report indicates that in 2017-18, Greater Geelong had an average gaming expenditure of \$599 per adult (based on DELWP data from 2018), which is 0.4% lower than the regional LGA average (\$602) yet 12.5% higher than the Victorian average (\$533). Applying the estimate of increased gaming expenditure arising from the operation of 30 additional EGMs at the Geelong RSL, the Application (if granted) would result in an increase in average gaming expenditure per adult of 0.4% without allowance for population changes.

Socio-economic profile of Greater Geelong

38. Greater Geelong is characterised by a mixed yet above average socio-economic profile, ranked 13th out of 13 regional LGAs and 38th out of 79 LGAs in Victoria on the Socio-Economic Indexes

¹⁴ See the Ministerial Order under sections 3.2.4 and 3.4A.5(3A) of the GR Act dated 20 September 2017 and taking effect on 3 November 2017 (*Victorian Government Gazette No. S 318 Wednesday 20 September 2017*).

¹⁵ It is noted that one of these venues (Barwon Heads Hotel) has recently ceased operations.



for Areas (**SEIFA**) scale of disadvantage (**IRSD**),¹⁶ indicating overall less disadvantage within the LGA (1st being the LGA with the greatest disadvantage). The NBA Report relies on data from the SEIFA scale of advantage and disadvantage (**IRSAD**).¹⁷ Greater Geelong is ranked 44th on the SEIFA IRSAD, which indicates less relative disadvantage than its position on the SEIFA IRSD rankings.

39. In relation to the immediate surrounding area of the Geelong RSL (i.e. within 2.5 kilometres),¹⁸ the SEIFA IRSD index is 3.32% higher than the SEIFA IRSD index for Greater Geelong, and 1.64% higher than the SEIFA IRSD index for Victoria. On the SEIFA IRSD, a higher score indicates less disadvantage, therefore the immediate surrounding area is less disadvantaged than both Greater Geelong and Victoria. 11.4% and 27.1% of SA1s¹⁹ in the immediate surrounding area are in the 1st and 2nd quintiles²⁰ of SEIFA scores respectively (generally below the regional average), balanced with 34.3% and 20% of SA1s in the 3rd and 4th quintiles (generally above the regional average). This also suggests that the area immediately surrounding the Geelong RSL experiences lower levels of disadvantage than the regional average.
40. The VCGLR Report also indicates that:
- (a) the equivalised household income in the immediate surrounding area is \$990.20, which is higher than the equivalised household income in Greater Geelong (\$938.36) and regional LGAs (\$893.07), yet lower than the Victorian rate of \$1,028.24;
 - (b) the rate of housing stress experienced within the immediate surrounding area of the Geelong RSL (calculated as the percentage of households in the lowest two equivalised household income quintiles paying more than 30% of income on rent or mortgage) is 65.1%, which is higher than the rate of housing stress for Greater Geelong (58.6%), for regional LGAs (51.9%) and for Victoria (60.2%); and
 - (c) the unemployment rate in Greater Geelong increased from 6.2% to 6.6% over the past year. The regional unemployment rate is slightly lower at 6.0%. The unemployment rate for the

¹⁶ SEIFA is a product developed by the ABS to assist in the assessment of the welfare of Australian communities. The SEIFA Index allows the ranking of regions/areas, providing a method of determining the level of social and economic well-being in each region.

¹⁷ According to the NBA Report at paragraph 200, the use of IRSAD is preferred over the IRSD and this is explained by the ABS as follows: the index is preferred in situations where the user: wants a general measure of advantage and disadvantage in their particular analysis, is not looking at only disadvantage and lack of disadvantage and wants advantage to offset any disadvantage in the area.

¹⁸ The VCGLR Report adopts a 2.5km radius as the immediate surrounding area for applications to amend EGM venue operator's licences for venues within metropolitan LGAs and key regional centres, including Geelong.

¹⁹ SA1s have been designed by the ABS as the smallest unit for the release of Census data, and generally have a population of 200 to 800 persons, with an average of 400 persons

²⁰ SEIFA index of relative disadvantage is divided into five quintiles each comprising 20% of areas (Statistical Areas Level 1 (SA1s)) ranked by socioeconomic status from the most disadvantaged (lowest / 1st quintile) to least disadvantaged (highest / 5th quintile). High disadvantage is indicated by a low SEIFA score (and low disadvantage by a high score).

immediate surrounding area is 4.4%.

Nature of the Geelong RSL

41. The Geelong RSL was established in September 1916 and moved to its current location in 1990. It currently has approximately 7,000 members, many of which reside beyond the immediate proximity of the venue. The Applicant is a not-for-profit RSL sub-branch with a community, charity and welfare focus. According to the NBA Report, the Geelong RSL has, for many years, *'been providing a very high level of support to the returned servicemen, servicewomen and their families and the wider community, as well as the elderly within the local Geelong community.'* Under the ANZAC House strategic plan (called the 2020 Plan), the Geelong RSL is in the process of becoming a key regional hub, with increased welfare and administrative responsibility for the south-west region of Victoria.
42. The Geelong RSL secured the additional 30 EGM entitlements from the Geelong Football Club, which ceased gaming operations at its Club Cats venue in 2015. The Applicant hopes to increase its appeal to a wider demographic of patrons through the installation of the additional EGMs and the associated redevelopment works.
43. The Geelong RSL currently comprises:
- (a) a 200-seat capacity bistro, open seven days a week for lunch between 12.00pm to 2pm and dinner between 5.30pm to 8.00pm;
 - (b) a recently renovated function room hosting up to 200 people;
 - (c) a gaming room (including TAB facilities) with 42 EGMs, open:
 - Monday to Wednesday – 9 am to 12 midnight
 - Thursday to Saturday – 9 am to 2 am
 - Sunday – 10 am to 12 midnight;
 - (d) a newly constructed indoor children's playground;
 - (e) a lawn bowls area and facilities; and
 - (f) various office space, incorporating the Geelong RSL's welfare and pensions office.

Catchment of the Geelong RSL

44. The *'no net detriment'* test refers to 'the community of the municipal district in which the approved venue is located.' In determining the impact of an application of this nature on a municipal district, previous Commission and VCAT decisions have had particular regard to the area serviced by the



relevant premises, which is generally referred to as the 'catchment area'.²¹ The determination of the likely catchment area in this instance is important in the Commission's consideration of the identity of those residents who will be most affected by the Application in terms of gambling-related benefits and harms.

45. In the NBA Report and oral evidence, Mr Anderson noted that, while research has found people generally travel up to 2.5 kilometres to play EGMs,²² he considered that the catchment area of the Geelong RSL encompassed a 20 kilometre radius from the Premises, due to its status as a regional hub for the RSL and supported by current membership data and guest patron surveys. Mr Anderson stated that the Geelong RSL's membership data indicates that approximately 68% of its members live within 5 kilometres, a further 17% live within 5-10 kilometres, and 6% live within 10-20 kilometres. By contrast, a guest patron survey conducted between August 2016 and June 2017 indicated that only 34% of the 12,846 recorded guests resided within 20 kilometres of the Premises, with the remainder residing beyond this distance (including approximately 13% from interstate).
46. In the Council Report and in oral submission, Council did not dispute Mr Anderson's evidence that the catchment area of the Geelong RSL is more expansive than the 2.5 kilometre radius generally relevant to venues in metropolitan and major regional centres. Council did not propose an alternative catchment area to that submitted by the Applicant, and much of its evidence and submission was directed at Greater Geelong as a whole, broken down to suburb level.
47. The PVS Report states that, for the purpose of the Geotech model, the area surrounding the venue from where patrons are drawn, and in which competing venues are located, is comprised of a number of statistical areas including trade area, local network and local government area.²³ The trade area is defined as the statistical area in which the majority of the venue's customers are domiciled and it is divided into primary (>20% probability of patronage of the venue from residents of these areas), secondary (12 to 20% probability of patronage from these areas) and tertiary areas (4 – 12% probability of patronage from these areas).²⁴ For the Geelong RSL, the PVS Report indicates that the primary trade area extends approximately 5km to the west, with an additional area in the vicinity of Armstrong Creek 10km to the south-east. The secondary and tertiary trade areas extend out to approximately 10km to the south-west and east.
48. Having regard to the above material, the Commission agrees with the analysis of Mr Anderson

²¹ See for example, *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation & Anor (Occupational and Business Regulation)* [2009] VCAT 2275 (12 November 2009); *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 (7 April 2011).

²² See NBA Report paragraph 186.

²³ PVS Report, page 7.

²⁴ *Ibid.*, page 7.



that the catchment of the Geelong RSL is more expansive than the standard 2.5 kilometre radius. However, the Commission considers it more likely that the majority of the Premises' patrons reside within a 10 kilometre radius, rather than a 20 kilometre radius as submitted by Mr Anderson. Having said that, the Commission notes that the membership data and guest survey does not differentiate those that attend the gaming room within the Premises, rather than for dining or other recreational reasons. Further, the Commission accepts that the Applicant is seeking to expand its current patron base in order to increase its competitiveness with other gaming venues within Greater Geelong. The proposed capital works are likely to attract a different type of patron, specifically young families to the Premises, which may impact the venue's catchment area in the future. While accepting that some members and guests reside some distance from the venue, the Commission considers the appropriate primary catchment area of the Geelong RSL is approximately 10 kilometres around the Premises (the **Catchment Area**).

Issues for determination

49. Pursuant to section 3.4.20 of the GR Act, the Commission cannot grant the Application unless it is satisfied of the following matters:²⁵
- (a) that the amendment of the venue operator's licence does not conflict with a direction given under section 3.2.3 of the GR Act;
 - (b) that the relevant regional or municipal limit for EGMs applicable to Greater Geelong will not be exceeded by the making of the amendment the subject of the Application; and
 - (c) that the net social and economic impact of the increase in EGMs permitted in the Geelong RSL will not be detrimental to the well-being of the community of Greater Geelong (the '*no net detriment*' test).

If it is determined that these matters have been satisfied, the Commission is then required to exercise its discretion under section 3.4.20 to determine whether or not the Application should be granted. That is, whether or not the proposed amendment to the venue operator's licence should be made.

A. Directions given under section 3.2.3

50. As outlined in paragraph 12 above, the Commission is satisfied that there are no relevant directions given under section 3.2.3 that are applicable to this Application.
51. On this basis, the Commission is satisfied that granting the Application would not conflict with a

²⁵ The Commission also considered and was satisfied as to the matters set out in section 3.4.20(1)(d) of the GR Act.



direction given under section 3.2.3 of the GR Act, and therefore considers that mandatory pre-condition set out in section 3.4.20(1)(a) of the GR Act is satisfied.

B. Municipal limits and regional caps

52. Greater Geelong is subject to a limit on the number of EGMs under a Ministerial Order pursuant to sections 3.2.4 and 3.4A.5(3A) of the GR Act. According to the Ministerial Order, the capped region is the whole area covered by the local government area of Greater Geelong and the Borough of Queenscliffe and the limit is 1,421.²⁶ At the time of the Application, the number of EGM approvals within the region is 1,460, with 1,322 EGMs presently in operation.
53. It is the position of the Commission that an approval to increase the maximum permissible EGMs at a venue will not result in a regional cap or municipal limit being exceeded. This is due to the difference between 'Licensed EGM' numbers and 'Attached EGM' numbers:
- (a) 'Licensed EGMs' are the maximum permissible EGM within an approved venue (i.e. the premises has been considered suitable and approved to install up to this number); and
 - (b) 'Attached EGMs' are the number of EGMs (together with a corresponding entitlement) attached and operating at an approved venue.
54. Since the introduction of the entitlements regime, the enforcement of capped numbers is managed through applications made under that regime (i.e. where a venue operator applies to the Commission to attach relevant EGM entitlements to an approved venue). At this time, the Commission (via a delegate) determines whether that attachment of EGM entitlements is permissible, taking into account the total current attached EGMs in a particular capped region of a municipality and assessed against the relevant cap number. While approval of this Application would increase the number of EGM approvals within Greater Geelong to 1,490, the introduction of the additional EGMs would only increase the number of operational EGMs within Greater Geelong to 1,352 which is within the regional cap.
55. In summary, it is the Commission's position that no application pursuant to section 3.4.17 to increase the permitted EGMs at a venue will result in a cap being exceeded. On that basis, the Commission is satisfied that granting the Application would not cause the relevant regional cap for gaming machines in Greater Geelong to be exceeded, and hence considers this aspect of the statutory test set out in section 3.4.20(1)(b) of the GR Act to be satisfied.

²⁶ See Ministerial Order taking effect on 3 November 2017 (*Victorian Government Gazette No. S 318 Wednesday 20 September 2017*) signed on 20 September 2017 by the Hon. Ms Marlene Kairouz.

C. 'No net detriment' test

56. The Commission is required to be satisfied that if the Application is granted, 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 Geelong RSL is located. Set out below (and summarised in tabular form at Appendix B) is the Commission's assessment of the economic and social benefits and disbenefits associated with the Application, including the weighting given to each of these impacts.
57. Before undertaking an assessment of the impact relevant to this Application, the Commission makes the following preliminary comments:
- (a) In previous applications, the Commission has considered the associated yet distinct economic and social benefits of community contributions separately. As noted in paragraph 16 above, it does not matter whether impacts are considered on the economic side, or the social side, or both, so long as such impacts are included and not double-counted in the ultimate composite test. In this Application, the Commission has adopted the approach it took in *Lynbrook Tavern Pty Ltd at Lynbrook Hotel premises (Gaming – EGM Increase)* [2018] VCGLR 31 (**Lynbrook Hotel**) and determined to consider the impacts associated with the proposed community contributions as a single impact under the 'Social impacts' section of its consideration. As noted in its discussion of this impact below, the Commission has taken into account both the economic and social benefits generally associated with community contributions forming part of EGM increase applications, and given appropriate weight to that impact in its cumulative form.
 - (b) Table 22 of the NBA Report²⁷ sets out the 'supporting' and 'detrimental' factors that were considered by Mr Anderson in his assessment of the Application. The Commission does not consider the factors listed are necessarily separate and distinct benefits or detriments of the Application to be assessed as part of the '*no-net detriment*' test. Factors including those identified as 'Current Venue', 'Council Policy,' 'Destination Venue,' and 'Management Expertise' were cited by Mr Anderson as supporting factors and considered as part of the identified impacts of the Application. The Commission does not consider these factors to be distinct impacts of the Application, and as such has not separately considered them below. However, the Commission has taken those factors into account, where relevant, in its assessment of the impacts identified in the following section of its reasons.

²⁷ See NBA Report, pages 91 – 96.

Economic impacts

58. The materials before the Commission, including the evidence adduced at the Hearing, either referred specifically to, or provided the evidentiary basis for, a range of economic benefits and disbenefits associated with this Application.

Gaming expenditure not associated with problem gambling

59. As the economic category includes consumption, then to the extent that gaming expenditure is not associated with problem gambling, it has been recognised (by, for example, the Productivity Commission in its 1999 report) that such expenditure can be treated as an economic positive.²⁸ As Bell J further notes, this approach also brings to account the benefit obtained from pure consumption by the lone gambler who does not use machines for social reasons.²⁹
60. For the Applicant, Mr Clyne, in the PVS Report and at the Hearing, gave evidence regarding anticipated expenditure in the first 12 months operating an additional 30 EGMs at the Geelong RSL. Using the Geotech model, Mr Clyne estimated that:
- (a) the level of additional gross gaming expenditure generated from the Application would be \$2,944,073 in the first 12 months of trade;
 - (b) 83% of this would be transferred expenditure from a number of existing gaming venues within Greater Geelong; and
 - (c) adopting the estimated level of 83% transferred expenditure, new gaming expenditure is estimated to be \$501,670 in the first 12 months of trade, which equates to approximately 0.4% of total gaming expenditure in Greater Geelong in 2016-2017.
61. The Commission notes that the Geotech model is a retail gravity model, based on the theory that a consumer's choice of gaming venue will be based on two fundamental considerations: travel time and venue attractiveness. The determinants for venue attractiveness, in order of priority, are: EGM numbers; whether the venue is a hotel or a club; operating hours; and facility score, which itself is based on a number of factors, including the proposed venue fit-out.

²⁸ See *Romsey #2* at [351] per Bell J.

²⁹ See *Romsey #2* at [351]. Bell J notes further at [352] that the other approach is to say, as did Morris J in *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [79] that gaming extends 'substantial economic and social benefits' to gaming machine users, which treats consumption as a benefit without saying whether it is economic or social. While Bell J states both approaches are correct, for the purposes of this Application this benefit is treated as an economic benefit.

62. In the PVS Report, Mr Clyne provided an analysis of the Geotech model outputs relating to the Application.³⁰ Of note, Mr Clyne observed that:
- (a) the increase in the venue's attractiveness score, and therefore the expenditure predictions of the Geotech model, was based 'purely' on the increase in the number of EGMs, indicating that venue's facility score had not been amended based on the proposed renovations as part of the Application;³¹
 - (b) the estimated increase in weekly expenditure of \$56,617 from the current actual average of \$66,558 is 'quite significant,' being approximately 85%;
 - (c) gaming expenditure at the Geelong RSL is, and would remain, significantly above the band average when compared to rural clubs with similar numbers of EGMs; and
 - (d) the estimated increase in expenditure per EGM being predicted to rise from \$82,405 to \$88,589 is significant in consideration of historical trends which indicate that a venue receiving a top-up of EGMs will typically experience a reduction in expenditure per EGM in the first 12 months following installation of the additional EGMs.³²
63. At the Hearing, Mr Clyne gave evidence that he was confident that the expenditure estimates are accurate and in line with other venues, but noted that the estimates could be considered slightly high given the predicted level of transferred expenditure and extent of local competition.
64. In relation to his predictions regarding transferred expenditure, Mr Clyne attributed the higher figure of 83% to the fact that Greater Geelong is experiencing no growth in expenditure and therefore any increase achieved by Geelong RSL will have to be attracted away from other venues. He submitted that the impact on neighbouring venues would range from 2.12% - 8.47% of the contributing venue's current weekly expenditure and that the Lord of the Isles Tavern, Grovedale Hotel and Waurn Ponds Hotel would be most significantly affected.³³
65. In considering the likely impact of an additional 30 EGMs at the Geelong RSL, the Commission notes that there has been a significant increase (between 10%-15%) in expenditure on EGMs at this venue between 2012/13 and 2015/16, with a slight decrease (between 2%-5%) for the 2016/17 and 2017/18 years.³⁴

³⁰ PVS Report, pages 12-13.

³¹ PVS Report, paragraphs 39-40.

³² PVS Report, paragraphs 47-49.

³³ PVS Report, paragraph 58 and Appendix One.

³⁴ PVS Report, page 11, Table Three and updated figures for 2017/18 year provided at the Hearing.

66. Having regard to the evidence before it, the Commission accepts the evidence of Mr Clyne as to the estimated gaming expenditure as calculated above. The Commission notes that the timing of the likely commencement of operation of the additional EGMs at the Geelong RSL is unknown and dependent on planning permission being obtained.
67. In assessing the extent of this benefit, the Commission has had regard to the evidence outlined in paragraphs 91 to 109 below and findings with respect to the potential increase to the incidence of problem gambling as a result of the Application, which reduces the economic benefit of the new expenditure.
68. Overall, in consideration of the estimated 0.4% increase in expenditure in Greater Geelong, and having necessary regard to the extent of gambling expenditure associated with problem gambling as outlined in paragraphs 91 to 109 below, the Commission considers that this benefit should only be given marginal weight.

Expenditure on capital works

69. A potential key economic benefit associated with this Application is that arising from the expenditure on the proposed redevelopment of the Geelong RSL.
70. In oral and written evidence, the Applicant submitted that the Geelong RSL needed to undertake significant capital works to refurbish the current premises and expand its appeal to a broader range of patrons. To that end, a proposed redevelopment costed at \$4.4 million is planned. These works would be broken into the following stages:³⁵
- (a) Immediate Works – installation of screens and entrance door in current gaming room, relocate reception closer to current entrance, establish temporary community hub and lounge/café;
 - (b) Within 12 months of planning permission – redevelopment of alfresco dining area, kitchen expansion, establish permanent community hub and lounge/café;
 - (c) Within three years of planning permission – relocation of entrance and foyer to north-east corner, create new car park entry; and
 - (d) Within five years of planning permission – redevelopment of new gaming room, upgrade bistro and toilets, new bar and sports lounge, indoor/outdoor children’s play areas, new office space,

³⁵ The Applicant has applied for a planning permit to conduct the capital works as described.

(together, the **Proposed Works**).

71. The NBA Report states that the Applicant intended for the Proposed Works to be constructed using local contractors, subject to a formal tender process due to the scale of the project. On this basis, Mr Anderson concluded that the expenditure will be retained in the municipality.³⁶ Mr Cole provided evidence that the Applicant's builder, Rubicon Design and Construct Pty Ltd, was "committed to use local trade contractors where possible".³⁷
72. Mr Cole gave evidence that, if the Application is approved, the Applicant's bank has confirmed that a loan would be approved to cover the Proposed Works (together with other associated costs).³⁸ Mr Cole also provided evidence of the Applicant's current financial position and stated at the Hearing that the Proposed Works would not be possible if the Application was not approved as the Applicant would not have the financial capacity to undertake them.³⁹
73. The Commission accepts the evidence of the Applicant that the Proposed Works to a value of \$4.4 million is a benefit associated with the Application, to vest in the community over a five year period. The Commission recognises that these works are dependent upon the Application being granted, in that if this is not the case, the Applicant will not proceed with the proposed redevelopment of the Geelong RSL. In any event, the Commission notes that the Applicant has proposed that any approval of the Application should be subject to a condition related to the completion of the works associated with the redevelopment. However, the commitment by the Applicant's builder to use local trade contractors is only "where possible", and therefore the Commission cannot be certain to what extent this expenditure will actually benefit the municipality in which the Premises are based.
74. Overall, the Commission considers that the extent of the Proposed Works is of a sizeable nature but there is some uncertainty as to the extent to which the expenditure will be retained in Greater Geelong, and as such a low weight is given to this benefit.

Additional employment

75. As regularly established by the Commission in applications of this nature, the Application may result in employment benefits associated with the increased number of operational EGMs and increased patronage of existing facilities at the Geelong RSL. Short term employment benefits may also arise during the redevelopment of the Geelong RSL during the Proposed Works (related

³⁶ See NBA Report, pages 91-92.

³⁷ Mr Cole's Addendum Witness Statement, paragraph 10 and Appendix F.

³⁸ Mr Cole's Addendum Witness Statement, paragraph 7.

³⁹ Transcript, Day 2, page 216.

to, but separate from, the economic benefit associated with expenditure on capital works).

76. The Geelong RSL currently has 44 total employees: 11 full-time employees, four part-time employees and 29 casual employees. Mr Cole stated that all but two of the Geelong RSL's employees live locally. According to the NBA Report, approval of the Application will result in the creation of 15 full time equivalent (**FTE**) positions at the Geelong RSL equating to \$600,000 in salaries per year. Mr Anderson considered that this additional employment was a moderately positive factor in support of the Application.⁴⁰
77. Although there was some confusion during the Hearing as to the exact employment impact of the Application, Mr Cole confirmed in his oral evidence that the 15 positions would equate to approximately \$670,000 in salaries per year and include a Welfare, Pensions and Advocacy (WPA) administrator, two RSG qualified staff, three chefs, three bistro/bar staff, one new reception staff, one function coordinator, one function staff, and two new bus drivers.⁴¹
78. At the Hearing, the Applicant, through Mr Hanns, confirmed its willingness for conditions to be imposed on its venue operator's licence to require the Applicant to employ the additional employees progressively over five years in line with the Proposed Work schedule (outlined in paragraph 70 above).
79. In relation to short-term construction jobs during the Proposed Works, the Commission considers that there was significant uncertainty of any such benefits accruing to the municipality because the Applicant could not guarantee that the Proposed Works will be carried out by a local supplier.
80. The Commission accepts the Applicant's estimate that 15 new FTE positions will be created at the Geelong RSL over five years if the Application is approved. The Commission notes that while there is no certainty provided that the new FTE positions will be filled by individuals from within Greater Geelong, given the employment practices of the Applicant to employ local staff, it is likely that they will. The Commission considers it is possible that the transferred expenditure could lead to job losses at other gaming and hospitality venues in the municipality, and that it is possible that some of the new FTE positions could be filled by staff from other venues. However, the Commission finds there was not enough evidence to indicate the impact on employment in the municipality would be net neutral. In consideration of the above, the Commission gives this benefit marginal to low weight.

⁴⁰ NBA Report, Table 16, page 95.

⁴¹ Witness Statement of Ricky Cole, page 5, paragraph 26; Transcript, Day 2, page 261.

Increased gaming competition in Greater Geelong

81. Increasing competition in gaming in Greater Geelong is a factor in light of the statutory purposes of the GR Act and the consumer benefits that derive from competition.
82. In this regard, the Commission refers to and relies on the evidence set out in paragraphs 60 to 66 in relation to the anticipated transfer of gaming expenditure within Greater Geelong.
83. On the basis of an estimated adult population in Greater Geelong of 196,065 in 2018, the Commission considers that this Application would (if approved):
- (a) increase the overall number of EGMs with attached entitlements within the municipality by 30 (2.32% increase) from 1,292 to 1,322;
 - (b) increase the EGM density of Greater Geelong from 6.6 EGMs per 1,000 adults to 6.7 EGMs per 1,000 adults (compared with the regional average of 7.3 EGMs per 1,000 adults and Victorian average of 5.3 EGMs per 1,000 adults); and
 - (c) increase the gaming expenditure per adult in Greater Geelong from \$599 to \$602 (compared with a regional average of \$602 per adult and a state average of \$533), an increase of 0.4% of total gaming expenditure in Greater Geelong.⁴²
84. As set out in paragraphs 60 to 66, the Application, if approved, is predicted to give rise to a transfer rate of 83% from surrounding gaming venues. According to the PVS Report, the major contributing venues are the Lord of the Isles Tavern, the Grovedale Hotel, the Waurin Ponds Hotel and the Valley Inn Hotel. Mr Clyne found this to be an appropriate transfer rate in consideration of the fact that there is very little growth in gaming in Greater Geelong, and gave evidence that the increase in EGM numbers would enable the Geelong RSL to compete with these venues (which operate between 60 to 80 EGMs).
85. The Commission finds that granting approval of the Application will provide 30 additional EGMs at which patrons may choose to play. While an application of this size exceeds most EGM increase applications considered by the Commission, the Application represents a relatively small proportional increase in the number of EGMs in Greater Geelong. While no utilisation rates were provided to the Commission as part of the Application, the Commission accepts the evidence of Mr Clyne that the increased number of EGMs will increase the Geelong RSL's ability to compete with nearby gaming venues. The Commission notes that gaming expenditure per adult in Greater Geelong is on par with the regional average, yet 12.5% higher than the Victorian average. While it acknowledges that \$501,670 in the first 12 months of trade is a relatively high increase in new

⁴² For all data in paragraph 83, see VCGLR Report pages 11-13 and 18-19.



expenditure, the Commission considers that the anticipated additional expenditure at the Geelong RSL does not suggest a substantive increase in gaming competition within Greater Geelong.

86. As such, for the purposes of this Application, the Commission considers that, at its highest, there is negligible benefit associated with an increase in gaming competition in Greater Geelong as a result of the addition of 30 EGMs at the Geelong RSL, and hence gives this impact no to marginal weight.

Supply contracts and complementary expenditure

87. The Application did not contain any figures or evidence in relation to the economic benefit associated with supply contracts (such as cleaning, EGM servicing and maintenance) and complementary expenditure and did not directly rely on these impacts as a benefit of this Application. While these potential impacts are occasionally dealt with separately by the Commission, they will be considered together for this Application.
88. Complementary expenditure is a potential benefit where it results in increased economic activity in the municipal district in which the premises that are the subject of an application are located. However, the extent of this benefit will depend upon a range of factors, including:
- (a) the extent to which the expenditure is a consequence of new spending (i.e. as a result of additional people coming to the municipal district as tourists as compared to transferred expenditure from other venues within the municipality); and
 - (b) the extent to which that complementary expenditure results in additional spending on local goods and services.
89. On the information available, the Commission considers there is no direct evidence on these impacts. Even if increased patronage at the Geelong RSL is anticipated following any approval of the Application, and such increased patronage could result in increased supply contracts and/or complementary expenditure, there is significant uncertainty as to the extent that any such increase would generate increased economic activity within the local area as opposed to transferred activity within Greater Geelong.
90. For these reasons, the Commission finds that any benefit associated with supply contracts and complementary expenditure for Greater Geelong would be negligible and as such places no weight on this impact.

Gaming expenditure associated with problem gambling

91. To the extent that a portion of the new gaming expenditure is attributable to problem gambling, this represents an economic disbenefit.⁴³ In assessing this impact (and other effects of problem gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gaming undertaken by individuals in each of the problem gambling severity index (**PGSI**) risk categories, in particular those who may be defined as ‘problem gamblers,’ as well as those who may be otherwise regarded as ‘low-risk’ or ‘moderate-risk’ gamblers.
92. In assessing the extent of this benefit, the Commission has regard to the expenditure evidence set out in paragraphs 59 to 68 above. In doing so, the Commission recognises that in considering this aspect of the ‘*no net detriment*’ test, it does not include consideration of transferred expenditure because such expenditure cannot be said to exacerbate problem gambling.⁴⁴

The potential vulnerability of Greater Geelong to gambling related harms

93. The extent to which new gaming expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with the Application, will be influenced by the socio-economic status and vulnerability of the community of Greater Geelong, and in particular those living in the Catchment Area: see paragraphs 44 to 48. This is because communities characterised by socio-economic disadvantage and greater vulnerability are considered to be more susceptible to the harms arising from problem gambling.
94. The NBA Report cites various factors to suggest that there is lower risk of increased incidence and economic impact of problem gambling should this Application be approved, including:
- (a) Greater Geelong had a SEIFA IRSAD score of 980 in 2016 and a ranking of 44 (out of 80, where 1 is the most disadvantaged), which indicates an average level of disadvantage when compared to other municipalities in Victoria;

⁴³ The Commission recognises that, on review, the key likely disbenefit of ‘problem gambling’ has, for convenience, been treated under the heading of ‘social impacts’ in various instances: see *Mount Dandenong Tourist Hotel Pty v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted; see, for example, *Mount Alexander Shire Council* [2013] VCAT 101 at [178] and following per Dwyer DP. For completeness, the Commission separately considered both the economic and social impacts of problem gambling in assessing this Application.

⁴⁴ See *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192 at [11] per Code PM and Nelthorpe M; *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J.



- (b) Greater Geelong improved in its SEIFA IRSAD decile⁴⁵ ranking from 5th decile in 2011 to the 6th decile in 2016;
- (c) the SA2 in which the Geelong RSL is located (Belmont) showed mixed but below average signs of disadvantage, having:
 - (i) a SEIFA score within the 4th decile;
 - (ii) a median weekly personal income for people aged 15 years and over of \$601, which is approximate to the average in Greater Geelong of \$600 and below the average in Victoria of \$644, suggesting a slightly lower disposable income;
 - (iii) a median weekly family income of \$1,142, which is lower than the average in Greater Geelong of \$1,244 and in Victoria of \$1,419;
 - (iv) an unemployment rate of 6.1%, which is lower when compared to 6.4% in Hobsons Bay and 6.6% in Victoria; and
 - (v) a low proportion of households experiencing mortgage stress of 4.8% when compared with Greater Geelong and Victoria (9.3% and 10.4% respectively), yet a higher proportion of households experiencing rental stress of 12.6% when compared with Greater Geelong and Victoria (8.1% and 7.5% respectively), suggesting that a greater proportion of renting households appear to be more under pressure;
- (d) approximately 80% of the area within 20 kilometres of the Geelong RSL is ranked in the 7th decile or above at a postcode level, indicating a below average level of disadvantage;
- (e) with reference to surrounding LGAs, the majority of the wider area surrounding Geelong RSL exhibits an above average socio-economic disposition;
- (f) membership data indicates that Geelong RSL does not attract excessive patronage from those suburbs in the Catchment Area that register high levels of disadvantage (specifically, Breakwater and Norlane/Corio);⁴⁶ and
- (g) the majority of suburbs within the Catchment Area retained or improved in their SEIFA IRSAD ranking between 2011 and 2016 which indicates that they are becoming less disadvantaged.

95. The NBA Report also relies on factors beyond the social and economic profile of patrons in the

⁴⁵ According to the NBA Report, paraphrased, the SEIFA index scores are divided into a distribution of ten equal groups with the lowest scoring 10% of areas given a decile number of 1, the second-lowest 10% given a decile number of 2 and so on, up to the highest 10% of areas being given a decile number of 10, page 69.

⁴⁶ Relevantly, 11% of members reside in Breakwater and 4% of members reside in Corio, which are serviced by closer gaming venues: see NBA Report, paragraphs 207-208.



Catchment Area in asserting that the approval of 30 new EGMs at the Geelong RSL will not have a detrimental impact on the relative disadvantage of the community in Greater Geelong, including that:

- (a) it is an existing gaming venue in a mature market;
- (b) it has a low risk patron profile in terms of the core gaming patron demographic attracted to RSL venues;
- (c) it is a not-for-profit RSL sub-branch venue with a community, charity and welfare focus;
- (d) it is a 'club' venue in a destination location (not convenient or easily accessible by definition); and
- (e) it has a proven high commitment to the welfare of their patrons, with volunteers providing gratis assistance to ex-service personnel and the local community and their families; and
- (f) it attracts a significant percentage of patrons from outside the Belmont area.⁴⁷

96. The NBA Report states that the Geelong RSL and its management team have a long-term, proven commitment to comply with the requirements of the relevant legislative framework for RSG.⁴⁸ The Applicant actively encourages the use of the pre-commitment scheme YourPlay, and has been recognised by the Victorian Government in 2016 and 2017 as a leading venue in terms of use and registrations for YourPlay.⁴⁹ In his oral and written evidence, Mr Anderson submitted that the Applicant had an impressive track-record and positive working relationship with their Venue Support Worker and local branch of Gamblers Help. He also expressed the view that the enhanced RSG measures of layout and surveillance to be introduced as a result of the Application would improve the already significant RSG compliance at the Geelong RSL.

97. At the Hearing, Mr Anderson elaborated on his position regarding the Geelong RSL being a 'destination venue,' which is acknowledged to be a protective factor against problem gambling. Mr Anderson argued that the Geelong RSL is not within the core retail area but, rather, on the periphery of the neighbouring activity centre on High Street (approximately 550 metres away) in a residential area. He considered that while some nearby residents might walk past it to get to High Street, the Geelong RSL was not 'on an ant-trail'.

98. In the Council Report, the Council provided a demographic analysis of the Catchment Area and beyond around the Geelong RSL, focusing on certain measures that would indicate a vulnerability to problem gambling in local communities (SEIFA profile, one parent families, low income

⁴⁷ NBA Report, paragraph 14.

⁴⁸ NBA Report, paragraph 69.

⁴⁹ NBA Report, paragraph 71.



households, rental and mortgage stress and lone person households). The Council noted the mixed levels of socio-economic circumstances within the Catchment Area and concluded that, although the Catchment Area does not show a low SEIFA disadvantage score compared to the Greater Geelong and Victorian averages, there was considerable concern for those areas exhibiting significant socio-economic disadvantage, in particular the suburbs of Breakwater, Norlane/Corio and Bell Park.⁵⁰ The Council also referred to the updated membership data provided by Mr Cole, and the increased membership numbers for these vulnerable suburbs.

99. The Council also relied on the poverty maps generated by VCOSS to highlight various levels of poverty within the suburb of Belmont. While the Council referred these maps to Mr Anderson, and referenced them in its Closing Submission, the Council did not otherwise make any detailed submissions or analysis of the maps or the levels of poverty within Belmont that it identified.
100. In its closing submission, the Council contended that the location of the Geelong RSL is convenient and encourages opportunistic and convenience gambling. Further, the Council noted that the Geelong RSL is proximate to a number of sensitive uses, such as the Barwon Health PARC facility, the Salvation Army's SalvoConnect Women's Service and a childcare centre, which heightens the risk in the location of the venue.

The Commission's view in relation to the vulnerability of the Catchment Area

101. Taking into account all of the material before it, including that discussed in paragraphs 38 to 40 above, the Commission finds that the Catchment Area features mixed, yet generally lower, levels of socio-economic disadvantage. The Commission notes that, in general, the Applicant and the Council agree that the Catchment Area exhibits lower levels of disadvantage on the respective SEIFA index adopted.⁵¹ However, the Council highlighted the increased vulnerability of particular suburbs within the Catchment Area that were of considerable concern, in particular Breakwater, Norlane/Corio and Bell Park. The Commission accepts that these suburbs exhibit higher levels of relative disadvantage and higher vulnerability to the impacts of problem gambling. While the Council referred to the increased membership numbers from these vulnerable suburbs, the Commission notes that this increase was generally not disproportionate to the general increase of membership across all suburbs within the Catchment Area.
102. Further, Mr Anderson noted that membership and guest data showed that patrons from those suburbs are not highly represented and that other competing gaming venues are either in closer

⁵⁰ Council Report, page 30.

⁵¹ Noting the Council has relied on the SEIFA ISRD index while Mr Anderson has relied on the SEIFA IRSAD index in the NBA Report.



proximity to those suburbs, or located between those suburbs and the Geelong RSL, indicating that there are more convenient gaming venues for patrons in Breakwater, Norlane/Corio and Bell Park. While the Commission accepts this evidence, it does not consider that prospective patrons from those suburbs should be entirely discounted from consideration of the impacts of the Application.

103. The Commission finds that, on the evidence provided, the socio-economic profile of the Catchment Area is likely to continue to improve, which could reduce its vulnerability to harms from problem gambling over time. However, the Commission also notes that the disadvantaged suburb of Breakwater appeared to further decline between 2011 and 2016, indicating an increased and ongoing vulnerability to problem gambling. Also, the Commission notes that the expenditure predictions relate to the first 12 months after installation of the new EGMs, prior to the majority of the Proposed Works which are intended to increase the appeal of the Geelong RSL to an expanded patron base of young families. For this reason, any increased harms arising from problem gambling associated with the new expenditure will be felt most greatly by the Catchment Area and its current demographics.
104. In considering the extent to which new gaming expenditure may give rise to an increased risk of problem gambling, the size of the venue is a relevant consideration. This is because larger venues are thought to offer increased anonymity for the problem gambler.⁵² The Commission notes Mr Anderson's evidence at the Hearing that, according to his assessment of the gaming environment in Victoria in 2018, venues with 0 – 50 EGMs are classified as small, venues between 50 – 80 are medium sized and venues with above 80 EGMs would be large.
105. With its existing 42 EGMs, the Geelong RSL is a small sized venue, though at the larger end (according to Mr Anderson's scale). The introduction of 30 new EGMs will transform it into a much larger gaming venue though according to Mr Anderson's scale it would still be 'medium sized' as it is not above 80. The Commission finds that transforming the venue from its current 'small' size to a 'medium' venue will increase the risk of problem gambling associated with this Application and that changing the nature of the Geelong RSL in this way could increase the risk that individuals may spend more money on EGMs than they may have otherwise.
106. The Commission notes Mr Anderson's evidence in support of his view that the Geelong RSL is best classified as a 'destination venue', and the Council's submission regarding the location of the Geelong RSL. The Commission considers that the Geelong RSL does fall within the strict

⁵² See, for example, *Lynbrook Hotel* at 115 in which it was stated that a larger gaming room would be more attractive for problem gamblers. In that matter, the increase in venue size was found to be off-set by the additional staff in the gaming room.

definition of 'destination venue' relied upon by Mr Anderson, however notes that the venue is somewhat more convenient and accessible to those proximate residents and patrons of nearby community services.

107. In considering the extent to which new gaming expenditure may give rise to an increased risk of problem gambling, the manner in which gaming is to be conducted at the venue is also a relevant consideration. On the information before it, the Commission notes that the Applicant has demonstrated a satisfactory commitment to RSG practice and, together with the additional RSG measures proposed as part of this Application, this will improve existing practices and partly address the increased risk of problem gambling in Greater Geelong associated with this Application.
108. In making this finding, the Commission relies on the evidence of Mr Cole regarding the management of staff within the Geelong RSL, the positive reporting and proactive approach by staff to events within the Geelong RSL evidenced by the Applicant's RSG Incident Register, the external regulatory compliance audits conducted by Leigh Barrett & Associates showing general compliance with RSG obligations, and the Applicant's acceptance of Mr Barrett's suggested layout improvements as part of the Proposed Works (including the addition of screens, reception, EFTPOS machine and relocation of the children's play area away from the entrance to the new gaming room). The Commission also agrees with Mr Anderson's evidence that gaming that occurs at an RSL (as opposed to a hotel or other club venues) is generally considered to be a protective factor against problem gambling.
109. Overall, in consideration of the evidence before it, the Commission considers with respect to the Application that the potential expenditure associated with problem gambling is a negative economic impact upon which it should place marginal to low weight. Issues relating to the negative social impacts associated with problem gambling are considered further in paragraphs 133 to 135 below.

Diversion of trade from other gaming venues

110. In the PVS Report, Mr Clyne estimated that 83% of gaming expenditure would be transferred from other gaming venues within Greater Geelong. With reference to the impact on surrounding venues,⁵³ the PVS Report states that three venues in particular would be likely to experience significant losses in revenue if the Application were approved. Those venues are the Lord of the Isles Tavern (-8.47%), the Grovedale Hotel (-7.33%) and the Waurin Ponds Hotel (-7.17%).⁵⁴ In

⁵³ PVS Report, page 14, paragraph 58.

⁵⁴ PVS Report, Appendix One, Table 4.



the PVS Report and at the Hearing, Mr Clyne gave evidence that these venues were all large, well-established venues with excellent facilities and would not be significantly impacted by these transferred expenditure figures. Following questions regarding the likely impact on the Valley Inn Hotel (-6.25%), Mr Clyne accepted that the Valley Inn Hotel was a relatively new gaming venue and may be more impacted by such transfer than the other three venues. However, Mr Clyne noted that the Valley Inn Hotel had a well-established bistro and sports bar, which would limit the overall impact on that venue's financial position.

111. The Commission accepts the Applicant's evidence that 83% of anticipated transferred expenditure would be derived from other venues, all located within Greater Geelong. The Commission considers that a transfer rate of this size is not insignificant and the diversion of trade will have some detrimental economic impact on other venue operators, particularly the Valley Inn Hotel given its gaming room is still becoming established within the competitive marketplace. Having regard to these factors, the Commission assigns marginal weight to this impact.

Conclusion on economic impacts

112. After considering the economic benefits of the Application and balanced against the detriments, the Commission considers that, on balance, there is likely to be a marginal positive economic impact of the Application.

Social Impacts

113. The materials before the Commission and the evidence adduced at the Hearing detailed a range of social benefits and disbenefits associated with the Application.

Additional and improved services and facilities at the Geelong RSL

114. Separate from the economic benefit that may be associated with expenditure involved in capital works at the Premises, there are also potential social benefits to the community that may arise as a result of the Application.
115. As noted in paragraph 70 above, the Proposed Works include redeveloped existing facilities as well as new facilities at the Geelong RSL as follows:
- (a) redevelopment of the bistro, alfresco dining area, kitchen, gaming room, indoor/outdoor children's playground and club entry (together with foyer and reception area);
 - (b) expansion to the Applicant's welfare services and courtesy bus service; and
 - (c) development of a new public sports bar, café lounge and community hub.



116. The NBA Report states that the Proposed Works will improve the amenity of the Geelong RSL for both members and guests, including a gaming room incorporating best-practice RSG measures.⁵⁵ Mr Cole stated that the renovations will “change the layout of the venue to provide new and more distinctive areas” for its members.⁵⁶
117. In relation to the increased welfare services of the Applicant, Mr Hanns submitted that the Geelong RSL was undertaking a “substantial increase in the amount of pension and advocacy work for veterans and their dependents”, and the Application would enable the Applicant to “employ one full-time welfare pension’s administrator, and potentially further welfare officers to accommodate the increased demand”.⁵⁷ Mr Hanns also submitted that the cost of providing these services is increasing as the availability of volunteer advocates was decreasing, requiring the establishment of paid staff to undertake this work.⁵⁸ Mr Cole outlined that approximately 50% of the Applicant’s income is allocated towards welfare and charitable expenses, and the additional revenue from the 30 EGMs would be used to increase the “substantial welfare support provided to the Geelong community”.⁵⁹
118. The Applicant has also committed to purchase a mini-bus to improve its current welfare transport services to members. The NBA Report outlines that the Applicant provides three distinct services from the buses: ‘welfare purposes’ by driving members to and from medical and other appointments, ‘auxiliary group purposes’ for day trips and other events, and ‘courtesy purposes’ for transport to and from the Geelong RSL.⁶⁰ However, Mr Cole’s statement indicates that the additional bus would be “for operational purposes and be different to the two buses already operated by the RSL for welfare purposes”.⁶¹ As such, the Commission finds that the purchased bus will likely to used entirely or at least predominantly for ‘courtesy purposes’, and would therefore return a negligible benefit to the community. It is possible that this would enable the existing buses to increase the welfare and auxiliary group purposes, however the Commission notes there is significant uncertainty in this regard and in respect of the overall service delivery of each of the three distinct services to be provided by the Applicant.
119. The Commission notes that there is a degree of uncertainty as to when the social benefits associated with the Proposed Works will vest in the community because planning permission has not yet been granted. On the basis that planning permission is granted, the Commission considers

⁵⁵ NBA Report, page 37.

⁵⁶ Mr Cole’s Witness Statement, paragraph 21.

⁵⁷ Mr Hanns’ Addendum Witness Statement, paragraph 2.

⁵⁸ Mr Hanns’ Addendum Witness Statement, paragraphs 5 to 6.

⁵⁹ Mr Cole’s Addendum Witness Statement, paragraph 9.

⁶⁰ NBA Report, paragraphs 117 to 121.

⁶¹ Mr Cole’s Witness Statement, paragraph 23.



it could be at least five years until the Geelong RSL has completed the capital improvements to the venue, based on the Proposed Conditions submitted after the Hearing. The Commission finds some social benefit in the refurbishment of existing facilities as it will modernise the venue and increase its attractiveness, considering the scale and scope of the Proposed Works. The Commission also finds that the increased welfare services to be provided through the additional Welfare, Pensions and Advocacy officer (within 12 months of issue of the planning permit in accordance with the Proposed Conditions) are a significant and meaningful contribution by the Applicant to its members and Greater Geelong generally. On the whole, the Commission affords this social benefit a low weight.

Increased gaming opportunities for those who enjoy gaming

120. This is a positive impact if the Application will better serve the needs of gaming patrons through providing additional opportunities and choice for those who choose to play EGMs.
121. The Applicant submits that the proposed addition of 30 EGMs will assist in providing an increased range of choice and variety of machine to patrons choosing to gamble responsibly at the venue. It submits that the additional machines are required to support the Geelong RSL's desire to be more competitive with other gaming venues and attract additional and diverse patrons to its venue.
122. Under cross-examination, Mr Anderson accepted that no utilisation survey had been provided by the Applicant. However, he maintained that the additional EGMs at the Geelong RSL would provide a greater range and variety of EGMs for patrons, such as different game types and denomination of EGMs.⁶²
123. In its closing submission, the Council submitted that as no relevant evidence was presented by the Applicant (e.g. gaming room counts or utilisation figures), the Commission had no material on which to make a finding on this impact.
124. The Commission acknowledges that there is a benefit in increasing machine choice for recreational players and catering for (non-problem gambling) demand. Given there are already 42 EGMs at the Geelong RSL, there was no evidence that the gaming room operated at peak utilisation and there are 25 other venues in Greater Geelong currently operating 1,292 EGMs, the Commission considers there is already an ease of access and high levels of consumer choice for anyone choosing to play EGMs. However, the Commission accepts that the increase of EGMs from 42 to 72 at the venue will enhance the range and variety of EGMs available at the Geelong

⁶² Transcript, Day 1, page 67.



RSL for recreational players. Overall, the Commission considers this to be a negligible social benefit to the community in Greater Geelong itself, and hence one on which it places marginal weight.

Increased community contributions

125. In determining the net economic and social impact of applications of this nature, both the Commission⁶³ and VCAT⁶⁴ have regularly treated community contributions as a positive benefit. However, for such contributions to be regarded as a benefit associated with the Application, it is necessary that they are properly regarded as community contributions and that they will result as a consequence of the Application.
126. As noted in paragraph 57(a) above, the Commission has taken into account both the economic (financial benefit enjoyed by recipients) and social (improvement to the social fabric of the community) benefits associated with the proposed community contributions forming part of the Application in this section, and given appropriate weight to that impact in its cumulative form. The Commission also confirms that it has separately taken into account the welfare services proposed to be expanded if the Application is approved under the “*Additional and improved services and facilities at the Geelong RSL*” impact above.
127. As part of the Application, the Applicant stated that it had committed to contribute \$30,000 each year for three years as part of its arrangement with the Geelong Football Club for the additional EGM entitlements. During the Hearing, the Applicant confirmed that it had already made two of the three contributions, with the third to occur in late 2019. In response, the Council submitted that these contributions appeared to be existing commitments and could not be considered benefits of the Application. The Commission agrees with the Council’s submission, and has not taken into account the payments made or to be made to the Geelong Football Club as part of this impact.
128. At the Hearing, Mr Cole gave evidence that the Applicant donated approximately \$10,000 per year under its Schools Assistance Program to various primary and secondary schools within Greater Geelong. Mr Cole stated that in March 2018, the Applicant made a decision at its General Meeting that “in light of the soft financial position of the [Applicant] from the previous year, that all sponsorship and the schools assistance program be put on hold and this money is to be redirected to welfare assistance and be used for such”. Under cross-examination, Mr Cole conceded that

⁶³ See, for example, *Application by Richmond Football Club* [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

⁶⁴ See, for example, *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.



the Applicant would intend to recommence donations under the Schools Assistance Program in any event, but only “if we can afford it” and definitely if the Application was approved.⁶⁵

129. Subsequently, the Applicant committed to making additional community contributions of \$30,000 in cash per year as part of its Schools Assistance Program (**Additional Contribution**), to commence in 2020 (after the final payment of \$30,000 under the Geelong Football Club agreement), on top of its existing community contributions.⁶⁶ In the Proposed Conditions submitted after the Hearing, the Applicant proposed that the Additional Contribution would be allocated to its Schools Assistance Program to fund local primary schools within Greater Geelong.
130. According to the NBA Report, the Applicant’s community benefit statements indicate that the Applicant made more than \$2.2 million in cash and in-kind donations to the community between the 2015 – 2017 financial years.⁶⁷ This amount consisted of room hire costs, donated volunteer hours, cash donations and in-kind-donations. He stated that the Altona RSL, as a member of the RSL, is non-profit based and as such, all surplus funds are redirected back into the community or into improvement of the venue and facilities.⁶⁸ At the Hearing, Mr Anderson submitted that the Geelong RSL made relatively consistent cash and in-kind contributions on an annual basis, but contributions do fluctuate depending on available funds.
131. The Commission notes that the Geelong RSL makes a significant contribution to the community. The services offered for the elderly, veterans and ex-veterans and families, many of which are free or subsidised, are commendable. However, the Commission notes that some of the community benefits claimed by Mr Anderson (particularly the in-kind contributions) are, in reality, marketing expenses. While there was some evidence provided in relation to costs going up and the diminishing volunteer base, the Commission has not seen any evidence to suggest that the Geelong RSL will not continue to provide similar benefits to the community if the Application is not approved. For the purpose of this Application (and noting that additional welfare services have been separately considered above), the Commission is only assessing the impact of the Additional Contribution on the community of Greater Geelong.
132. The Commission nevertheless accepts that \$30,000 additional cash contributions under the Applicant’s Schools Assistance Program will have a positive economic and social impact. However, the Commission finds that the Applicant would likely make at least part of the Additional Contribution in the future on an annual basis, regardless of whether the Application was granted,

⁶⁵ Transcript, Day 2, pages 253-4.

⁶⁶ Transcript, Day 2, page 224.

⁶⁷ NBA Report, paragraph 102 and Appendix 3.

⁶⁸ NBA Report, page 85.



although it would be unlikely to be in the full amount of the Additional Contribution. Having regard to this increase in the community contributions that will occur of the Application is granted, the Commission considers the Additional Contribution to be a small positive benefit, which it affords no to marginal weight.

Possibility of increased incidence and the potential impact of problem gambling on the community

133. As established in previous Commission decisions,⁶⁹ 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, relationship breakdowns, emotional harms and other social costs. Accordingly, the Commission accepts there is potential for negative social costs through possible increased problem gambling expenditure. The Commission also accepts that to the extent that approval of this Application would result in an increase to gambling-related crime and other social disturbances (including family violence) it would constitute a social disbenefit of this Application.
134. The Commission refers to and relies upon the evidence set out in paragraphs 91 to 109 above with respect to the economic impact of problem gambling on the community, which equally apply to the social impact of problem gambling. As indicated above at paragraph 91, the Commission accepts that harms associated with the incidence of problem gambling are wide-ranging and attributable to all PGSI categories of gamblers ('low-risk', 'moderate-risk' and 'problem gamblers') and across the community more broadly.
135. Overall, the Commission finds that this Application, to vary the number of EGMs at an existing venue from 42 to 72, is estimated to be associated with new expenditure of approximately \$501,670 in the first 12 months following installation of the new EGMs. It accepts that a proportion of this new expenditure will be associated with problem gambling. The Commission finds that the Catchment Area exhibits mixed relative socio-economic disadvantage, but that it is not significantly disadvantaged. The Commission notes the uncertainty of the Geelong RSL's future patron base in light of the changing demographic within the Catchment Area and the lack of detailed evidence of the residence of gaming room patrons (compared with membership and visitor data generally), but finds that this is unlikely to significantly change the risk profile of such patrons. However, the Commission further notes that the Applicant is seeking to attract a new patron demographic of young families to the venue, whom may exhibit a new risk profile in term of gambling related harms and/or financial vulnerability.

⁶⁹ See, for example, *Lynbrook Hotel, Dandenong Cranbourne RSL Sub-Branch Inc at Dandenong RSL premises (Gaming – EGM Increase)* [2018] VCGLR 44 (24 September 2018) and *Castello Cardinia Hotel Pty Ltd at Castello's Cardinia Hotel premises (Gaming – EGM Increase)* [2018] VCGLR 37 (10 September 2018).



136. The Commission finds that the protective factors associated with the Application from an RSG perspective were generally positive. While noting that the Applicant is committed to improving RSG practices at the Geelong RSL through interim works to the current gaming room and improved layout in the new gaming room, the Commission notes that the improved layout will not be achieved as part of the Proposed Works until up to five years from the issue of the relevant planning permit. Further, the Commission finds that the impact that an EGM increase of this size will have on the Geelong RSL – transforming it from a small venue to a (larger size) medium venue (predicted by Mr Clyne to perform significantly above the band average as compared with rural club venues of similar size)⁷⁰ – will further increase the risk of incidence and the impact of problem gambling on the community.
137. The Commission is therefore of the view that granting this Application has the potential to increase the incidence and impact of problem gambling in Greater Geelong to a moderate extent. As such, the Commission accepts that the disbenefit associated with problem gambling is a negative social impact upon which it places low to moderate weight.

Community attitude

138. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,⁷¹ the Commission recognises that while 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 of an application as part of the ‘*no net detriment*’ test.
139. The evidence before the Commission indicates that some community attitude towards this Application has been mixed. In summary:
- (a) the Council, as the representative body of the relevant community and charged with statutory duties under various pieces of legislation, has made a submission in opposition to the Application and appeared at the Hearing of the Application;⁷²
 - (b) two community attitudinal surveys: a random survey conducted by the Council of 87 members of the public indicating a strongly negative attitude to the Application, and a targeted survey by the Applicant of 97 of its members indicating a strongly positive attitude to the Application; and
 - (c) as detailed in paragraph 25, the Commission received:

⁷⁰ PVS Report, page 27, appendix 7.

⁷¹ (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.

⁷² See also *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [42]; *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275 at [249] and [288]-[321].



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- (i) correspondence in support of the Application from four community groups and four individuals; and
- (ii) correspondence in opposition to the Application from two community groups and 14 individuals. Representatives from the community groups (Geelong Inter-Church Social Justice Network and Barwon Health) appeared at the Hearing and gave evidence to the Commission.

140. In the NBA Report, Mr Anderson stated that the attitude of the community toward the Geelong RSL was marginally positive on the basis of its (at the time) 6,525 strong membership base, 91% of whom were from a local population of within 20km of the Geelong RSL.⁷³ Under cross-examination, Mr Anderson accepted that there had been two community attitudinal surveys conducted (one by the Applicant and one by the Council), however stated that he didn't place much weight on them as the Applicant's survey was targeted at members and was always likely to be strongly positive, and the Council survey was random and always likely to be strongly negative. Mr Anderson ultimately concluded that few of the issues raised in the public submissions specifically targeted the Geelong RSL, or were of sufficient concern to affect his original conclusion regarding the net positive community attitude to the Application.

141. The submissions from individuals and community organisations contained both general and specific concerns regarding the impact of the Application on the local community. The general concerns were contained in emails generated by the Do Gooder campaign website, as well as bespoke objections that expressed an anti-pokies sentiment but did not explicitly touch on specific harms resulting from the Application. Of specific relevance to the Application, submissions included the following concerns:

- (a) that the operation of EGMs at the Geelong RSL is inconsistent with the RSL's mission of ensuring the care and well-being of serving and ex-service members of the ADF and their dependants;
- (b) that there is already a large number of EGMs in the community and that certain risk factors of the Application would increase the risk of problem gambling, including the proximity of health services and low cost accommodation to the Geelong RSL; and
- (c) that the addition of new children's play areas will attract young families and expose children to EGMs.

⁷³ NBA Report, page 94.



142. At the Hearing, Dr Nyanhanda, on behalf of Barwon Health, said that she had opposed the Application in the interests of harm minimisation and protecting the community of Greater Geelong from the harms associated with gambling. Of particular concern, Barwon Health operates various health services in the immediate proximity of the Geelong RSL, including a mental health community rehabilitation facility and prevention and recovery centre (PARC) on the neighbouring property. Staff at the PARC expressed concern that patients (including ex-veterans suffering post-traumatic stress disorder) often attend the Geelong RSL and are at a heightened risk of problem gambling. While noting that Barwon Health has a good relationship with the Geelong RSL, she considered that the additional EGMs at the Geelong RSL were not required and the removal of the shared driveway with the PARC would not stop patients from attending the venue. Following questions regarding the research papers submitted to the Commission (and outlined in paragraph 29 above), Dr Nyanhanda accepted that the research indicated a correlation between veterans with PTSD and incidence of problem gambling, rather than establishing a causal relationship.
143. The Commission does not agree with Mr Anderson's conclusions in relation to community attitude. The Commission notes that the 'community membership' to the Geelong RSL only costs \$2, and a 'social membership' only costs \$10. Further, the Commission does not accept that the community's general support of the welfare work undertaken by the Geelong RSL equates to community support of the Application.
144. The Commission notes that:
- (a) the Applicant's patron survey, while indicating positive support for the Application, was not as persuasive as the Council's survey and submissions received from individuals and community groups in opposition to the Application, many of which expressed genuine and relevant concern for the potential impact of the Application on the local community; and
 - (b) the evidence of Dr Nyanhanda and submission by Barwon Health contained relevant concerns regarding the impact of the Application on the local community from a health organisation that works closely with the Greater Geelong community.
145. In conclusion, the Commission does not consider the potential impact on community well-being, in this instance, to be in the same sense as was discussed in the Romsey case. This is because the Application relates to an increase in the number of EGMs, rather than the establishment of a new venue or circumstances where there were no existing gaming venues in the local community. However, the Commission finds that there is a mixed, yet slightly more negative than positive, attitude towards the Application from within the community of Greater Geelong. The Commission considers it appropriate to attribute marginal weight to this negative social impact of the

Application.

Conclusion on social impacts

146. After considering the social benefits of the Application and balanced against the disbenefits, the Commission considers that, on balance, there is likely to be a marginal negative social impact of the Application.

Net economic and social impact

147. The ‘*no net detriment*’ test in section 3.4.20(1)(c) of the GR Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. This test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impact of approval on the well-being of a relevant community will be either neutral or positive.⁷⁴

148. After consideration of the material before it, including the evidence provided at the Hearing (and weighted as outlined above and summarised in tabular form at Appendix B of these Reasons for Decision), the Commission has concluded that there is likely to be a net neutral social and economic impact on the well-being of the community in the municipal district in which the Geelong RSL is located if the Application is approved.

149. Overall, the Commission is satisfied that the net economic and social impact of approving the Application would not be detrimental to the well-being of the community in the municipal district in which the Geelong RSL is located, and therefore considers that mandatory pre-condition set out in section 3.4.20(1)(c) of the GR Act is satisfied.

CONCLUSION

150. The Commission has determined that on the evidence before it, the ‘*no net detriment*’ test has been satisfied and the total number of EGMs will not exceed the relevant municipal limit. The Commission notes that there remains a discretion to determine whether or not to grant the Application. The Commission is satisfied that the Applicant understands and will continue to act in accordance with its obligations, so far as is reasonable to take measures to prevent problem gambling. It considers that this will work towards minimising gambling-related harm and accommodating those who gamble without harming themselves or others. Further, the

⁷⁴ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 at [52] per Dwyer DP.



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Commission is not aware of any other matter that would warrant it to refuse to grant the Application.

151. Accordingly, the Commission is satisfied that it should exercise its discretion in favour of the Application and make the proposed amendments to the Applicant's venue operator's licence to increase the number of EGMs permitted in the Premises from forty-two (42) to seventy-two (72), subject to the conditions outlined in Appendix A below.

The preceding paragraphs are a true copy of the Reasons for Decision of Ms Deirdre O'Donnell, Deputy Chair and Mr Des Powell AM, Commissioner

Appendix A

Conditions of the Decision of the Commission dated 10 December 2018 to vary the number of EGMs permitted in the approved premises located at Geelong RSL, 50 Barwon Heads Road, Belmont, from forty-two (42) to seventy-two (72).

Condition imposed under section 3.4.20(3C) of the *Gambling Regulation Act 2003*

1. This amendment does not take effect until the Venue Operator is issued a planning permit for the works outlined in conditions 2(b), (c) and (d).

Conditions imposed under section 3.4.20(3) of the *Gambling Regulation Act 2003*

2. WORKS AND EMPLOYMENT

- (a) Prior to the installation of any of the additional thirty (30) electronic gaming machines (**the Additional EGMs**) at the Geelong RSL (**the Premises**), the Venue Operator must do the following works to the Premises (being the immediate RSG works set out in the document titled: *Timing of proposed works and employment of staff* provided to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) on 23 November 2018 and described in the oral evidence of Mr Ricky Cole to the Commission):
 - (i) Installation of floor to ceiling screens in the gaming room (at entry and across the bar area);
 - (ii) Installation of door at entrance to gaming room;
 - (iii) Move reception to the south of existing entry;
 - (iv) Remove existing reception and offices 1, 2 and 3 and replace with Community Hub and lounge/café;
 - (v) Employ two RSG qualified staff members;
 - (vi) Purchase courtesy bus; and
 - (vii) Employ two courtesy bus drivers.
- (b) Within twelve months of the issue of the planning permit the following works and employment will be completed:



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- (i) Alfresco dining area;
- (ii) Kitchen expansion;
- (iii) Relocation of interim lounge/café/Community Hub;
- (iv) Employment of:
 - a. 1 Welfare and Pensions Admin Staff Member;
 - b. 3 Chefs;
 - c. 3 Food & beverage Staff Members;
 - d. 1 Reception/Admin Staff Member;
 - e. 1 Bistro/Function Coordinator; and
 - f. 1 Function Staff Member;
- (c) Within three years of the issue of the planning permit the following works will be completed:
 - (i) Relocation of venue entrance and foyer with undercover drop off area;
 - (ii) New car park entry;
- (d) Within five years of the issue of the planning permit the following works and employment will be completed:
 - (i) Renovation and partial relocation of gaming room;
 - (ii) Upgrade to toilets in bistro;
 - (iii) New bar and sports lounge;
 - (iv) Upgrade and expansion of bistro;
 - (v) Indoor/outdoor children's play areas;
 - (vi) Additional offices; and
 - (vii) 1 Reception/Admin Staff Member.
- (e) The works and employment described above must be substantially completed to the satisfaction of the Commission by the date required in each condition at 2(a), (b), (c) and (d) otherwise this approval will lapse. The works may be amended by the Venue Operator to satisfy necessary construction alterations or variations or the requirements of any planning permit issued.



- (f) The Commission may, at the request of the Venue Operator, agree to extend the time for the completion of the works and employment referred to at conditions 2(b), (c) and (d) above. A request for an extension of time must be received at least 30 days prior to the date on which the works and employment are due to be completed, and must include an explanation as to why the applicable works and employment have not been substantially completed.

3. COMMUNITY CONTRIBUTIONS

- (a) In addition to the existing cash contributions made by the Venue Operator to the community and to the Geelong Football Club, the Venue Operator undertakes to make cash contributions annually in the sum of \$30,000 (increased each year by CPI) (**the Additional Contribution**) for as long as the Additional EGMs are in operation at the Premises.
- (b) The Venue Operator will begin making the Additional Contribution within 12 months of 31 October 2019 (being the date the Venue Operator's final payment to the Geelong Football Club is due).
- (c) The Additional Contribution must be allocated to the Venue's School's Assistance Program for schools within the City of Greater Geelong.
- (d) If the Additional Contribution is not allocated in full each year as required in condition 3(a), the operation of the Additional EGMs must cease immediately for so long as the Additional Contribution (or part thereof) remains outstanding.

Appendix B

Summary of economic and social impacts

The following table is a summation of the economic and social benefits and disbenefits considered by the Commission in reaching its decision. The table 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 and the evidence presented.

Economic impacts

	Impact	Paragraph numbers	Comment relevant to weight	Weight
Benefits	Gaming expenditure not associated with problem gambling	59 to 68	<p>The portion of new expenditure not attributable to problem gambling is an economic benefit.</p> <p>Expenditure expert predictions of 83% anticipated transfer rate and new expenditure of \$501,670 in the first 12 months of trade equating to approximately 0.4% of total gaming expenditure in Greater Geelong are accepted.</p> <p>The Geelong RSL is located in a Catchment Area of mixed, yet generally lower, relative socio-economic disadvantage, with pockets of increased disadvantage and vulnerability to the impacts of problem gambling.</p>	Marginal



	Impact	Paragraph numbers	Comment relevant to weight	Weight
	Expenditure on capital works	69 to 74	<p>A potential economic benefit associated with the Application is the expenditure on the Proposed Works to redevelop the Geelong RSL. Contingent upon the Application, the Proposed Works are costed at approximately \$4.4 million.</p> <p>Local trade contractors will be preferred by the Applicant's builder "where possible", but there is no guarantee that contractors from Greater Geelong will be successful.</p>	Low
	Employment creation	75 to 80	<p>The Application may result in long term employment benefits due to the increased number of operational EGMs and increased patronage of the facilities at the Geelong RSL.</p> <p>The Commission is satisfied the Application will create 15 FTE roles at the Geelong RSL over the next five years, and those positions are likely to be filled by residents of the municipality, based on existing hiring practices.</p> <p>There is likely to be a level of transferred employment from nearby gaming venues within the municipality, however not sufficient to completely offset the creation of the 15 FTE positions.</p>	Marginal to low
	Increased gaming competition in Greater Geelong	81 to 86	<p>Increasing competition in gaming is a factor in light of the statutory purposes of the GR Act.</p> <p>The Application will increase the overall number of EGMs with attached entitlements in Greater Geelong by 30 from 1,292 to 1,322, increase the EGM density from 6.6 to 6.7 EGMs per 1000 adults and increase expenditure from \$599 to \$602 per adult, and will only represent a negligible increase of 0.4% in gaming expenditure.</p>	No to marginal



	Impact	Paragraph numbers	Comment relevant to weight	Weight
	Supply contracts and complementary expenditure	87 to 90	<p>The Application contained no figures or evidence in relation to the economic benefit associated with supply contracts or complementary expenditure and did not directly rely on these impacts as a benefit.</p> <p>Even if increased patronage at the Geelong RSL is anticipated following any approval of the Application, and such increased patronage could result in increased supply contracts and/or complementary expenditure, there is significant uncertainty as to the extent that any such increase would generate increased economic activity within the local area as opposed to transferred activity within Greater Geelong.</p>	No weight
Disbenefits	Gaming expenditure associated with problem gambling	91 to 109	<p>The portion of new gaming expenditure attributable to problem gambling is an economic disbenefit. The Geelong RSL is located in a Catchment Area of mixed, yet generally lower, relative socio-economic disadvantage, with pockets of increased disadvantage and vulnerability to the impacts of problem gambling.</p> <p>The increased size of the gaming room at the Geelong RSL and its location in proximity to sensitive uses will increase the risk of problem gambling associated with this Application</p> <p>The Applicant's demonstrated commitment to RSG practice, together with the additional RSG measures proposed as part of this Application, will improve existing practices and partly address the increased risk of problem gambling in Greater Geelong associated with this Application.</p>	Marginal to low



	Impact	Paragraph numbers	Comment relevant to weight	Weight
	Diversion of trade from other gaming venues	110 to 111	<p>The anticipated transfer rate of 83% is expected to be spread across existing gaming venues within Greater Geelong. Four venues in particular are likely to experience significant losses in revenue if the Application is approved. Those venues are the Lord of the Isles Tavern (-8.47%), the Grovedale Hotel (-7.33%), the Waurm Ponds Hotel (-7.17%) and the Valley Inn Hotel (-6.25%).</p> <p>The Commission considers that a transfer rate of this size is significant and the diversion of trade will have a detrimental economic impact on other venue operators, particularly the Valley Inn Hotel given its gaming room is still becoming established within the competitive marketplace.</p>	Marginal



Social impacts

	Impact	Paragraph numbers	Comment relevant to weight	Weight
Benefits	Additional and improved services and facilities at the premises	114 to 119	<p>Social benefits that may be associated with the Proposed Works include the addition of a new public sports bar, café lounge and community hub. Limited social benefit in the refurbishment of existing facilities as it will modernise the venue and increase its attractiveness, considering the scale and scope of the Proposed Works. These benefits may not be felt for in excess of five years due to contingency upon planning permission.</p> <p>The increased welfare services to be provided through the additional Welfare, Pensions and Advocacy officer are a significant and meaningful contribution by the Applicant to its members and Greater Geelong generally.</p>	Low
	Increased gaming opportunities for those who enjoy gaming	120 to 124	<p>The Application will increase gaming opportunities by providing an additional 30 EGMs at which patrons may choose to play. Increase of EGMs from 42 to 72 at the venue will enhance the range and variety of EGMs available at the Geelong RSL for recreational players.</p> <p>Marginal benefit in light of the current number of EGMs in the Geelong RSL (42) and within the municipality (1,292), as well as the 25 other gaming venues in Greater Geelong.</p>	Marginal
	Increased community contributions (includes both economic and social benefits)	125 to 132	<p>Additional community contribution of \$30,000 per annum to be distributed under the Applicant's Schools Assistance Program.</p> <p>Applicant would likely make at least part of the Additional Contribution in the future on an annual basis, regardless of whether the Application was granted, although it would be unlikely to be in the full amount of the Additional Contribution.</p>	No to marginal



	Impact	Paragraph numbers	Comment relevant to weight	Weight
Disbenefits	Possibility of increased incidence and the potential impact of problem gambling on the community (including family violence)	133 to 137	<p>A proportion of total gaming expenditure at the Geelong RSL will be associated with problem gambling. Adverse impacts relating to problem gambling include health, jobs, finances, emotional states and relationships. Therefore, a portion of the \$501,670 of new expenditure in the first year of installation of the machines will be associated with problem gambling, including all PGSI risk categories.</p> <p>The Geelong RSL is located in a Catchment Area of mixed, yet generally lower, relative socio-economic disadvantage, with pockets of increased disadvantage and vulnerability to the impacts of problem gambling.</p> <p>The increased size of the gaming room at the Geelong RSL and its location in proximity to sensitive uses will raise the possibility of increased incidence and potential impact of problem gambling in the community.</p> <p>The Applicant's demonstrated commitment to RSG practice, together with the additional RSG measures proposed as part of this Application, will improve existing practices and partly address the increased risk of problem gambling in Greater Geelong associated with this Application.</p>	Low to moderate
	Community attitude	138 to 145	<p>The Commission has taken into account:</p> <ol style="list-style-type: none"> 1. the Council's intended role in which it represents the community interest; 2. two community attitudinal surveys; and 3. submissions from individuals and community organisations from Greater Geelong containing relevant support and concerns. <p>Overall mixed, yet slightly more negative, attitude towards the Application from within the community of Greater Geelong.</p>	Marginal