



**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 Hogan's Hotel Pty Ltd for the amendment of its venue operator's licence to vary the number of gaming machines at the approved premises at 92 High Street, Wallan from forty-five (45) to sixty-five (65) gaming machines.

**Commission:**

Mr Ross Kennedy, Chair  
Mr Des Powell AM, Commissioner

**Appearances:**

Ms Sarah Porritt, Counsel for the Applicant (instructed by BSP Lawyers)  
Mr John Rantino, Maddocks Solicitors, representing the Council  
Mr Lee Konstantinidis, Counsel Assisting the Commission

**Date of Hearing:**

2 April 2019 and 3 April 2019

**Date of Decision:**

9 May 2019

**Date of Reasons:**

24 May 2019

**Decision:**

The application is granted subject to the conditions set out in Appendix A of these reasons for decision.

**Signed:**

A handwritten signature in black ink, appearing to read 'R Kennedy', with a large loop at the end.

Mr Ross Kennedy  
Chair



## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by Hogan's Hotel Pty Ltd (**the Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) under section 3.4.17(1)(b) of the Gambling Regulation Act 2003 (**the GR Act**) to amend its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) permitted in Hogan's Hotel, located at 92 High Street, Wallan (**the Premises**) from 45 to 65 (**the Application**).
2. The relevant municipal authority is the Shire of Mitchell City Council (**the Council**). By correspondence to the Commission dated 14 February 2019, the Council stated that it intended to make an economic and social impact submission in relation to the Application, and did so on 12 March 2019.
3. The Commission considered the Application by way of a public inquiry.<sup>1</sup> To this end, a public hearing was conducted over two days, namely 2 and 3 April 2019 (**the Hearing**). The Applicant was represented by Ms Sarah Porritt of Counsel, instructed by BSP Lawyers. The Council was represented by Mr John Rantino of Maddocks Solicitors.

### 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:

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<sup>1</sup>A public inquiry is required to be conducted by the Commission in relation to the Application pursuant to section 28(g)(iii) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (**VCGLR Act**). As to the manner in which the Commission is to conduct an inquiry, see generally Pt 3 Div 2 VCGLR Act (Inquiries), see also Pt 2 Div 3 VCGLR Act (Performance and exercise of the Commission's functions, powers and duties).



...

(2) *The main objectives of this Act are—*

(a) *to foster responsible gambling in order to-*

(i) *minimise harm caused by problem gambling; and*

(ii) *accommodate those who gamble without harming themselves or others;*

(ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*

(b) *to ensure that gaming on gaming machines is conducted honestly;*

(c) *to ensure that the management of gaming equipment and monitoring equipment is free from criminal influence and exploitation;*

(d) *to ensure that other forms of gambling permitted under this or any other Act are conducted honestly and that their management is free from criminal influence and exploitation;*

...

(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*
- (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 (**the 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 in 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. Section 3.4.18(2) provides that if the request is for an amendment to increase the number of gaming machines permitted in an approved venue, the venue operator must give the relevant municipal council a copy of the proposed request before submitting the request to the Commission.<sup>2</sup>

11. 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.*

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<sup>2</sup> As the Council did not indicate that the requirement contained at section 3.4.18 of the GR Act was not met by the Applicant, the Commission is satisfied that the Council received a copy of the proposed request prior to submitting it to the Commission.



12. Section 3.4.20 sets out matters that are required to be considered by the Commission with respect to such a proposed amendment. Relevant to this Application, that section provides:

*(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;*

*(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 Applicant's licence as an approved venue and the Applicant (or an associate of the Applicant) operates an approved venue within 100 metres of the Premises, that the management and operation of the Premises and other approved venues are genuinely independent of each other.*

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.<sup>3</sup>

14. The GR Act does not specify the matters that the Commission must consider in deciding

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<sup>3</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [52] per Dwyer DP.

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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> On review, decisions in the Victorian Civil and Administrative Tribunal (**VCAT**) have held that for impacts that may be both economic and social – for example the benefits of gaming consumption – it does not matter whether the impact is considered on the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.<sup>7</sup> The Commission has adopted the same approach as VCAT in setting out a table of likely economic and social benefits both to enhance clarity of Commission decisions and facilitate greater consistency between the Commission and VCAT.<sup>8</sup>
17. 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,

<sup>4</sup> *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [42]-[43] per Warren CJ, Maxwell P and Osborn AJA ('**the Romsey case**').

<sup>5</sup> *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey No. 2)* [2009] VCAT 2275, [332], [348] per Bell J ('**Romsey No. 2**') cited in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [58] per Dwyer DP.

<sup>6</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [57] per Dwyer DP.

<sup>7</sup> See *Romsey No. 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.

<sup>8</sup> See e.g., *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [60] per Dwyer DP.



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.<sup>9</sup> 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.<sup>10</sup>

18. In considering the exercise of this discretion:
  - (a) The Commission must have 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;<sup>11</sup> and
  - (b) it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the GR Act as a whole.<sup>12</sup>
19. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*<sup>13</sup> 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.
20. Finally, pursuant to section 9(4) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)*, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under

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<sup>9</sup> 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 of the GR Act).

<sup>10</sup> GR Act, section 3.4.20(2).

<sup>11</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [98] per Dwyer DP.

<sup>12</sup> *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.

<sup>13</sup> [2013] VCAT 101, [98].



gambling legislation.

21. 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 premises for gaming. As such, it appears primarily to apply to premises applying to be new gaming venues, rather than increases in the number of EGMs at existing gaming venues. While this guideline is therefore not directly applicable to the 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. Before the Hearing, the Applicant provided the Commission with the following material in support of the Application:
  - (a) application form – amendment to venue operator licence – vary gaming machines dated 14 November 2018 (**the Application Form**);
  - (b) a social and economic impact statement prepared Mr Rhys Quick, director of Urbis dated 20 December 2018 (**the Urbis Report**);
  - (c) an expenditure report prepared by ShineWing Australia on 17 December 2018 on behalf of the Applicant (**the ShineWing Report**);
  - (d) the witness statement of Mr James Hogan, owner of the Applicant, dated 21 December 2018;
  - (e) the witness statement of Mr Darren Freestone, general manager of the Applicant, dated 21 December 2018;
  - (f) correspondence from BSP Lawyers advising that the Application was served upon the Council on 21 December 2018;



- (g) a copy of the public notice appearing in the Herald Sun newspaper dated 24 December 2018;
  - (h) comments indicating support for the Application, dated 17 February 2019 and 20 March 2019 from two of the Applicant's patrons; and
  - (i) proposed conditions to attach to approval of the Application, were the Commission to approve the Application, received by the Commission on 28 March 2019.
23. On 12 March 2019, the Council provided the Commission and the Applicant with an economic and social impact submission in respect of the Application, which included a Social and Economic Impact Assessment prepared by SGS Economics & Planning (**the SGS Report**). The SGS Report concluded that based upon its qualitative and quantitative analyses, the Application was likely to result in a net detriment to the municipality in which the Premises were located.
24. The following material, prepared by Commission staff, was provided to the Applicant and the Council and considered by the Commission:
- (a) a report titled *Economic and Social Impact Report* dated March 2019 (**the VCGLR Report**); and
  - (b) a report titled *Pre-Hearing Inspection and Compliance Report* dated 12 March 2019 (**the Pre-Hearing Report**).
25. In addition, the Commission received correspondence, dated between 4 February 2019 and 25 March 2019, in opposition to the Application from the following local community organisations:
- (a) Nexus Primary Health, dated 4 February 2019;
  - (b) Lowe Hume Primary Care Partnership, dated 12 March 2019;
  - (c) Familycare, on 20 March 2019;
  - (d) The Zonta Club of Mitchell, dated March 2019;



(e) Women's health, Goulburn North East, dated 25 March 2019; and

(f) The City of Whittlesea, dated 25 March 2019.

26. On 28 March, the Commission received additional materials from the Applicant, consisting of:

(a) an addendum to the ShineWing Report with revised expenditure projections;

(b) amended rosters to replace annexure 3 to the witness statement of John Hogan;

(c) an email from the owner of the Magpie and Stump Hotel, stating his intention to cease operating all EGMs at that premises;

(d) proposed conditions to attach to approval of the Application, were the Commission to approve the Application, received by the Commission on 28 March 2019; and

(e) correspondence from the following community groups to outline and support the Applicant's role in the local community:

i) the Wallan Junior Football Club;

ii) the Wallan District Cricket Club Inc (from the President);

iii) the Wallan District Cricket Club Inc (from the Women's Coordinator);

iv) the Mitchell Rangers Soccer Club Inc;

v) Ambulance Auxiliaries;

vi) Camp 4 Cancer;

vii) the Wallan Bowling Club;

viii) the Wallan Carols by Candlelight Committee;



- ix) Totally Fit Gym;
- x) the Kilmore Golf Club Inc.
- xi) the Romsey Football Netball Club Inc;
- xii) the Romsey Golf Club; and
- xiii) the St Bernard's Old Collegians Football Club Inc.

27. On the first day of the Hearing, the Applicant provided the following further material to the Commission in relation to the Application:

- (a) Architect plans showing the proposed redevelopment of the Premises; and
- (b) a map showing 21 licensed venues within 10km of the Premises, allowing patrons to consume liquor on those premises, and copies of the liquor licenses with respect to those premises.

28. On the second day of the Hearing, the following material was provided to the Commission in relation to the Application:

- (a) the Council's final written submission; and
- (b) the Applicant's final written submission, consisting of:
  - i) the written submission;
  - ii) a document titled 'Appendix H' from the December 2012 final report '*Counting the Cost Inquiry into the Costs of Problem Gambling: Final Report*';
  - iii) a document titled '*C Estimating consumer surplus*';
  - iv) amended conditions proposed to be attached to the approval of the Application, if granted by the Commission, including plans for frosted glass obscuring vision of the gaming room from the outside (**the Proposed Conditions**); and



- v) a copy of the Commission's reasons for decision in the matter of *Werribee Football Club Ltd at Tiger's Clubhouse premises (Gaming – EGM increase)* [2018] VCGLR (3 May 2018). Counsel for the Applicant referred to paragraph 96 of those reasons which discussed whether those premises were a destination or convenience venue.

29. The following witnesses gave oral evidence at the Hearing:

- (a) Mr James Hogan, Owner of the Applicant;
- (b) Mr Darren Freestone, General Manager of the Applicant;
- (c) Mr Rhys Quick, Director of Urbis; and
- (d) Mr James Atkinson, Senior Consultant of SGS Economics and Planning.

30. Suzanne Miller of Nexus Family Health also provided oral evidence at the Hearing, in addition to her written submission referred to in paragraph 25(a).

31. Prior to the determination of this matter, Commissioner Powell AM visited the Premises.

## DECISION AND REASONS FOR DECISION

### Background

#### *Location*

32. The Premises are located within the Shire of Mitchell (**Shire of Mitchell**) at 92 High Street, Wallan, off the Northern Highway. They are situated in the main commercial and entertainment area of Wallan, in proximity to service centres, restaurants and other eateries and supermarkets. To the south of the Premises is Hadfield Park and to the east is a residential area. The Premises includes a dedicated car park and is accessible from the west and the east.



33. The Shire is a rural Local Government Area (the **LGA**) located approximately 45km to the north of metropolitan Melbourne and continues north for approximately 45km. The LGA covers an area of 2,862 square kilometres and its major centres include Seymour, Wallan and Kilmore.
34. The Shire of Mitchell is an atypical LGA, in that while it is classified as rural, the Victorian Planning Authority has included it as a 'Logical Inclusion Area' pursuant to its North Growth Corridor Plan.<sup>14</sup> Accordingly, is expected that the Shire of Mitchell will experience rapid growth compared to rural LGAs which are not located within a growth corridor and its indicia generally position it between rural and metropolitan LGAs. According to the VCGLR Report, the Shire of Mitchell has an estimated adult population of 32,727 which ranks it as the 5<sup>th</sup> most populous rural municipality out of all 35 rural municipalities. The annual rate of population growth projected by the Department of Environment, Land Water and Planning (2018) is 2.9% which is higher than the projected Victorian average of 2.3%.
35. The unemployment rate in the Shire of Mitchell as at the end of 2018 was 4.4% which ranked it as having the 12<sup>th</sup> highest rate of unemployment out of 35 rural LGAs and the 36<sup>th</sup> highest rate of unemployment out of all 79 Victorian LGAs. As at April 2019, the unemployment rate had decreased to 4.0% in the Shire of Mitchell which was ranked as having the 10<sup>th</sup> highest rate of unemployment out of 35 rural LGAs and the 33<sup>rd</sup> highest rate of unemployment out of all 79 Victorian LGAs.
36. The homelessness rate in the Shire of Mitchell is ranked as the 9<sup>th</sup> highest of all 35 rural LGAs and ranked the 41<sup>st</sup> highest of all 79 Victorian LGAs. Some residents of the Shire of Mitchell are welfare recipients however the area was ranked as having the lowest rate of residents claiming welfare across all 35 rural LGAs and as having the 48<sup>th</sup> highest rate of welfare among 79 Victorian LGAs.
37. The crime rate in the Shire of Mitchell is relatively high, being the second highest of all 35 rural LGAs, and the 14<sup>th</sup> highest of all 79 Victorian LGAs. Housing stress in the Shire of Mitchell is ranked as the 12<sup>th</sup> highest of 35 rural LGAs and the 48<sup>th</sup> highest of all 79 Victorian LGAs.
38. A regional cap of the permissible number of gaming entitlements made under a Ministerial

<sup>14</sup> Victorian Planning Authority, 'North Growth Corridor Plan' <<https://vpa.vic.gov.au/greenfield/growth-corridor-plans/>> last accessed 29 April 2019.



Order pursuant to section 3.4A.5(3A) of the GR Act applies to the Shire of Mitchell.<sup>15</sup> The maximum permissible number of gaming machine entitlements in the area covered by the local government area of the Shire of Mitchell is 299. Currently, there are five gaming venues operating within the Shire of Mitchell with approvals to operate a total of 209 EGMs and with 209 attached entitlements.

*EGM density and expenditure*

39. The VCGLR Report notes that the Shire of Mitchell has an EGM density of 7.0 EGMs per 1000 adults, which is 36.1% more than the rural average (5.1) and 32.3% more than the State average (5.3). This ranks the Shire of Mitchell as having the 9<sup>th</sup> highest EGM density out of all 26 rural LGAs.
40. The VCGLR Report also shows that in the 2017-18 financial year, the Shire of Mitchell had an average gaming expenditure of \$574 per adult which is 71.4% more than the rural average (\$335) and 7.6% more than the State average (\$533).
41. The ShineWing Report referred to in paragraph 22(c) above estimated the transferred expenditure and new expenditure which would be generated as a result of the approval of the Application, however an addendum to the ShineWing Report referred to in paragraph 26(a) later modified this position to account for the expected closure of gaming operations at the Magpie and Stump Hotel. The addendum estimated the following in relation to the new expenditure to arise within the first 12 months of operation of the 20 additional EGMs sought by the Application:
  - (a) \$78,902 would be transferred expenditure from other gaming venues within the LGA;
  - (b) \$157,803 would be transferred expenditure from other gaming venues outside the LGA; and
  - (c) \$552,312 would be new expenditure.
42. Applying this estimate of \$552,312 which the 20 new EGMs would generate during the

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<sup>15</sup> Victorian Government Gazette S318, 20 September 2017.

initial 12 months of operation to a population of 32,727,<sup>16</sup> granting the Application would result in a 2.94% increase to the \$574 expenditure per adult within the Shire of Mitchell, increasing the expenditure per adult to \$590.<sup>17</sup>

43. Over the 2017/2018 financial year, EGM expenditure in the Shire of Mitchell was \$18,771,634.93. Of this amount, the Applicant's 45 EGMs at the Premises generated \$4,798,079.
44. The ShineWing Report considered the notional average EGM expenditure per adult in the suburb of Wallan (\$534), compared to the areas of Kilmore/East Kilmore (\$805), Seymour (\$1,397) and Wandong/Heathcote Junction (\$531), noting that the expenditure was relatively low in Wallan compared to the Kilmore and Seymour regions within the LGA.
45. At the hearing, Mr Atkinson submitted that the operation of 20 new EGMs at the Premises would result in a higher EGM expenditure per machine based upon an analysis of 2017/18 data regarding venue size undertaken by SGS Economics and Planning. He submitted that given the rapid population growth expected for the region, it was likely that expenditure per machine would increase to \$115,000 to \$130,000 within the next few years.

#### *Nature of Premises*

46. The Premises itself currently comprises:
  - (a) a bistro offering a full *a la carte* menu, capable of seating approximately 260 patrons;<sup>18</sup>
  - (b) a sports bar in which food is served;
  - (c) a 'saloon bar' which is a relaxed pub area;
  - (d) a café which serves up coffee and house-made cakes;
  - (e) gaming room which currently contains 45 EGMs;<sup>19</sup>

<sup>16</sup> The adult population in the Shire of Mitchell was recorded as 32,727 for the 2017/18 financial year as indicated in the VCGLR Report.

<sup>17</sup> The VCGLR Report EGM expenditure data was calculated on the basis of the ShineWing expenditure report referred to in paragraph 22(c), but did not consider the addendum to this report referred to in paragraph 26(a). Accordingly, the VCGLR Report described the average EGM expenditure to increase by 3.1% to \$591 per adult were the Application granted.

<sup>18</sup> The bistro is open seven days per week and includes an enclosed playground; Urbis Report, p.4.





- (f) a TAB bar;
- (g) a multi-purpose room with a private bar and a seating capacity of approximately 120 people;
- (h) four-star hotel accommodation, including 2 spa suites, 24 king standard rooms, 2 disabled access rooms, 4 family/interconnecting rooms and 4 rooms with baths; and
- (i) the Pretty Sally Bakehouse which is owned and operated by the hotel and includes dining options and a venue for functions.

#### *Catchment area of the Premises*

47. 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 given particular regard to the area serviced by the relevant premises, which is generally referred to as the 'catchment area'.<sup>20</sup> The determination of the likely catchment area in this instance is important in the Commission's consideration of the identity of those residents which will be most affected by the Application in terms of gambling-related benefits and harms.
48. The Applicant, under Urbis' guidance, conducted hourly gaming room surveys of patrons at the Premises during three weeks between 26 August 2018 and 8 September 2018. From an analysis of these gaming room surveys, the Urbis Report showed that 53% of patrons to the gaming area of the Premises came from within the LGA, made up of Wallan (41% including Hidden Valley), Kilmore (7%), Seymour (2%) and Wandong (2%).<sup>21</sup>
49. Patrons of the gaming room identified to reside outside the LGA included Craigieburn (4%), Essendon (3%), Romsey (3%), Broadford (2%) and Whittlesea (2%). The remaining total of 33% of patrons were not identified by the survey.
50. Within the Urbis Report, Mr Quick focused on the 2.5km and 5.0km catchment areas,

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<sup>19</sup> The gaming room is open daily between 9:00am to 1:00am, Monday to Saturday and 10:00am to 3:00am on Sunday.

<sup>20</sup> See for example, *Romsey No. 2* [2009] VCAT 2275; *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 (7 April 2011).

<sup>21</sup> The Urbis Report recorded 36% of patrons to be from Wallan and 5% of patrons to be from Hidden Valley, however the Commission notes that Hidden Valley is located within the suburb of Wallan.



stating that *'in built-up areas, most EGM players come from within a 2.5 km radius around a gaming venue, up to 5km in areas where residential development is less dense.'*

51. In contrast, the SGS Report determined that the primary catchment area corresponded to a 5km radius around the Premises by reference to research indicating that patrons generally travel less than 5km to access EGMs. However, the SGS Report also considered that in regional areas, patrons were likely to travel further to access EGMs which was reflected by the gaming patron survey results. The SGS Report stated that the secondary catchment area corresponded to a 10km radius from the Premises on the basis that the suburb of Wallan corresponds roughly to a 10km radius from the Premises and is the closest retail and service centre for its residents.
52. In this instance, the Commission considers that the gaming room patron survey provides some indication of the likely gaming patrons for the Premises, with the greatest proportion (36%) of those patrons residing in the suburb of Wallan. Having regard to the material and evidence put forward by the Applicant and the Council, and noting the VCGLR Report analysing the surrounding area as a radius of 5km around the Premises, the Commission considers that the appropriate primary catchment area of the Premises consists of the area within a 5km radius of the Premises while the secondary catchment area consists of the area within a 10km radius of the Premises.

### **Issues for determination**

53. As set out in paragraph 12 above, the Commission cannot grant the Application unless it is satisfied of the four matters set out in section 3.4.20 of the GR Act. These matters are considered in parts A to D below.
54. If having determined that these matters have been satisfied, the Commission is then required to exercise its discretion under section 3.4.20 to determine whether the Application should be granted; that is, whether the proposed amendment to the venue operator's licence should be made.<sup>22</sup>

#### **A. Directions given under section 3.2.3**

55. Pursuant to section 3.4.20(1)(a) of the GR Act, the Commission must be satisfied that the

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<sup>22</sup> An amendment may be made subject to any conditions the Commission thinks fit: GR Act, section 3.4.20(3).



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.

56. On this basis, the Commission is satisfied that granting the Application would not conflict with a direction given under section 3.2.3 of the GR Act, and therefore considers that the mandatory pre-condition set out in section 3.4.20(1)(a) of the GR Act is satisfied.

**B. *Regional cap***

57. As noted in paragraph 38 above, the Shire of Mitchell is subject to a regional cap on the number of EGMs under a Ministerial Order under section 3.4A.5 of the GR Act. The maximum permissible number of gaming machine entitlements in the area covered by the LGA is 299.
58. As outlined on page 7 of the VCGLR Report, at the date of the Hearing there were 228 licensed EGMs over 5 gaming venues within the capped region with 228 attached. Following the hearing, the number of licensed and attached EGMs in the LGA reduced to 209.
59. Should the Commission grant the Application and the 20 new EGMs commence operation at the Premises, the number of licensed and attached EGMs within the LGA would increase to 229. Therefore, the Commission is satisfied that granting the Application would not cause the relevant regional cap for gaming machines for the Shire of Mitchell to be exceeded, and considers that mandatory pre-condition set out in section 3.4.20(1)(b) of the GR Act is satisfied.

**C. *'No net detriment' test***

60. The Commission must be satisfied that if this 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 Premises are 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 this Application, including the weighting given to each of these impacts.

## Economic Impacts

61. The materials before the Commission and the evidence adduced at the Hearing provided the evidentiary basis for the Commission's consideration of the economic benefits and disbenefits associated with this Application.

### Gaming expenditure not associated with problem gambling

62. To the extent that gaming expenditure is not associated with problem gambling, it has been recognised that such expenditure can be treated as an economic positive.<sup>23</sup> As Bell J notes in *Romsey No. 2*, this approach also brings to account the benefit obtained from *'the pure consumption by the lone gambler who does not use EGMs for social reasons.'*<sup>24</sup>
63. The Commission notes from the VCGLR Report that nominal gaming expenditure in the Shire of Mitchell for the most recent (2017/18) financial year was \$18,771,634.93. The average net EGM expenditure per adult in the Shire of Mitchell, based on spending in the 2017/8 financial year was \$574, which was significantly greater than the rural average of \$335 and greater than the State average of \$533.
64. The VCGLR Report also indicates that:
- (a) the rate of housing stress<sup>25</sup> experienced within the immediate surrounding area of the Premises is 56.8%, which is higher than the rate of housing stress for the Shire of Mitchell (50.2%) and the rural average (47.0%), but lower than the State average (60.2%);
  - (b) the unemployment rate in the LGA is 4.4%, which is identical to the rural average unemployment rate of 4.4%. However, this ranks the LGA as having the 12<sup>th</sup> highest unemployment ranking out of all 35 rural LGAs and the 36<sup>th</sup> highest of all 79 State LGAs. Unemployment in the Shire of Mitchell decreased from 5.3% to 4.4% between September 2017 and September 2018;

<sup>23</sup> See *Romsey No. 2* [2009] VCAT 2275 [351] per Bell J.

<sup>24</sup> *Ibid.* Bell J further notes at [352] that the other approach is to say (as Morris J did in *Branbeau Pty Ltd v Victorian Commission for Gambling and Liquor 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.

<sup>25</sup> This is calculated as the percentage of households in the lowest two equalised household income quintiles paying more than 30% of income on rent or mortgage.



(c) relatively few residents in the LGA are welfare recipients and the area had the lowest incidence of pensions and allowances out of 31 rural LGAs. The LGA was ranked as having the 48<sup>th</sup> highest incidence of pensions and allowances out of all 79 LGAs in Victoria with a rate of 151.5 per 1,000 adults. The crime rate in the Shire of Mitchell is the second highest of all 35 rural LGAs; and

(d) that the latest statistics (*ABS 2016, DELWP 2018*) show that the rate of homelessness in the LGA is at 0.5% which is much lower than the rural average of 2.8%. The Shire of Mitchell is ranked 9<sup>th</sup> of 35 rural LGAs for homelessness, and 41<sup>st</sup> of all 79 Victorian LGAs.

65. Mr Stillwell estimated that based upon the closure of competing venues and the location of the Premises, 30% of the new expenditure following the operation of the 20 new EGMs would be transferred expenditure from existing gaming venues. The ShineWing Report estimated that of the gross gaming expenditure derived from the introduction of the 20 EGMs, 10% would be transferred expenditure from venues within Shire of Mitchell and 20% from venues outside the Shire of Mitchell and within the State of Victoria. On these figures, a total of 70% of EGM expenditure was expected to be new expenditure. Noting that 20% of transferred expenditure will be derived from outside the Shire of Mitchell, the new expenditure to the LGA will equal 90% of the overall gross gaming expenditure.
66. The ShineWing Report estimated a net increase in EGM expenditure of \$552,313, and this figure was adopted by the SGS Report in estimating that the consumer surplus benefit would be \$153,885 per annum. The SGS Report ultimately regarded the benefit associated with consumer surplus to be of low weight.
67. The Urbis Report criticised the SGS Report's analysis and its underlying assumptions in particular. The Urbis Report noted that the SGS Report's analysis of the benefit of consumer surplus only considered the benefit associated with the use of EGMs by non-problem gamblers which effectively double-counted the detrimental effects of problem gambling. Mr Quick also contested the SGS Report's adoption of '\$17.14' as the hourly value of leisure time within its analysis. Mr Quick submitted to the Commission that even though the new expenditure resulting from the grant of the Application was estimated to be \$552,312 the nature of the Premises and demographic profile of the LGA represented a low risk of an increased incidence of problem gambling. The Urbis Report ultimately



assessed the benefit of consumer surplus to be of moderate weight, but did not provide details of how this weighting was determined.

68. The Urbis Report submitted that:
- (a) all EGM expenditure generates a consumer surplus;
  - (b) problem gamblers derive benefits from spending time and money on EGMs; and
  - (c) removing the consumer surplus of problem gamblers is a significant 'double counting' of the associated disbenefit.

The Commission does not agree with this submission of the Applicant. The Commission considers that only the portion of increased gaming expenditure that is not attributable to problem gambling should be treated as an economic benefit, which is consistent with the view of VCAT.<sup>26</sup> The Commission considers that its approach to not treat any part of the increased gaming expenditure that is associated with problem gambling as an economic benefit is consistent with the general objective of the GR Act relating to harm minimisation.

Further, the Commission also does not consider that its approach results in double counting, given that only non-problem gambling expenditure generates a positive impact and only problem gambling expenditure generates a negative impact.

69. In assessing the extent of the benefit associated with this increased gaming expenditure, the Commission had regard to the evidence outlined in paragraphs 114 to 137 below with respect to gambling expenditure associated with problem gambling. In particular, the Commission notes the following in respect of the Premises:
- (a) within the immediate 5km area from the Premises there are no competing gaming venues;
  - (b) within the immediate 10km area of the Premises, there is currently only one other gaming venue with entitlements to operate five EGMs;

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<sup>26</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [184] per Dwyer DP and *Monash CC v L'Unico Pty Ltd (Review and Regulation)* [2013] VCAT 1545, [20]



- (c) within the immediate 20km area of the Premises, there are currently two gaming venues with entitlements to operate 81 EGMs;<sup>27</sup>
- (d) the gaming room operates between 14 to 15 hours per day;
- (e) 36% of surveyed patrons to the gaming room reside in Wallan (41% if including Hidden Valley) and 53% reside in the LGA;
- (f) The SEIFA for the SA1 in which the venue is located is 986 which is slightly below the Shire of Mitchell's SEIFA score of 997. However, 13% of SA1s within a 5km radius of the Premises were in the first quintile and 34.8% were in the second quintile for disadvantage measured by the SEIFA Index of Disadvantage. This indicates that both the SA1 and the Shire of Mitchell as a whole are only slightly advantaged compared to the average score of 989 for all rural LGAs and slightly disadvantaged compared to the average score of 1,010.5 for the whole of Victoria;
- (g) the average household weekly income for residents living within the immediate 2.5km radius of the Premises is \$895. This sits above the non-metropolitan average of \$863.42 but below the Victorian average of \$1,028.24. Equivalised household income levels are lower higher in proximity to the Premises relative to the rest of the Shire of Mitchell which has an equivalised weekly household income of \$940.03;
- (h) residents within 2.5km of the premises making rent and mortgage payments experience a relatively higher degree of housing stress (56.8%) compared to the Shire of Mitchell generally (50.2%) and the average for all rural LGAs (47%), but less than the Victorian average (60.2%);
- (i) for the year ending June 2018, the Premises had greater expenditure per EGM than all other venues in the LGA and significantly greater expenditure than the average of venues within the LGA;
- (j) the Shire of Mitchell is ranked 35<sup>st</sup> out of 35 rural LGAs and 48<sup>th</sup> out of 79 Victorian LGAs for pensions and allowances per 1,000 adults; and

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<sup>27</sup> The VCGLR Report did not account for the decrease of 19 EGM entitlements at the Magpie and Stump Hotel which occurred prior to the Hearing.



(k) for the year ending June 2018, the Shire of Mitchell had an average gaming expenditure of \$574 per adult, which is 71.4% greater than the rural average and 7.6% greater than the state average.

70. Generally, the Commission considers that the portion of new expenditure not attributable to problem gambling is an economic benefit. Having regard to the matters discussed in paragraphs 62 to 69 and in the section below related to problem gambling at paragraphs 114 to 137, the Commission considers that the new expenditure at the Premises is likely to be modest and as such, the benefit to the LGA in terms of new expenditure not associated with problem gambling will be of marginal benefit.

Expenditure on capital works

71. The Applicant submits that a potential economic benefit associated with this Application comes from the expenditure on the proposed renovations of the Premises and the associated economic stimulus in the LGA.

72. In relation to the proposed renovations of the Premises, the Applicant submitted that the additional EGMs would allow it to renovate its facilities, at an aggregate cost of \$2,453,000.

73. The Applicant submitted that the estimated expenditure on capital works was calculated as follows:

Area	Cost
Restaurant and group dining works	\$400,000
Kitchen extension	\$240,000
Kitchen equipment	\$75,000
Alterations to existing gaming lounge	\$180,000
New Lounge and Lobby extension	\$840,000
New double-sided liquor servery	\$100,000
Car park works	\$70,000
Fixtures and fittings	\$100,000
Furniture	\$75,000
Professional fees	\$150,000
Plus 10% contingency fee	\$223,000





Total	\$2,453,000
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74. Additionally, the Application estimated that the value of building maintenance it would incur over the first 12 months associated with the proposed renovations would be \$100,000. The Applicant asserted that without the new EGM expenditure expected as a result of the approval of the Application, it would not undertake proposed renovations at paragraph 73 above. The Urbis Report ascribed a moderate economic benefit to the value of the development works.
75. The SGS Report addressed the economic impact of the capital works, noting that the aggregate cost of the works was approximately \$2,450,000 and stating that the benefit of these works to the LGA should be assessed in terms of the benefit to local businesses engaged to carry out the works and the increase in employment for local residents as a result of the works. The SGS Report relied upon data which indicated that approximately 57% of construction workers within Wallan were also residents of Wallan on the day of the 2016. The SGS report used this figure to estimate that 57% of the 'total value add' associated with the capital works would benefit local residents. The SGS report ultimately ascribed a marginal economic benefit to the proposed capital works, resulting from the expected increase in labour force participation and the economic value of the works.
76. While the Commission accepts that the Applicant's expected expenditure is not insubstantial, it has no evidence before it outlining the extent to which the goods and services (i.e. carpentry, electrical work etc.) required for the works would in fact be procured within the Shire of Mitchell. Therefore, the Commission considers this expenditure is an economic benefit but, in the circumstances, one that should be given marginal to low weight. Further, the Commission is careful to ensure that benefits associated with the renovation expenditure are not double counted, having regard to the social impact that may result from the improved facilities. This aspect is considered further at paragraphs 149 to 152 below.

Additional employment

77. In relation to the long-term employment benefits associated with the Application, the Applicant estimated that the operation of the additional 20 EGMs at the Premises would result in six additional equivalent full time (**EFT**) positions consisting of:



(a) 1.5 EFT positions in the gaming room; and

(b) 4.5 EFT positions associated with the preparation and service of food.

78. At the hearing, the General Manager of the Premises advised that each EFT position would involve a minimum of 38 hours per week, plus additional hours as reasonably required.
79. The Urbis Report ascribed a low benefit to the net impact upon employment in the LGA, stating that any positions created within a high-growth area were of value to the LGA.
80. Contrastingly, the SGS Report commented that limited additional employment opportunities for the local community were likely to be created as a result of the new EGMs and assessed the benefit associated with the expected increase in employment within the LGA to be of low weight.
81. The SGS Report addressed the economic impact of the additional employment by stating that the expenditure generated by the new EGMs would result in a diversion of expenditure from sectors such as retail and hospitality, and that as a consequence of this, the rise in employment as a result of the Application would involve a decline in employment elsewhere as increased gaming expenditure is matched by a fall in expenditure on other goods and services.
82. At the hearing, Mr Freestone explained that the Premises did not have any policy with respect to hiring employees from the LGA, however he submitted at the Hearing that many existing employees were from local areas including Kilmore, Wandong, Broadford, Craigieburn and Romsey.
83. Overall, the Commission regards the anticipated additional employment of 6 EFT positions as a benefit to the LGA. The Commission also notes that some employment may be transferred from within the LGA which is indicated by the transferred EGM expenditure projected by the ShineWing Report. Further, while new EGM expenditure may significantly increase due to population growth within the LGA, it is unlikely that employment at the Premises will increase commensurately. The Commission notes that while the Applicant has not guaranteed that new employees will be selected from within the LGA, the

Premises' current hiring practices referred to in paragraph 82 indicate that granting the Application is likely to result in some increase to employment within the LGA. Overall, given the scale of this impact on the municipality at large with an adult population of 32,727 and an unemployment rate of 4.4%,<sup>28</sup> the Commission regards this as an economic benefit to the community to which it attributes marginal weight.

### Community Contributions

84. In determining the net economic and social impact of applications of this nature, both the Commission<sup>29</sup> and VCAT<sup>30</sup> have regularly treated community contributions proposed by an applicant as of benefit to the LGA. However, for such contributions to be regarded as a benefit associated with the Application, they must necessary occur as a result of granting the Application. In assessing the weight to be placed on such a benefit, it is important that the Commission does not conflate the economic benefit of community contributions with any associated social benefit.
85. The Proposed Conditions include a commitment to make cash contributions to local sporting clubs, charities and community groups in the amount of \$100,000 per annum for as long as the new EGMs operate, increased in accordance with the Consumer Price Index (CPI). The Applicant submitted that it had made approximately \$56,000 per annum in cash contributions averaged over the five years prior to the Application. The Applicant further submitted at the Hearing that it would likely maintain this level of cash contributions to community organisations should the Application be refused.
86. The effect of the Proposed Conditions would be to require the Applicant to maintain its current level of cash contributions of approximately \$56,000 per annum and require the Applicant to contribute an additional \$44,000 per annum, resulting in a total annual contribution of \$100,000.
87. The Urbis Report and the SGS Report both regarded the proposed \$44,000 increase to the Applicant's current level of cash contributions as representing an economic benefit to the LGA which should be given medium weight.

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<sup>28</sup> Adult population for 2017/18.

<sup>29</sup> See e.g., *Application by Richmond Football Club* [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

<sup>30</sup> See e.g., *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.



88. Even though the Applicant submitted that it would likely continue to make cash contributions to community groups were the Application refused, the Commission considers that granting the Application could provide the additional benefit to the LGA of requiring the Applicant to maintain its current level of contributions by making the grant of the Application conditional upon the proposed condition referred to in paragraph 85 above.
89. Accordingly, while the Commission considers that the Applicant's community contributions would be of positive economic benefit to the LGA, it notes the Applicant's evidence that it would maintain some level of cash contributions were the Application not granted. Accordingly, the Commission regards the proposed increase in cash contributions as a positive factor to the LGA, but one which should be given marginal to low weight. Further the Commission is careful to ensure that economic benefits associated with the proposed contributions are not double-counted with the social benefits of the contributions which are discussed in paragraphs 154 to 155 below.

#### Supply Contracts

90. The Council report considered that an expansion in the number of EGMs at the Premises would likely generate a small increase in supply contracts, including cleaning services and EGM servicing and maintenance. However, the Council qualified this by noting that the Applicant had not committed to sourcing supplies from local businesses and that the Applicant's procurement of supplies was therefore likely to be motivated by cost rather than by a preference for suppliers from within the LGA. In the Council's view, this indicated that the benefit associated with an increase in supply contracts would be received mainly by businesses outside the LGA, and therefore that while this would be a positive factor, it should ultimately be given neutral weight.
91. In contrast, the Applicant provided an estimate that the value of new supply contracts arising from the grant of the Application would be \$340,000 within the first year of operation of the new EGMs. Urbis Report assessed these supply contracts as of 'medium benefit' to the LGA on the basis that a significant proportion of them would involve local suppliers.
92. The value of the supply contracts estimated by the Applicant is not insubstantial. However, it is unclear to what extent contracts would be sourced within the LGA. Given

the size of the LGA, it is possible that they would be available from within the LGA but there is no certainty regarding this. The Commission notes Council's submission that supply contracts were likely to be awarded based upon cost, but also notes the Applicant's submission that its general practice is to source supplies and services locally.

93. The Commission ultimately considers that while it is likely that the Applicant will procure supplies from within the LGA which would involve supply contracts with local suppliers, the Applicant has provided no guarantee that this will be the case. Accordingly, the Commission assesses the positive impact to be of marginal weight.

#### Complementary Expenditure

94. The Applicant estimated that complementary expenditure within the initial 12 months following the grant of the Application would be to the value of \$1,000,000 at the Premises due to the Premises being a popular entertainment and dining venue within the LGA. However, the Applicant did not provide details of how it had arrived at this expected estimate of complementary expenditure at the Premises.
95. The SGS Report considered that the grant of the Application would likely lead to an increase in complementary expenditure consisting mainly of food and drink at the Premises, and assessed this to be of low benefit to the LGA. However, the SGS Report also submitted that:
- (a) this could only be considered as a benefit of the Application when the expenditure would otherwise occur outside the LGA;
  - (b) the majority of economic activity occurring as a result of the Application would be transferred from within the LGA; and
  - (c) the benefit of complementary expenditure by EGM users can only be considered a benefit if the primary reason for the EGM user to be at the Premises is to play EGMs.
96. Accordingly, the Council ultimately considered the benefit associated with complementary expenditure to be of low weight.
97. In contrast, the Urbis Report stated that an enhanced and upgraded facility would attract



more users from within and beyond the LGA and assessed the benefit of complementary expenditure to be of medium weight.

98. The ShineWing Report states that 10% of expenditure as a result of the new EGMs at the Premises would be transferred from other venues outside the LGA and 20% would be transferred from venues within the LGA. Modest transfer rates suggest that much of the expected complementary expenditure will consist of new expenditure which would not have otherwise occurred anywhere, or expenditure which is new to the LGA.
99. However, the Commission considers that there is little specific evidence showing the result of the Application upon complementary expenditure, however there is likely to be an increase in non-gaming expenditure at the Premises as a result of the improvements associated with the grant of the Application. Consequently, the Commission expects that it is likely that the Application will have a marginal positive impact as a result of complementary expenditure within the LGA.

*Increased gaming competition in the Shire of Mitchell*

100. Increasing competition in gaming in the Shire of Mitchell is a factor to be considered by the Commission in light of the statutory purposes of the Act<sup>31</sup> and the consumer benefits that derive from competition.
101. The SGS Report submitted that as with any service sector, an improvement in the provision of services by the Premises has the potential to trigger a response from competing premises within the LGA. It was submitted that this may create a range of benefits, including cheaper meals and drinks, discounted fees for the use of adjoining facilities and better and more attentive customer service. It was submitted that there are benefits to members of the community who may receive improved services for lower prices. However, the SGS Report also submitted that a more attractive regional gaming environment may induce problem gamblers to gamble more. The Commission has received no evidence to support this assertion. The Commission also notes that one of the purposes of Chapter 3 of the GR Act is to *'promote a competitive gaming industry with the aim of providing financial and social benefits to the Victorian community.'*<sup>32</sup>

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<sup>31</sup> See GR Act, s 3.1.1(2).

<sup>32</sup> *ibid*, s 3.1.1(2)(b).



102. The Urbis Report argued that the approach taken by the SGS Report in paragraph 101 involved 'double counting' the detriment associated with increased problem gambling, as its analysis had effectively offset the benefits of increased competition with the risk that this would increase the incidence of problem gambling.
103. The Urbis Report attributed medium weight to the possible benefit of increased competition among gaming venues in the Shire of Mitchell, however did not make submissions as to why the circumstances associated with the Application indicated that the Commission should consider this benefit to be of such weight.
104. ShineWing prepared its Report on the basis that the Magpie and Stump hotel would cease operating its 24 EGMs during April 2019. At time of the Hearing the Magpie and Stump hotel had transferred 19 its EGM entitlements to the Black Rhino Group Pty Ltd and Mr Stillwell advised the Commission at the hearing that none of the venues operated by this company were located within the LGA. The ShineWing Report considered that its estimate of the gross gaming expenditure at the Premises would increase as a result of EGMs ceasing to operate at the Magpie and Stump Hotel, as some of the expenditure made at the Magpie and Stump Hotel was expected to be transferred to the Premises. The ShineWing Report estimated that a transfer rate of 40% from the Magpie and Stump Hotel to the Premises would be appropriate and that a portion of the expenditure previously made at the Magpie and Stump Hotel would be lost to the LGA.
105. Noting that the Premises is the only gaming venue within a 5km radius and considering that the Application is for 20 EGMs in an established venue, the Commission considers that there is likely to be a positive impact of nil to marginal weight resulting from increased gaming competition within the LGA. This is in part due to the general principle that the potential for competition decreases as the distance between venues increases.

*Diversion of trade from non-gaming premises*

106. The SGS Report based its analysis on the assumption that EGM expenditure diverts expenditure from other sectors of the economy and was therefore likely to have a detrimental effect upon the LGA. It was submitted that the likely result of granting the Application would be a smaller pool of local expenditure for activities other than EGM use, leading to a reduction in retail expenditure within the catchment area and causing local businesses to suffer. The SGS Report attributed a marginal weight to this detriment.



107. The Urbis Report stated that new gaming expenditure generated at the Premises which was not transferred from other venues could be diverted from retailers within the LGA. The Urbis Report submitted that this would have a negative impact, but one which should be given negligible weight, as the expenditure would be diverted from numerous sources and is unlikely to have a significant impact on any single business.
108. The Commission recognises that the negative economic impact that could be felt by way of diversion of trade from local gaming and non-gaming businesses is the value of the new expenditure from this Application, being approximately \$552,313 in the first year of operation. However, the Commission is unable to accurately determine whether that expenditure would necessarily have been spent elsewhere within or outside the LGA.
109. Having regard to the submissions referred to in paragraphs 106 to 108, while the Commission considers that there will be a negative impact associated with the diversion of trade from non-gaming venues, this negative impact is likely to be minimal as it would most likely be spread across numerous venues and would be lessened by the anticipated and substantial growth in to the population of the LGA, which is likely to be responsible for much of the anticipated increase in EGM expenditure at the Premises. Accordingly, the Commission considers this impact should be given nil to marginal weight.

*Diversion of trade from gaming venues*

110. The SGS Report submitted that there would be a reduction in expenditure at other gaming venues as a result of granting the Application and, theoretically, the negative impact associated with this would be offset by the effect of increased expenditure at the Premises. While the SGS Report regarded this as a possible detriment to the LGA, it was a detriment which was given a low weight.
111. The Urbis Report submitted that while a proportion of expenditure associated with the operation of the 20 new EGMs is expected to be transferred from other venues in the LGA, this was normal in a competitive marketplace. The Urbis Report further submitted that the level of transferred expenditure was expected to be less than \$250,000 which it considered to be a low amount and stated that the negative impact upon other gaming venues within the LGA was ultimately one to which the Commission should give negligible weight.





112. As referred to in paragraph 65 the ShineWing Report estimates that within the first 12 months of operation of the new EGMs, 30% of new expenditure is likely to be transferred from other venues, but only 10% would be transferred from gaming venues within the LGA. As referred to in paragraph 104, Mr Stillwell expected that a portion of this expenditure would be transferred from the Magpie and Stump Hotel and would be otherwise lost to the LGA if not transferred to the Premises. Given the distance between the Premises and other gaming venues and the absence of any gaming venues within a 5.0km radius of the Premises, the Commission adopts Mr Stillwell's expenditure estimates.
113. Having regard to the submissions made in paragraphs 110 to 112, while there will be a negative impact associated with the diversion of trade from other gaming venues, the Commission recognises that this negative impact should be given nil weight due to the low percentage of the increased EGM expenditure expected to be transferred from gaming venues within the LGA.

*Gambling expenditure associated with problem gambling*

114. Mr Quick assessed the risk of an increased incidence of problem gambling associated with the proposed increase in EGMs as low. In his submission, problem gambling has an economic cost relating to the provision of support services to problem gamblers and their families and friends, however he stated that the relevant question to be determined was the degree to which granting the Application would increase the incidence of problem gambling and constitute an economic detriment to the LGA. In his submission, this detriment was one which should be given negligible weight due to the 'small increase in gaming expenditure' resulting from a 'modest top-up of machines' at an existing venue.
115. While the Applicant submitted that their usual practice was to operate the gaming room until no later than 1:00am on any day during the week, the Proposed Conditions submitted by the Applicant submitted that this be made a condition of the venue operator's licence. The Proposed Conditions also submitted that the placement of additional frosted screening which would obscure vision into the gaming room from the outside be made a condition of the venue operator's licence, and the Proposed Conditions annexed plans describing where the screening would be constructed. In the Commission's view these measures will mitigate the incidence of problem gambling at the Premises.



116. During closing submissions, the Applicant maintained that the Premises was not a venue of convenience, referring to the decision of *Werribee Football Club Limited* as illustrative of when premises can be destination venues while having some aspects of convenience venues. The Council was of a differing view that the Premises was both highly visible and easy to access. Ultimately, the discussion in the case of *Werribee Football Club Limited* does not inform substantially upon whether the Premises is a destination or convenience venue on the basis that the venue in that case was significantly less visible and relatively inaccessible compared to the Premises.
117. The SGS Report attempted to quantify the economic cost of problem gambling. The SGS Report provided a model which indicated that the average annual EGM expenditure per problem gambler was \$38,554. When questioned with respect to this model, Mr Atkinson stated that the model relied upon data from the Productivity Commission which stated that EGM users account for between 75% and 80% of problem gamblers.
118. The SGS Report also referred to findings by the Productivity Commission in 2010 that between 22% and 61% of expenditure related to gaming was made by problem gamblers.<sup>33</sup> The SGS Report used the midpoint to estimate that 40% of the expenditure produced by the new EGMs at the Premises would be associated with problem gambling.
119. Mr Quick disagreed that 40% of expenditure derived from the new EGMs would be associated with problem gambling as premised by the SGS Report. However, Mr Quick did not offer any alternative view on what proportion of expenditure was likely to be associated with problem gambling.
120. Within a model prepared by Mr Atkinson, the SGS Report indicated that each problem gambler would impose a net cost to the LGA of between \$43,518 and \$80,439 per annum. The SGS Report indicated that based on the estimated proportion of problem gamblers in the LGA, the annual cost to the LGA was therefore estimated at \$1,658,000 per annum. The SGS Report assessed this as representing a high detriment to the LGA.
121. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an economic disbenefit.<sup>34</sup> In assessing this impact (and other effects of

<sup>33</sup> Productivity Commission (2010) *Gambling – Inquiry Report Volume 1*, 5.1 (p.203).

<sup>34</sup> 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*

problem gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gambling undertaken by those who may be defined as 'problem gamblers', as well as those who may be otherwise regarded as 'low-risk' or 'moderate-risk' gamblers.

*The potential vulnerability of the Shire of Mitchell to gambling-related harms*

122. The extent to which it can be considered that new expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with this Application, will be influenced by the socio-economic status and vulnerability of the community of the Shire of Mitchell, and particularly those living in the catchment area surrounding the Premises. This is because communities characterised by socio-economic disadvantage and greater vulnerability are considered as more susceptible to the harms arising from problem gambling.<sup>35</sup>
123. In relation to the Premises, the Applicant submitted that the Premises 'core catchment' generally displayed relatively low levels of disadvantage, with higher household income levels and labour force participation rates than the Victorian non-metropolitan average.
124. The SGS Report indicated that the catchment area of the Premises contained pockets of disadvantage and that high rates of housing stress could be observed in the Premises' primary catchment area. The SGS Report submitted that high population growth is expected for the suburb of Wallan and that this growth would likely lead to a higher level of problem gambling in the future at the Premises than would otherwise be the case. The SGS Report concluded that these factors combined with the significant level of projected new expenditure made the LGA vulnerable to gambling-related harms. The Commission notes that population growth in the LGA is likely to lead to increased EGM use overall.
125. The SGS Report also submitted that due to the rapid population growth expected within the LGA, the socio-economic characteristics of the present population were of less importance than would ordinarily be the case. The SGS Report submitted that the

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*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 considers both the economic and social impacts of problem gambling in assessing this Application.

<sup>35</sup> This approach accords with the VCAT's treatment of this issue in *Molwin Pty Ltd v Mornington Peninsula SC* [2015] VCAT 1982 (23 December 2015), [68].



characteristics of the future population of Wallan would likely make them relatively vulnerable to the impacts of EGMs. This aside, the SGS Report noted that the SA2 area as a whole was only slightly disadvantaged relative to the rest of Victoria.

126. The VCGLR Report focussed on housing stress as the percentage of households in the lowest two equivalised household income quintiles (the bottom 40% of household incomes) being relatively disadvantaged, spending at least 30% of income on either rent or mortgage. This approach, which was followed by the SGS Report, ranked the LGA as having the 12<sup>th</sup> highest level of housing stress of 35 rural LGAs. Mr Quick disagreed with this approach on the basis that it only considered the housing stress experienced by those renting or with a mortgage in the two lowest quintiles of household incomes, rather than considering all households.
127. The Commission refers to the factors discussed in paragraph 69 and 123 to 126 above and considers that while pockets of disadvantage exist within the LGA, the population at large cannot be said to be significantly disadvantaged compared to other rural municipalities.

#### *RSG Practices*

128. In considering the extent to which any new expenditure may give rise to an increased risk of problem gambling, the manner in which gaming is to be conducted at the Premises is also a relevant consideration. Specifically, in relation to the Applicant's Responsible Service of Gaming (**RSG**) practices:
129. Mr Freestone provided evidence that a company named Frontier audited the Premises' with respect to its RSG practices. At the hearing, Mr Freestone indicated that the Applicant was made aware of the items which were included on the audit and the audit occurred at a time predetermined between the Applicant and Frontier. He further indicated that the purpose of Frontier's visit was essentially to educate and encourage best practice rather than to formally audit. As such, while the RSG checklist annexed to Mr Freestone's witness statement<sup>36</sup> shows good RSG practices when assessed against Frontier's checklist on the specific date of the audit, it cannot be inferred from the material available that the Applicant maintains these practices at all times.

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<sup>36</sup> Mr Freestone's written statement referred to in paragraph 22(d).



130. At the hearing, Mr Freestone gave evidence that the Premises had a self-exclusion program and 33 patrons on the Premises' EGM self-exclusion list, three of whom were residents of Wallan. He further submitted that a security guard was rostered every day from 11am.
131. At the Hearing, Mr Freestone was able to recall an occasion when a patron of the gaming room had been identified as a problem-gambler and outline the steps which were taken by the Applicant's staff to intervene. He also submitted that the Premises had a strong food and beverage offering and would offer tea, coffee and cake to gaming patrons observed to exhibit problematic behaviours to encourage breaks in play. He submitted that these were mitigating strategies against the possible incidence of problem gambling at the Premises.
132. Mr Freestone further submitted that the Premises had adopted the RSG Code of Conduct from the Australian Hotels Association. He explained that while the gaming room was licenced to operate until 3:00am, it rarely operated after 1:00am on any day.
133. Mr Freestone submitted that there was an RSG register and a security book in the gaming room and a system allowing staff to make note of or monitor potential issues. He estimated that he was familiar with 60 to 70% of gaming room patrons.
134. At the Hearing, Mr Hogan submitted that the layout of gaming banks within the gaming room at the Premises would ensure that gaming staff would have direct line of sight to every EGM in operation. Mr Hogan also submitted that the proposed renovations would include a breakout area adjoining the gaming room with a strong food and beverage offering.
135. The Commission notes that its Pre-Hearing Report dated 12 March 2019 detected no known issues with the Applicant's conduct of gaming at the Premises, however there were multiple incidents recorded with respect to the Applicant maintaining its Responsible Service of Alcohol Register.
136. Notwithstanding the above, the SGS Report in response to the evidence regarding RSG practices stated that, while well-trained staff can help identify problem behaviour and intervene where necessary, reducing the risk associated with a venue as a general principle, the SGS Report assumed that the Premises followed RSG procedures no more



nor less effectively than other gaming venues in Victoria and that the Commission should give neutral weight to the RSG practices at the Premises.

*Other Factors*

137. There are other factors applicable to this Application that the Commission considers relevant to assessing the potential risks associated with problem gambling, including:
- (a) the Proposed Conditions submitted to the Commission on 3 April 2019 included plans for frosted screening to obscure vision into the gaming room;
  - (b) that under the Proposed Conditions, none of the new EGMs would be permitted to commence operation until the works referred to in paragraphs 65 and 66 had been completed.
  - (c) the Applicant's commitment within the Proposed Conditions that it will operate the gaming room no later than 1:00am on any day as referred to in paragraph 115 above; and
  - (d) the submissions received from local community organisations and individual local residents mentioned in paragraph 25 which refer to problem gambling within the LGA. This aspect of the Application is further considered below at paragraphs 163 to 167.

*The Commission's view*

138. The Commission finds that the SEIFA indices indicate that the majority of the Premises' gaming room patrons surveyed have an average level of socio-economic disadvantage and financial vulnerability that would not make them significantly more susceptible to gambling-related harms. Specifically, the SEIFA score for the SA1 in which the Premises is located is 986 which is marginally lower than the SEIFA rural average of 989.
139. Having regard to all available evidence and the circumstances surrounding the Application, the Commission considers that there is a risk that granting the Application would result in an increase in EGM expenditure associated with problem gambling. This expenditure would be a portion of the estimated \$552,000 of new expenditure generated



within the initial 12 months of operation of the 20 new EGMs at the Premises.<sup>37</sup> As expenditure is expected to increase following the initial 12 months of EGM operation due to population growth in the LGA, it is expected that all gaming expenditure will too increase. While a portion of this increased expenditure may be associated with problem gambling, to focus only on this portion is to double-count any relevant disbenefit associated with problem gambling.

140. The Commission notes that the Proposed Conditions state that no new EGMs would commence operation until the works referred to in paragraphs 65 and 66 had been completed. The effect of this is that the disbenefits associated with granting the Application would be deferred until after the works had been completed and the LGA had already received some of the benefits associated with these works.
141. The Commission regards the proposed condition restricting gaming room trading hours to no later than 1:00am on any day as referred to in paragraph 115 and 137(c) above as a significant factor mitigating the incidence of problem gambling. This is supported by literature showing a correlation between problem gambling and late-night hours (12am to 6am) and that a venue shutdown is effective in mitigating problem gambling by forcing a break in play.<sup>38</sup>
142. Having regard to the considerations raised in paragraph 114 to 141, the Commission regards gambling expenditure associated problem gambling as a negative impact and gives this marginal to low weight.

#### Conclusion on economic impacts

143. After weighing the economic benefits of the Application against the disbenefits, the Commission considers that the Application is likely to have a marginally positive economic impact if granted.

#### **Social Impacts**

144. The materials before the Commission and the evidence adduced at the Hearing described

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<sup>37</sup> This figure is provided by the ShineWing report and referred to in paragraph 42.

<sup>38</sup> Blue Moon Research 2008, *Evaluation of the 6 Hour Shutdown of Electronic Gaming Machines in NSW*, Multi-method research report, Prepared for the NSW Office of Liquor, Gaming and Racing.



a range of social benefits and disbenefits associated with the Application.

*Increased gaming opportunities for those who enjoy gaming*

145. Increased gaming opportunities are a positive social impact if granting the Application will better serve the needs of gaming patrons by providing additional opportunities and choice for those who choose to play EGMs.
146. At the Hearing, Mr Quick submitted that it was possible for a problem gambler to derive the benefit of enjoyment from gaming, but did not provide evidence to support this. Mr Atkinson was of the differing view that problem gamblers engaged in gaming impulsively and irrationally and could not be said to derive any benefit from their behaviour. Without evidence in support of either view, the Commission does not conclude that a problem gambler receives the benefit of enjoyment from gaming. However, the Commission considers that increased gaming opportunities may be a positive factor when not associated with problem gambling.
147. The SGS Report stated that a proportion of the new expenditure would relate to non-problem gamblers and that to this extent, EGM use should be considered a social benefit. The SGS Report referred to the quantity of anticipated new expenditure as evidence that the Application would provide increased opportunities for recreational gambling by non-problem gamblers and gave moderate weight to this social benefit.
148. The Commission accepts that granting approval of the Application would likely better serve the needs of gaming patrons through providing additional EGMs, particularly given the reduction of EGMs at the Magpie and Stump Hotel as at the date of the Hearing and the current absence of gaming venues within a 2.5km radius of the Premises. However, the Commission also considers that the increase of EGMs at the Premises will likely only provide a social benefit with respect to peak periods of EGM use at the Premises. Accordingly, the Commission considers it appropriate to attribute marginal to low weight to this social benefit.

*Improved facilities enabling greater range of services*

149. 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 having regard to the nature of the renovations that are intended to take place.

150. The proposed renovations described in the Proposed Conditions are set out in paragraph 73 above. They include an extension to the lounge area and restaurant areas of the Premises and the removal of the Saloon Bar and TAB area of the Premises to provide room for the proposed renovations to occur.
151. The Urbis Report ascribed a medium social benefit to the proposed renovations on the basis that the Premises would be able to provide greater access to facilities to patrons along with an improved experience.
152. In contrast, while the SGS Report's qualitative analysis considered that the establishment of an enhanced entertainment option in the LGA would have a positive impact of moderate weight upon the LGA, it also noted that the benefit of the proposal to current residents represented only a portion of the total benefit of improved facilities expected to arise from granting the Application. This was because the expected growth to the LGA suggested that this benefit would also be received by many future residents.
153. The Commission considers that the community's ability to access and use the proposed improved facilities at the Premises resulting from the granting of this Application will provide a social benefit to the community of the Shire of Mitchell. However, the Commission recognises that the proposed renovations will improve the Premises' existing offerings rather than creating completely new facilities. Therefore, the Commission considers that improved facilities would have a positive social impact upon the municipality, but gives this factor low weight.

*Social benefit derived from increased community contributions*

154. Related to the economic impact associated with increased community contributions, is the positive social impact such contributions may have by improving the social fabric of the community in which they are made. In assessing the weight to be placed on such a benefit, it is important that the Commission does not conflate this benefit with the economic benefit associated with such contributions.
155. The Commission considers that the letters referred to in paragraph 26(e) provide an



indication of the Applicant's level contribution to the community and how its community contributions have benefitted the community. These provide the Commission with an indication of how the Applicant's increased contributions as described in the Proposed Conditions would enhance the social fabric of the community.

156. For the reasons discussed in respect to community contributions as set out in paragraphs 84 to 88, while the Commission considers this impact to be a social benefit, the Commission gives it low weight.

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

157. Wherever accessibility to EGMs is increased, there is a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, family breakdowns and other social costs. Accordingly, the Commission accepts that there is potential for a negative social impact through possible increased problem gambling expenditure.
158. The Urbis Report submitted that the negative social impact of an increase in problem gambling in the LGA was negligible due to what it regarded as an 'incremental' increase in EGMs, in the context of the LGA, the socio-economic profile of the locals and what it regarded as a modest anticipated increase in gaming revenue in the LGA were the Application granted.
159. The SGS Report referred to the following factors as showing that the LGA was particularly vulnerable to the social harms of problem gambling:
- (a) their submission estimating that approximately 40% of Australian EGM expenditure was associated with problem gambling, which was a figure derived from findings of the Productivity Commission in 2010;
  - (b) a socio-economic profile with pockets of high disadvantage immediately surrounding the Premises;
  - (c) high rates of housing stress in the primary catchment area; and
  - (d) the potential for rapid population growth anticipated in the area surrounding the



Premises.

160. The SGS Report referred to these factors in submitting that the negative social impact of problem gambling as a result of the Approval of the application would be high.
161. The Commission has considered the submissions referred to in paragraphs 157 to 160 with respect to the social impacts of problem gambling, as well as those in paragraphs 114 to 139 above with respect to the economic impact of problem gambling on the community, which equally apply to the social impact of problem gambling.
162. The Commission considers that there is potential for increased risk in gambling-related harm as a result of this Application which gives rise to possible negative social impact. However, considering the mitigatory strategies referred to specifically in paragraphs 128 to 134 and 137, low to moderate weight is placed upon this negative social impact.

Community attitude

163. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,<sup>39</sup> the Commission recognises that while community apprehension is not an overriding factor in the sense that the Application is not ‘a referendum on gaming machines’,<sup>40</sup> it is certainly relevant to the consideration of the social impact as part of the ‘no net detriment’ test.
164. The evidence before the Commission with respect to community attitude is found in the materials referred to in subparagraphs 22(h) and 26(e) along with paragraph 25. At the Hearing, the Commission also heard evidence from Darren Freestone and John Hogan with respect to the Applicant’s role in the community. The materials referred to in paragraph 22(h) consist of two short comments submitted electronically with respect to the Application. The materials referred to in paragraph 25 consist of letters from a range of community groups and individuals expressing opposition towards the Application.
165. The Applicant characterised the materials referred to in paragraph 26(e) as ‘letters of

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<sup>39</sup> The *Romsey* case (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.

<sup>40</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [71] per Dwyer DP.



*support* with respect to the Application, however this was challenged by the Council on the basis that these letters did not express support for or knowledge of the Application, but merely gratitude for the assistance and contributions received from Applicant. The Commission accepts the Council's view that the letters referred to in paragraph 26(e) do not indicate community support for the Application, but provide information with respect to the social impact of the Applicant's community contributions.

166. The SGS Report compared the number of submissions made in opposition to the Application as referred to in paragraph 25 above, to those in support of the Application. Upon comparing these, the SGS Report submitted that given the overwhelming opposition to the Application by members of a relatively small community, that the community attitude towards this application represents a moderate detriment to the LGA were the Application to be approved.
167. The Urbis Report submitted that the mix of positive and negative sentiment towards the Application was typical of any gaming application and noted that many of the objections appeared to oppose EGMs in general rather than addressing the specific impacts of the Application. The Urbis Report further submitted that the materials referred to in paragraph 26(e) indicated an overall mixed community view towards the Application. Mr Quick stated that on these bases, community attitude was a factor which the Commission should give neutral weight.
168. The Commission considers that there is a degree of community opinion against granting applications resulting in increases in EGMs generally, and this is demonstrated by the correspondence objecting to the Application as referred to in paragraph 25 above. However, the Commission notes that this shows opinion against EGMs generally and does not specifically address the benefits or disbenefits of the Application.
169. The Commission also recognises that the Council is the representative body of the local community and is charged with statutory duties under legislation.<sup>41</sup> The Council submitted that it undertook an evaluation of the benefits and disbenefits associated with the Application prior to deciding to object to it, based in part upon the independent report provided by SGS. The Commission further notes the Council's submission that it has not historically opposed all gaming applications, and that it has provided evidence in support

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<sup>41</sup> See *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT at 2606 at [42]; *Romsey No. 2* [2009] VCAT 2275 at [249] and [288]-[321].

of its objection.

170. On balance, the Commission considers that there is a degree of community disapproval towards EGMs generally, but due to the general nature of this disapproval the Commission attributes low weight to this negative social impact.

#### Conclusion on social impacts

171. After considering the social benefits of the Application balanced against the disbenefits, the Commission considers that, on balance, there is likely to be a marginally negative social impact should the Application be granted.

#### **Net economic and social impact**

172. The '*no net detriment*' test in section 3.4.20(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.<sup>42</sup>
173. After consideration of the material before it, including the evidence provided at the Hearing (as outlined above and summarised in tabular form at Appendix B below), the Commission is satisfied that the overall social and economic impact to the well-being of the community of the municipal district in which the Premises are located will be neutral. Therefore, the Commission considers that the pre-condition set out in section 3.4.20(1) of the GR Act is satisfied and, the Commission may amend the venue operator's licence.

#### **D. Independence from other gaming venues**

174. Section 3.4.20(1)(d) of the GR Act requires the Commission to be satisfied that, if the Premises are proposed to be added to the Applicant's licence as an approved venue and the Applicant (or an associate of the Applicant) operated an approved venue within 100 metres of the Premises, that the management and operation of the Premises and other approved venues are genuinely independent of each other.

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<sup>42</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 at [52] per Dwyer DP.



175. The Commission finds that the Application is not proposing to add the Premises to the Applicant's venue operator's licence (as it already exists on the licence), nor does the Applicant (or an associate) operate an approved venue within 100 metres of the Premises.
176. On this basis, the Commission considers that the mandatory pre-condition set out in section 3.4.20(1)(d) is not applicable to this Application.

## CONCLUSION

177. On the material that has been put before it, the Commission has determined that the '*no net detriment*' test has been satisfied<sup>43</sup> and that granting the Application to amend the venue operator's licence will not result in exceeding the regional cap set pursuant to section 3.4A.5 of the GR Act.<sup>44</sup> Pursuant to section 3.4.20(1) of the GR Act, the Commission is satisfied that it should exercise its discretion to approve the Application and make the proposed amendment to the venue operator's licence to vary the number of EGMs permitted in the premises from 45 to 65, subject to the conditions set out in Appendix A.
178. The Application is therefore granted.

***The preceding 178 paragraphs and the following Appendices are a true copy of the Reasons for Decision of Mr Ross Kennedy, Chair, and Mr Des Powell AM, Commissioner.***

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<sup>43</sup> Refer to paragraph 13.

<sup>44</sup> Refer to paragraph 57.



## **Appendix A**

Conditions of the Decision of the Commission dated 9 May 2019 to vary the number of EGMs permitted in the approved premises, Hogan's Hotel, located at 92 High Street, Wallan from 45 to 65.

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

#### **1. The Works**

- (a)** The Works (as defined in clause 1(b)) must be substantially completed to the satisfaction of the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) before the commencement of the operation of any of the additional twenty (20) electronic gaming machines (**Additional EGMs**) at the approved premises.
  
- (b)** For the purpose of this clause, '**the Works**' comprise:
  - i.** The works in accordance with the plans contained at Figures 3 and 4 of the Social and Economic Impact Assessment prepared by Urbis, dated 20 December 2018 and submitted to the Commission; and
  
  - ii.** The screening to the gaming room in accordance with the plans annexed to the proposed conditions which were provided to the Commission on behalf of the approved premises at the hearing on 3 April 2019.
  
- (c)** The Works described above must be substantially completed at the approved premises to the satisfaction of the Commission before the commencement of the operation of any of the Additional EGMs.

#### **2. Community Contributions**

- (a)** The Venue Operator will make cash contributions in the sum of \$100,000.00 (increased each year by the increase in CPI) (**the Contributions**) for each year during which any of the Additional EGMs operate at the approved premises for as long as any of the Additional EGMs are in operation at the approved premises.
  
- (b)** The Contributions will be allocated each year only to not-for-profit community groups and sporting organisations which provide services and facilities primarily to residents



of the Shire of Mitchell.

- (c) If the Contributions are not allocated in full each year as required in 2(b), the operation of the Additional EGMs must cease immediately for so long as the Contributions (or part thereof) remain outstanding.

### **3. Gaming Room Hours**

- (a) The gaming room may only operate during the following times:
- i. Sunday between 10am and 1am the following morning;
  - ii. Good Friday and Anzac Day between 12 noon and 1 am the following morning;  
and
  - iii. On any other day between 7am and 1am the following morning.





## **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***

	<b>Impact</b>	<b>Paragraph numbers</b>	<b>Comment relevant to weight</b>
<b>Benefits</b>	Expenditure on capital works	71 to 76	<p>The Applicant proposes to undertake renovations at the Premises at an estimated cost of \$2,453,000. Consequently, there will be a benefit received by the Shire of Mitchell, however the specific extent to which this will benefit the Shire of Mitchell is unable to be determined.</p> <p>Positive impact, marginal to low weight.</p>
	Complementary expenditure	94 to 99	<p>There will likely be an increase to complementary expenditure as a result of the redevelopment of the Premises, particularly given the few alternative venues for a sit-down meal in the vicinity. However, there is no specific evidence quantifying the extent of this benefit and to what extent this will simply be driven by population growth.</p> <p>Positive impact, marginal weight.</p>
	Supply contracts	90 to 93	<p>There is a likelihood but no guarantee that contracts will be awarded to local suppliers.</p> <p>Positive impact, marginal weight.</p>



	Impact	Paragraph numbers	Comment relevant to weight
	Additional employment	77 to 83	<p>The Applicant estimates that six FTE positions will be created as a result of the Application. While the Applicant has no specific policy requiring that employees be hired from within the LGA, the Applicant's evidence suggests that the jobs created will be filled by candidates from within the LGA. The Commission notes that these jobs are likely to be transferred from within the LGA.</p> <p>In relation to the short-term benefits associated with renovation activities, the Urbis Report indicates that up to 15 jobs will be created during the construction period but the basis for this view was not provided (p32).</p> <p>Positive impact, marginal weight.</p>
	Community contributions	84 to 88	<p>In relation to the cash contributions, the Applicant has committed to make annual contributions to the value of \$100,000 should the Application be approved.</p> <p>This represents an annual benefit of approximately \$44,000 above the average level of cash contributions made by the Applicant over five years preceding the Application.</p> <p>This also represents a benefit in that the Applicant has committed to maintain its current level of cash contributions.</p> <p>Positive impact, marginal to low weight.</p>
	Increased gaming competition in the Shire of Mitchell	100 to 105	<p>The 20 additional EGMs at the Premises relative to the total number in the Shire of Mitchell would not likely result in a substantive increase in gaming competition in the municipal district.</p> <p>Following the removal of all EGMs from the Magpie and Stump Hotel, there will be no other gaming venue located within 5km of the Premises and only two located within 10km of the Premises. Accordingly, it is unlikely that the new EGMs will significantly contribute towards increased gaming competition in the LGA.</p> <p>Positive impact, nil to marginal weight.</p>



	Impact	Paragraph numbers	Comment relevant to weight
<b>Disbenefits</b>	Gaming expenditure not associated with problem gambling	62 to 70	<p>The portion of new expenditure not attributable to problem gambling is an economic benefit.</p> <p>Considering the 12-month new expenditure estimate provided by the ShineWing Report and the possibility that expenditure may be greater due to population growth in the LGA, the evidence before the Commission suggests that there will be a small benefit to the LGA.</p> <p>Positive impact, marginal weight.</p>
	Gambling expenditure associated with problem gambling	114 to 142	<p>The ShineWing report estimates that new expenditure will be \$552,000 for the first year of EGM operation.</p> <p>This represents a small disbenefit to the LGA in an economic sense during the first year of operation, however the Commission accepts that this may increase with growth in the LGA such that the new expenditure may be greater than this by the time the proposed works are completed and the machines are able to commence operating.</p> <p>Negative impact, marginal to low weight.</p>
	Diversion of trade from non-gaming businesses	106 to 109	<p>The impact that could be felt by local non-gaming businesses is the value of the new expenditure from this Application will be low, as growth within the LGA will be the dominant driver of new business.</p> <p>Further, there is already little within 5km of the Premises which competes with the Premises by providing a similar 'sit-down' food and beverage offering.</p> <p>Negative impact, nil to marginal weight.</p>
	Diversion of trade from gaming businesses	110 to 113	<p>As the expected transferred expenditure from within the LGA is low and there are no gaming venues within 2.5km of the Premises, this negative impact has nil weight</p>



**Social impacts**

	<b>Impact</b>	<b>Paragraph numbers</b>	<b>Comment relevant to weight</b>
<b>Benefits</b>	Increased gaming opportunities for those who enjoy gaming	145 to 155	Granting the Application will better serve the needs of gaming patrons through providing additional opportunities and choice for those who choose to play EGMs. This application will provide some additional opportunity for patrons to game during peak periods, however the new expenditure estimates indicate that this will be moderate.  Positive impact, marginal to low weight.
	Improved facilities enabling greater range of services	149 to 152	There will be benefits resulting from the improved facilities created by the proposed redevelopment of the Premises. While patrons may receive an improved offering, the character of this offering will essentially remain the same.  Positive impact, low weight.
	Social benefit derived from increased community contributions	154 to 155	The Applicant is a significant contributor to the social fabric of the community in which it is located and the community will be enhanced by the Applicant's contributions.  Positive impact, low weight.



	Impact	Paragraph numbers	Comment relevant to weight
<b>Disbenefits</b>	Possibility of an increased incidence and potential impact of problem gambling on the community (including family violence)	157 to 162	<p>The LGA shows signs of disadvantage and there is risk associated with the Application. Growth within the LGA makes it difficult to predict the specific impact of the Application upon the incidence of problem gambling, however there is evidence that growth in the region will be driven by young families.</p> <p>The closing hours proposed by the Applicant will mitigate some risk associated with problem gambling.</p> <p>Negative impact, low to moderate weight.</p>
	Community attitude	163 to 170	<p>A number of individuals and community groups opposed the Application, however the opposition generally expressed opposition to EGMs in general rather than the specific proposal before the Commission.</p> <p>It is relevant that Council's objection to the Application was made after soliciting an independent report and making an assessment on the benefits and disbenefits of the Application.</p> <p>Negative impact, low weight.</p>