



**DECISION AND REASONS FOR DECISION**

In the matter of an application by Zahav (Aust) Pty Ltd under section 3.3.4(1) of the *Gambling Regulation Act 2003* for approval of the premises, the Mt Atkinson Hotel, proposed to be located at McKinley Drive, Truganina, as suitable for gaming with sixty (60) electronic gaming machines.

**Commission:**

Mr Des Powell AM, Commissioner  
Ms Danielle Huntersmith, Commissioner  
Mr Andrew Scott, Commissioner

**Appearances:**

Mr Nicholas Tweedie SC and Mr Daniel Robinson of Counsel  
for the Applicant (instructed by BSP Lawyers)

Mr Cameron Warfe as Counsel Assisting the Commission

**Date of Hearing:**

3 and 6 March 2020

**Date of Decision:**

14 April 2020

**Date of Reasons:**

14 April 2020

**Decision:**

The Application is granted subject to the conditions outlined at paragraphs 156 and 157 of these Reasons for Decision.

**Signed:**

A handwritten signature in blue ink that reads "Powell".

**Des Powell AM**  
Commissioner

## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by Zahav (Aust) Pty Ltd (**the Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) for approval of the Mt Atkinson Hotel, proposed to be located at McKinley Drive, Truganina (**Premises**), as suitable for gaming with sixty (60) electronic gaming machines (**EGMs**) (**the Application**).
2. The relevant municipal authority is the City of Melton (**the Council**). On 12 February 2020, the Council notified the Commission, pursuant to section 3.3.5B of the *Gambling Regulation Act 2003* (**GR Act**), that the Council did not intend to make a submission in relation to the Application.
3. The Commission considered the Application by way of a public inquiry.<sup>1</sup> A public hearing was conducted on 3 and 6 March 2020 (**the Hearing**). The Applicant was represented by Mr Nicholas Tweedie SC and Mr Daniel Robinson of Counsel, instructed by BSP Lawyers.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the 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 in section 1.1(2), which provides, inter alia:
 

...

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

  - (a) *to foster responsible gambling in order to-*
    - (i) *minimise harm caused by problem gambling; and*
    - (ii) *accommodate those who gamble without harming themselves or others;*
  - (ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*

<sup>1</sup> A public inquiry is required to be conducted by the Commission in relation to the Application pursuant to section 28(e) 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).



Victorian Commission for  
Gambling and Liquor Regulation

- (b) *to ensure that gaming on gaming machines is conducted honestly;*
- ...
- (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 (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 provisions concerning this Application are to be found in sections 3.3.7 and 3.3.8 of the GR Act:

(a) section 3.3.7 provides:

- (1) *The Commission must not grant an application for approval of premises as suitable for gaming unless satisfied that—*



Victorian Commission for  
Gambling and Liquor Regulation

- (a) *the applicant has authority to make the application in respect of the premises; and*
  - (b) *the premises are or, on the completion of building works will be, suitable for the management and operation of gaming machines; and*
  - (c) *the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located.*
- (2) *In particular, the Commission must consider whether the size, layout and facilities of the premises are or will be suitable.*
- (3) *The Commission must also consider any submission made by the relevant responsible authority under section 3.3.6.<sup>2</sup>*
- ...
- (5) *The Commission cannot approve an area as a gaming machine area unless that area is wholly indoors.*

(b) section 3.3.8 provides, inter alia:

- (1) *The Commission must determine an application by either granting or refusing to grant—*
    - (a) *approval of the premises as suitable for gaming; and*
    - (b) *if applicable, approval for 24 hour gaming on the premises on any one or more days.*
- ...
- (2) *An approval must specify—*
    - (a) *the number of gaming machines permitted; and*
    - (b) *the gaming machine areas approved for the premises; and*
    - (c) *if applicable, the days on which 24 hour gaming is permitted on the premises.*
- ...

9. Section 3.3.7(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>

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

<sup>2</sup> Section 3.3.6 of the Act allows the Council to make a submission addressing the economic and social impact of the proposal for approval on the well-being of the community of the municipal district in which the premises are located; and taking into account the impact of the proposal on surrounding municipal districts.

- the likely economic impacts of approval;
  - the likely social impacts of approval; and
  - the net effect of those impacts on the well-being of the relevant community.<sup>4</sup>
11. 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.
  12. 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>
  13. The Commission also accepts the position expressed by Morris J in *Branbeau Pty Ltd v Victorian Commission for Gaming Regulation* [2005] VCAT 2606 at [51] that:
 

*Although the [no net detriment] test requires consideration of the impact of approval on the well-being of the community of the municipal district in which the premises are located, logic and common sense require this to be considered in the context of the spatial impact of the gaming machines to be installed in the venue concerned.*<sup>8</sup>
  14. The Commission also notes that on review, it has been indicated by VCAT that:
 

*A table of likely economic and social benefits and disbenefits, and with some comments relevant to the relative weight to be given to particular factors ... is a useful way of transparently dealing with the ‘no net detriment’ test, and might perhaps be considered for wider application.*<sup>9</sup>

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

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

<sup>5</sup> *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [332], [348] per Bell J (**‘Romsey #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 #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 also *Romsey #2* [2009] VCAT 2275, [274] per Bell J.

<sup>9</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [60] per Dwyer DP.

This approach has been adopted in a number of VCAT decisions.<sup>10</sup> To facilitate greater consistency between the Commission and VCAT, the Commission has adopted the same approach in this matter.

15. If the Commission is not satisfied that the ‘*no net detriment*’ test is met, that is clearly fatal to the application given the opening words of s 3.3.7(1) of the GR Act. The test is a mandatory precondition to approval. However, although s 3.3.7(1) sets out certain mandatory considerations for the Commission, the provision is not cast in exhaustive terms. If the Commission is satisfied that the ‘*no net detriment*’ test is met, it still has an ultimate discretion as to whether or not to grant the approval.<sup>11</sup> The Commission must decide whether to grant the approval, even where an applicant has satisfied the minimum threshold of the ‘*no net detriment*’ test.<sup>12</sup>
16. In considering the exercise of this discretion:
  - (a) it must be exercised having regard to the purposes of the GR Act and, in particular, the specific purposes of Chapter 3 of the GR Act dealing with the regulation, supervision and control of gaming machines;<sup>13</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>14</sup>
17. 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>15</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.

<sup>10</sup> See, for example: *Darebin CC v Victorian Commission for Gambling and Liquor Regulation & Anor* [2013] VCAT 1389; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Monash CC v L'Unico Pty Ltd* [2013] VCAT 1545; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

<sup>11</sup> See *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [97] and following per Dwyer DP; see also *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.

<sup>12</sup> *Gambling Regulation Act 2003*, section 3.3.8(1).

<sup>13</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [98] per Dwyer DP.

<sup>14</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 *Romsey* (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

<sup>15</sup> [2013] VCAT 101, [98].



18. It is further noted that pursuant to section 9(4) of the VCGLR Act, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation.
19. On 16 October 2013, Ministerial decision-making guidelines were published in the Victorian Government Gazette pursuant to section 5 of the VCGLR Act concerning applications for approvals of venues for EGMs (**children's play area Ministerial Guidelines**). The children's play area Ministerial Guidelines concern the assessment of the suitability of a premises for gaming which contain, or will contain, a children's play area to ensure that the venue operator provides a responsible gambling environment. The Ministerial Guidelines provide a list of criteria regarding children's play areas that the Commission should have regard to, and also states that the Commission should have regard to any other aspect relevant to ensuring that the approved premises for gaming will provide a responsible gambling environment.
20. On 14 February 2017, Ministerial decision-making guidelines were published in the Government Gazette (**permanent residential accommodation Ministerial Guidelines**). The permanent residential accommodation Ministerial Guidelines note that when considering applications for the approval of premises as suitable for gaming, the Commission must have regard to the Government's position that any building that is planned to include permanent residential accommodation should not be approved as premises suitable for gaming.
21. Finally, in the instance that the Commission approves a premises as suitable for gaming, section 3.3.9 provides for both mandatory conditions of approval and the Commission's power to impose other conditions, as follows:
  - (1) *It is a condition of every approval of premises that, when the premises are an approved venue—*
    - (a) *there must be a continuous 4 hour break from gaming after every 20 hours of gaming; and*
    - (b) *there must not be more than 20 hours of gaming each day.*
  - ...
  - (3) *An approval may be granted subject to—*
    - (a) *a condition that the approval does not take effect until the Commission has notified the applicant in writing that the premises have been inspected for the purposes of section 3.3.7(1)(b) and the Commission is satisfied that the premises are suitable for the management and operation of gaming machines;*
    - (b) *a condition that the approval does not take effect until the applicant satisfies the Commission that—*



Victorian Commission for  
Gambling and Liquor Regulation

- (i) *the applicant has obtained a permit under the Planning and Environment Act 1987 permitting the premises to be used for gaming on gaming machines; or*
- (ii) *use of the premises for gaming on gaming machines would not contravene the planning scheme that applies under the Planning and Environment Act 1987;*
- (c) *any other conditions that the Commission thinks fit;*
- (d) *a condition that the approval does not take effect until the applicant has satisfied the Commission that it has complied with any other condition imposed by the Commission, as the Commission thinks fit.*
- (4) *Without limiting the matters to which conditions may relate, the conditions of an approval may relate to any matter for which provision is made by this Act but must not be inconsistent with a provision of this Act.*
- (5) *If an approval is granted subject to a condition under section 3.3.9(3)(d), the holder of the approval must comply with the condition within 2 years of the approval being granted, or such other time specified by the Commission when granting the approval.*
- (6) *If an approval is granted subject to a condition under section 3.3.9(3)(d), and the holder of the approval fails to comply with subsection (5), the approval is automatically revoked.*
- (7) *If an approval is granted subject to a condition under section 3.3.9(3)(d), and before complying with the condition the holder of the approval ceases to have an interest in the premises or any other relevant authorisation as referred to in section 3.3.4(3)(a)—*
  - (a) *the holder of the approval must notify the Commission as soon as is practicable; and*
  - (b) *the approval is automatically revoked.*
- (8) *The Commission may, by notice in writing, require the holder of an approval to provide information or documents relevant to whether the holder of the approval still has an interest in the premises or any other relevant authorisation as referred to in section 3.3.4(3)(a).*
- (9) *If a requirement under subsection (8) is not complied with, the Commission may revoke the approval.*

## **MATERIAL BEFORE THE COMMISSION**

22. The Applicant provided the Commission with the following material in support of its Application:

- (a) 'application for approval of premises for gaming' form dated 17 December 2019 (**the Application Form**);





- (b) Social and Economic Impact Statement prepared by Ms Colleen Peterson, Chief Executive Officer of Ratio Consultants Pty Ltd (**Ratio**) dated December 2019 (**the Ratio Report**);
  - (c) report of Mr Tim Stillwell, partner of ShineWing Australia (**ShineWing**), dated 17 December 2019 (**ShineWing Report**);
  - (d) statement of Mr Leigh Barrett, director of Leigh Barrett and Associates, dated 17 December 2019;
  - (e) statement of Mr Luke Ponti, a registered architect and partner of BSPN Architecture, dated 16 December 2019, attaching various plans and indicative images of the Premises;
  - (f) statement of Mr Joseph Gauci, a director of the Applicant, dated December 2019, attaching a company search for the Applicant and photographs of other gaming and non-gaming venues he currently operates;
  - (g) floor plans for the Premises and the gaming room prepared by BSPN Architecture;
  - (h) a copy of a letter from Contour Town Planners to the Council dated 18 December 2019 evidencing the submission of an application for planning permission for the Premises;
  - (i) consent form signed by Mr Anthony Caligiuri on behalf of Mt Atkinson NL3 Investments Pty Ltd and Mt Atkinson NL4 Investments Pty Ltd, owners of the land on which the Premises is proposed to be constructed, dated 16 December 2019, authorising the Applicant to make the Application;<sup>16</sup> and
  - (j) proposed conditions of any approval agreed to as between the Applicant and the Council, under cover letter by the Applicant's lawyers dated 7 February 2020.
23. The following material, prepared by Commission officers, was provided to the Applicant and was considered by the Commission:
- (a) a report titled *Economic and Social Impact Report*, originally dated January 2020 and provided to the Applicant and the Council on 20 January 2020 (**VCGLR Report**);
  - (b) a report titled *Pre-Hearing Size, Layout and Facilities Report* dated 6 March 2020; and
  - (c) a report titled *Inspection and Compliance Report* dated 12 March 2020 with respect to the West Waters Hotel (operated by a separate legal entity with two common directors of the Applicant, Messrs Joseph and Edward Gauci (together, **the Gaucis**), and managed by a management company of the Gaucis, Seachange Management Pty Ltd (**Seachange**)) (**Compliance History Report**).

24. In addition, the Commission received correspondence in opposition to the Application from three individuals, and submissions from a number of community organisations and associations operating in the City of Melton (including by providing services to the LGA), including:
- (a) Women's Health West dated 7 February 2020;
  - (b) cohealth, a community health service, dated 2 March 2020; and
  - (c) Banyule Community Health dated 4 March 2020.
25. On 4 March 2020, the Commission also received correspondence from the Victorian Local Governance Association (**VLGA**). The Commission notes that the correspondence from the VLGA related primarily to the processes of the Commission in determining gaming applications generally, rather than the likely impacts on the Melton community of the Application itself. In these circumstances, the Commission has determined to respond to the VLGA in separate correspondence addressing those issues.
26. During the Hearing, the Commission was provided with:
- (a) the Mt Atkinson and Tarneit Plains Precinct Structure Plan (**Mt Atkinson PSP**);
  - (b) a report titled 'Melton Planning Scheme Amendment C182 – Electronic Gaming Policy' dated 11 February 2019; and
  - (c) written submissions by Mr Tweedie SC and Mr Robinson of Counsel on behalf of the Applicant, dated 3 March 2020.
27. Following the Hearing and at its request, the Commission was provided with further written submissions regarding:
- (a) transferred expenditure by Mr Tweedie SC and Mr Robinson of Counsel on behalf of the Applicant, dated 10 March 2020; and
  - (b) the impact of the COVID-19 pandemic on the Application by Mr Tweedie SC and Mr Robinson of Counsel on behalf of the Applicant, dated 2 April 2020.
28. Commissioners Powell and Huntersmith visited the area of the proposed Premises before the Hearing, including a visit to the West Waters Hotel (Caroline Springs). Commissioner Scott also visited the West Waters Hotel shortly after the Hearing.

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<sup>16</sup> Mr Caligiuri is also a director of the Applicant.

## PRELIMINARY MATTER

29. The Commission has considered this matter on all of the available evidence before it. The Commission is aware that the COVID-19 pandemic, and associated restrictions implemented by government, are likely to have an impact on the social and economic conditions of Victoria, as well as the community of the City of Melton. The nature and extent of this impact on the municipality is not yet known. The Commission requested the Applicant provide submissions as to whether the Commission is able to determine the Application in light of the COVID-19 pandemic, with specific reference to the matters to be considered and mandatory criteria for approval set out in section 3.3.7(1) of the GR Act.
30. In summary, the Applicant submitted that the Commission is able to determine the Application against the criteria for approval in section 3.3.7(1) of the GR Act, noting that construction of the Premises is not expected until sometime in 2022 and that there will have been a period of economic and social recovery following the resolution of the COVID-19 pandemic. The Applicant further noted that there is nothing about the community of Melton that would make it more or less vulnerable to the impacts of COVID-19 than any other part of Australia. Finally, the Applicant submitted that the construction and operation of the Premises would respond to the community's immediate need for economic stimulus and employment in the hospitality, entertainment and accommodation sectors.
31. In this instance, and given that the GR Act expressly requires that "the Commission must use its reasonable endeavours to determine an application within the required period" (see section 3.3.8(1A)), the Commission has accordingly used its reasonable endeavours to determine this matter on the basis of the information and evidence before and available to it within the required period, noting that there is no information or evidence before the Commission that could confirm or reliably predict the impact of this matter on the social and economic conditions in the municipality. The Commission also notes that the Applicant has a right of review to the Victorian Civil and Administrative Tribunal (**VCAT**) should it wish for the Commission's decision to be reviewed under section 3.3.14 of the GR Act.

## DECISION AND REASONS FOR DECISION

### *Background*

32. The City of Melton is a metropolitan municipality located approximately 40 kilometres west of Melbourne. Major centres include Melton, Caroline Springs and Diggers Rest. The estimated total adult population is 115,742, ranking the City of Melton 18 out of 31 metropolitan municipalities.<sup>17</sup> The City of Melton's estimated annual population growth of 4.4% in 2019 is

<sup>17</sup> Department of Environment, Land, Water and Planning, 2018.

projected by the Department of Environment, Land, Water and Planning to be higher than the Victorian average of 2.3%.

33. The Ratio Report notes that the population in the City of Melton as at 2016 of 135,443<sup>18</sup> is projected to increase by 32.5% to 179,490 in 2021 and by 104.1% to 223,930 by 2026.<sup>19</sup> As Ms Peterson notes in the Ratio Report, the population growth in the Truganina-Ravenhall suburb is estimated to grow from 1,449 in 2016 to 10,503 in 2031, a change of 625%.<sup>20</sup>

#### *Current gaming in the City of Melton*

34. Currently, there are seven gaming venues operating within the City of Melton with approvals to operate 523 EGMs and with all 523 attached entitlements currently operating.<sup>21</sup> The maximum permissible number of gaming machine entitlements under which gaming may be conducted in the City of Melton is 824.<sup>22</sup>
35. The VCGLR Report notes that the City of Melton has an EGM density of 4.5 EGMs per 1000 adults, which is 6.3% lower than the metropolitan Local Government Area (**LGA**) average of 4.8 and 12.2% less than the State average of 5.1, placing the City of Melton as the 18<sup>th</sup> of 31 metropolitan LGAs in terms of EGM density per 1000 adults. Similarly, the VCGLR Report notes that the City of Melton has a gaming venue density of 16,535 adults per gaming venue, which is 30.9% higher than the metropolitan LGA average of 12,630 and 58.4% higher than the State average of 10,439. This places the City of Melton as the 7<sup>th</sup> of 31 metropolitan LGAs in terms of gaming venue density, indicating there are fewer gaming venues per 1000 adults within the City of Melton than many metropolitan LGAs.
36. Also as stated in the VCGLR Report, in the 2018-19 financial year, the City of Melton had an average gaming expenditure of \$598 per adult (based on the 2018 population estimate), which is 10.5% more than the metropolitan LGA average of \$542 and 13.4% more than the State average of \$528. Applying the Applicant's estimate of the increased gaming expenditure arising from the operation of 60 EGMs in the first year of operation would result in an increase in average gaming expenditure per adult of 1.2% in the LGA.<sup>23</sup>

<sup>18</sup> Ratio Report, p.10, citing ABS Census 2016 data.

<sup>19</sup> Ibid, citing Victoria In Future 2016 figures.

<sup>20</sup> Ratio Report, p.32, Figure 7.4.

<sup>21</sup> Attached entitlements are gaming machine entitlements attached to an approved venue by the venue operator owning the entitlements, and indicates the number of gaming machines actually operating.

<sup>22</sup> See the Ministerial Order under ss 3.2.4 and 3.4A.5(3A) of the GR Act, Victorian Government Gazette, No. S 318 Wednesday 20 September 2017, p.5.

<sup>23</sup> This figure is based on current expenditure figures, and does not factor in the fact that the operation of EGMs at the Premises is not expected until 2022 and any population increase within the City of Melton during that period.

### *Location*

37. The Premises will be situated on the eastern side of McKinley Drive, approximately 200 metres south of its intersection with Grand Boulevard in Truganina. The site, along with much of the surrounding area, is currently vacant land, with some limited infrastructure works under construction.
38. The suburb of Mt Atkinson sits adjacent to the Western Freeway in the south-eastern part of the City of Melton, and forms part of Melbourne's West Growth Corridor. According to the Mt Atkinson PSP, the Premises will be located within the business zone on the eastern edge of the new suburb, with the Mt Atkinson Town Centre to the north and a residential zone to the west. The Mt Atkinson Town Centre, to be developed by Westfield, will consist of a mix of higher density residential and entertainment uses, and contain the core retail sector that will service the future residential community of the suburb. Ms Peterson noted that Stage 1 of the town centre is due for completion in 2021, with the remainder due for completion in 2023.<sup>24</sup>

### *Details of the Proposed Premises*

39. The Premises is proposed to include the main hotel complex, a four-storey residential hotel and car parking for 512 cars. Within the main complex, the Premises will consist of:
- (a) a bistro (180 seats) with al-fresco terrace (100 seats);
  - (b) a café/lounge area (200 seats) with outdoor terrace (60 seats);
  - (c) a sports bar (150 patrons) with an external terrace (60 patrons);
  - (d) a children's play area, with both indoor and outdoor aspects;
  - (e) three function rooms with a combined capacity of 400 people;
  - (f) four meeting rooms with a combined capacity of 80 people;
  - (g) a gaming lounge with 60 EGMs; and
  - (h) back of house facilities.
40. The residential hotel, connected with the main complex at the southern end, is to contain a reception area, 66 hotel rooms, gym and lap pool facilities and back of house facilities. The Applicant proposes to integrate the residential hotel with the main complex by having the check-in for the hotel within the complex's main atrium and the bistro providing the food and drinks for

hotel guests (including breakfast being served in the bistro).

#### *Catchment area of the Premises*

41. The ‘*no net detriment*’ test refers to ‘the community of the municipal district in which the approved venue is located’. In determining the impact of an application of this nature on a municipal district, previous Commission and VCAT decisions have had particular regard to the area serviced by the relevant premises, which is generally referred to as the ‘catchment area’.<sup>25</sup> The determination of the likely catchment area in this instance is important in the Commission’s consideration of the identity of those residents who will be most affected by the Application in terms of gambling-related benefits and harms.
42. Ms Peterson analysed that the suburb of Mt Atkinson, once fully established, would likely form the primary catchment of the Premises.<sup>26</sup> Ms Peterson further noted that it is generally estimated that 70-80% of patrons would come from a 5 km radius, which was consistent with the Melton Planning Scheme and Council’s Gambling Harm Prevention and Reduction Policy. The suburbs falling within this 5km radius are Truganina, Ravenhall, Mount Cottrell, Rockbank, Plumpton, Caroline Springs and Burnside. In addition, Ms Peterson identified areas within 5km that would also form part of the secondary catchment once future development had occurred, such as Deanside to the north, Aintree to the northwest, and Fieldstone to the west. As such, Ms Peterson considered the secondary catchment of the Premises would consist of those current and future suburbs within 5km of the Premises.
43. Having regard to the above material, the Commission agrees with the analysis of Ms Peterson in the Ratio Report and considers the appropriate catchment area of the Premises consisting of the primary catchment of Mt Atkinson, and the secondary catchment out to 5km comprising the current suburbs of Truganina, Ravenhall, Mount Cottrell, Rockbank, Plumpton, Caroline Springs and Burnside, in addition to the future suburbs of Deanside, Aintree and Fieldstone.

#### ***Reasons for Decision***

44. Pursuant to section 3.3.7, there are three elements that the Commission must be satisfied of before it can grant the Application:

#### **AUTHORITY TO MAKE APPLICATION**

45. The first element in relation to which the Commission is required to be satisfied is that the

<sup>24</sup> Ratio Report, p. 12.

<sup>25</sup> See for example, *Romsey #2* [2009] VCAT 2275; *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 (7 April 2011).

<sup>26</sup> Ratio Report, p.29.

Applicant has authority to make the Application in respect of the Premises.

46. In the Application Form, the Applicant noted that it was not the owner of the land on which the Premises is proposed to be located. However, the Applicant provided evidence of the owners' authority for the Applicant to make the Application (referred to at paragraph 22(i) above).
47. Based on the evidence above, the Commission is satisfied that this first element has been met.

#### SUITABILITY OF PREMISES FOR THE MANAGEMENT AND OPERATION OF GAMING MACHINES

48. The second element in relation to which the Commission is required to be satisfied is that the Premises are, or on the completion of building works will be, suitable for the management and operation of gaming machines. In particular, the Commission must consider whether the size, layout and facilities of the Premises are, or will be suitable.<sup>27</sup>
49. The Commission was provided with a Pre-Hearing Size, Layout and Facilities report prepared by staff at the Commission. This report was prepared based on the plans provided by the Applicant referred to in paragraph 22(g) above in relation to the Premises and the gaming machine area (**GMA**) and the statement of Mr Ponti. According to the Pre-Hearing Size, Layout and Facilities report, new venues are assessed by Commission Licence Management and Audit Inspectors against standards and guidelines in relation to the size, location and layout of the GMA, type and height of perimeter barriers, floor numbering and layout of gaming machines, windows, proximity of the GMA to other facilities within the venue (e.g. children's play areas) and any liquor or statutory authority conditions imposed. Based on the plans submitted, and subject to any planning issues, the report concluded that the size, layout and facilities of the Premises would be suitable for gaming.
50. During the hearing, the Commission heard evidence from Ms Peterson, Mr Gauci, Mr Ponti and Mr Barrett in relation to the suitability of the Premises for the management and operation of EGMs. Specifically, Mr Barrett considered that the draft plans for the gaming room indicated the Premises would be suitable for gaming as:
- (a) the gaming room would be discrete from other parts of the venue and EGMs would not be visible from outside the venue or any other area of the Premises;
  - (b) there was good separation between the children's play area and the gaming room; and
  - (c) the proposed layout allowed for significant surveillance of patrons and entrances to the

gaming room by staff at the Premises.

51. Based on the evidence above, the Commission is satisfied as to the matters set out in the children's play area Ministerial Guidelines and the permanent residential Ministerial Guidelines and that this second element has been met.

#### 'NO NET DETRIMENT' TEST

52. The third element in relation to which the Commission is required to be satisfied is that 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 One) is the Commission's assessment of the economic benefits and disbenefits and social benefits and disbenefits associated with this Application, including the weighting given to each of these impacts.

#### Economic Impacts

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

#### Gaming expenditure not associated with problem gambling

54. As the economic category of gaming expenditure not associated with problem gambling includes consumption, then to the extent that such expenditure is not associated with problem gambling, it has been recognised (by, for example, the Productivity Commission in its 1999 report) that it can be treated as an economic positive.<sup>28</sup> As Bell J further notes, this approach also brings to account the benefit obtained from pure consumption by the lone gambler who does not use machines for social reasons.<sup>29</sup>

#### *Expenditure estimates*

55. In the ShineWing Report, Mr Stillwell gave evidence that, adopting a benchmarking approach, he would anticipate the 60 EGMs at the Premises in the first 12 months of operation to earn

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<sup>27</sup> Section 3.3.7(2) of the GR Act.

<sup>28</sup> See *Romsey #2* [2009] VCAT 2275 at [351] per Bell J.

<sup>29</sup> See *Romsey #2* [2009] VCAT 2275 at [351]. Bell J notes further at [352] that the other approach is to say, as did Morris J in *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [79] that gaming extends 'substantial economic and social benefits' to gaming machine users, which treats consumption as a benefit without saying whether it is economic or social. While Bell J states both approaches are correct, for the purposes of this Application this benefit is treated as an economic benefit.





approximately between \$5,124,600 and \$5,650,200 (estimated to commence from 16 August 2022).

56. Mr Stillwell also estimated that the level of gross gaming expenditure generated at the Premises after an initial four year 'ramp up' period would be between \$8,541,000 and \$9,417,000 per annum.
57. In terms of transferred expenditure, Mr Stillwell estimated that 50% to 60% of gross gaming expenditure over the first five years of operation would be transferred expenditure. The ShineWing Report noted that empirical evidence of greenfield venues with approximately three gaming venues within proximity suggested a transfer rate of up to 50%. Mr Stillwell noted the competitive environment within proximity of the Premises (10 venues within a 10km radius) to support a notional transfer rate of 50% to 60%. He predicted that the level of transferred expenditure would vary over the first five years of operation, starting at between 57-59% in the first two years of operation before decreasing and stabilising at an effective transfer rate of 50%.<sup>30</sup>
58. At the request of the Commission, the Applicant provided written submissions on the issue of transferred expenditure. Specifically, the Applicant submitted that transferred expenditure must be calculated by taking into account the likely decline in the amount of expenditure at an existing venue from the previous year, in addition to the estimate of any increase that might have otherwise been expected to occur at that venue but for the new approval. Explaining this further, Counsel for the Applicant stated that if a gaming venue expects to grow its expenditure by 5%, but instead records a reduction of 5% from the previous year, then the true level of transferred expenditure is 10%.
59. Based on the above figures, Mr Stillwell gave evidence that he estimated the level of new expenditure in the first 12 months of operation of approximately \$2,308,011, and rising to approximately \$4,489,500 by the fifth year of operation.

#### *The Commission's view*

60. For the purposes of the '*no net detriment*' test, the Commission has considered the impact on the community of the municipal district in which the Premises are located. Although Mr Stillwell did not provide a detailed analysis of the source of the transferred expenditure, the Commission notes that of the 10 venues identified within 10km of the Premises, three are located within the City of Melton, six are located within the City of Brimbank and one is located within the City of Wyndham. Mr Stillwell accepted that expenditure could be transferred from outside the City of

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<sup>30</sup> ShineWing Report, p. 17.

Melton, further increasing the amount of expenditure in that LGA, but that this would be offset by the decreased expenditure in the City of Brimbank and the City of Wyndham.

61. In all the circumstances and with reference to the catchment area of the Premises, the Commission accepts the evidence of Mr Stillwell in relation to anticipated gaming expenditure as outlined in paragraphs 55 to 59 above, and finds that:
- (a) it is likely the Premises in the first year of its operation (not before 16 August 2022) will earn expenditure in the amount of between \$5,124,600 and \$5,650,200;
  - (b) in subsequent years, expenditure at the Premises will likely rise to between \$8,541,000 and \$9,417,000 within five years of operation; and
  - (c) transferred expenditure will be higher for the first years of operation of the Premises, commencing at 57% in the first year of operation before decreasing to and stabilising at 50% after five years.
62. In assessing the extent of the benefit of gaming expenditure not associated with problem gambling, the Commission has had regard to the evidence outlined in paragraphs 94 to 119 below with respect to the incidence of problem gambling. The Commission finds that the portion of new expenditure not attributable to problem gambling is an economic benefit. Various factors suggest that the extent of problem gambling at the Premises is likely to be relatively low, including that the gaming room is of a medium size, the venue is located on the edge of the proposed activity centre of Mt Atkinson, and designed with an intent to promote responsible gambling. Generally, and noting the caution expressed below at paragraph 116 in relation to the uncertainty as to the socio-economic profile of Mt Atkinson once established, the Commission considers that the Premises is located in an area of lower relative socio-economic disadvantage (albeit with some financial vulnerability), and one that is anticipated to experience significant and ongoing population growth.
63. Finally, the anticipated extent of the new expenditure at the Premises is expected to be low to moderate due to the determined transfer rate. As such, the Commission gives the benefit of gaming expenditure not associated with problem gambling marginal weight.

*Expenditure on capital works*

64. A potential key economic benefit associated with this Application is that arising from the expenditure on the proposed development of the Premises.
65. Ms Peterson noted that it was expected the development would cost \$26.75 million, on the basis of a \$25 million build cost and \$1.75 million fit-out. The Commission refers to the evidence

of Mr Ponti, which provided a range of plans of the proposed development and virtual 3D modelling of the Premises. However, Ms Peterson weighed this as negligible benefit as there was no certainty that the builder would be a locally based business or the extent that local contractors would be employed.

66. Mr Gauci noted that the Applicant had not yet selected a builder for the project, but anticipated employing John Gray, whom he has used on previous projects. While noting that Mr Gray's building company is not located within the City of Melton, Mr Gauci gave evidence that Mr Gray would be likely to use some local contractors where capacity required.<sup>31</sup>
67. Mr Gauci also gave evidence that the proposed development was dependent on the success of this Application, and stated that the Applicant was unlikely to proceed with any development at the proposed site without the grant of the Application.<sup>32</sup>

*The Commission's view*

68. The Commission accepts Mr Gauci's evidence that the development would not occur without the approval of this Application. Further, the Commission is mindful of VCAT's decision in *Monash CC v L'Unico Pty Ltd*,<sup>33</sup> where it held (albeit in relation to an EGM increase application) that it is not appropriate under the relevant statutory framework to either engage in a 'project feasibility' or 'existing financial capacity' assessment, but rather (with two provisos<sup>34</sup>) that it is appropriate to simply take the proposal for what it is and then assess its likely social and economic impacts as per the '*no net detriment*' test. Here, the Commission considers that neither of those two provisos are enlivened, and it has a sufficient degree of confidence that the development of the Premises (at least in the manner presented to the Commission) would not proceed if this Application were not to be successful.
69. The Commission regards the expenditure of capital works to be a benefit. Here, the Commission accepts that construction of the Premises will cost approximately \$26.75 million (including fit-out costs). In weighing the benefit, while \$26.75 million is a significant expenditure associated with the construction and fit-out, the Commission refers to the evidence of Mr Gauci of the Applicant's intention to employ a builder based outside the City of Melton, hence a large

<sup>31</sup> Statement of Mr Gauci, para 40; Transcript of the Hearing, 6 March 2020, p-134.

<sup>32</sup> Transcript of the Hearing, 6 March 2020, p-126.

<sup>33</sup> [2013] VCAT 1545.

<sup>34</sup> The first proviso was that common sense suggests that there needs to be a reasonable degree of corroborating information, to at least provide comfort that the "estimated project value" of the proposed works is more than just an ambit or "back of the envelope" calculation. As such, less weight should be given to purported proposed works where there is a concern about the bona fides of the "project value" figure being relied upon. The second proviso was that it seemed appropriate to recognise that the proposed works may in practice be easier to achieve financially if the Application were approved.

proportion (if not all) of the cost will not directly benefit the community of the City of Melton. As such, the Commission accords this benefit a marginal weight.

70. In making this assessment, the Commission notes it is important that the benefits associated with the development are not double counted, having regard to the social impact that may result from the proposed facilities and services at the Premises. This aspect has been considered separately, and is detailed below at paragraphs 126 to 131.

#### Employment creation

71. The economic benefit of employment creation arising from this Application can be described as both short term and longer term:
- (a) short term employment benefits that arise during the development of the Premises (related to but separate to the economic benefit associated with the expenditure on capital works); and
  - (b) longer term employment benefits arising from the introduction of EGMs and increased patronage of facilities at the Premises.
72. In relation to short term employment benefits, the extent of the works are described generally in paragraphs 64 to 70 above. As noted above, it is not clear to what extent this work will be undertaken by individuals who live in the relevant municipality.
73. Based on the evidence presented, the Commission concludes that it should not place any weight on this economic benefit. To the extent that it arises in relation to this Application, the Commission considers that the value of this benefit has been captured in the benefit associated with the expenditure on capital works considered in paragraphs 64 to 70 above.
74. Separate from the short term economic benefits associated with the capital works is the potential benefit associated with longer term employment arising from the Application.
75. In relation to this benefit, Ms Peterson gave evidence that 57 equivalent full-time employee (EFT) positions would be created, which includes 7 EFT positions in the gaming room. Based on her work with other venues within the City of Melton and more generally, Ms Peterson was of the view that a majority of the 57 EFT positions (estimated at 70-80%) would reside within the City of Melton. Under cross-examination and with reference to the anticipated level of transferred expenditure, Ms Peterson accepted that some of the employment opportunities could be transferred from other venues, however expected this to be minimal despite the

anticipated level of transferred EGM expenditure.<sup>35</sup> In his statement, Mr Gauci stated that he expected approximately 80% of staff would reside in the City of Melton, however noted that “some management and staff will come across from West Waters”.<sup>36</sup>

76. The Commission is of the view that granting the Application will generate employment at the Premises, and this is a positive benefit. The Commission accepts the evidence given on behalf of the Applicant that if the Application is granted, this will result in the creation of the equivalent of 57 EFT positions at the Premises, which include 7 EFT positions within the gaming room. The Commission also accepts the view of Ms Peterson and Mr Gauci that the majority of the employees will be sourced from the municipality and, due to the population growth in the municipality, will be net new additional employees. However, the Commission finds that some element of employment will likely be transferred from within the municipality (i.e. from competitive gaming and hospitality venues).
77. Overall, the Commission considers the additional employment arising from the Application as positive, and has taken into account the anticipated numbers of employees, the potential for employees to be sourced from outside the LGA, and the potential for some transfer of local employment. As such, the Commission gives this benefit marginal to low weight.

#### Complementary expenditure

78. Complementary expenditure is the increased economic activity in the LGA, apart from gaming expenditure, that may arise if the Application is granted. However, the extent of this benefit will likely depend upon a range of factors, including the extent to which the expenditure is a consequence of new spending, for example, as a result of additional people coming to the municipal district as tourists or for business as compared to transferred complementary expenditure from other venues within the municipality, and the extent to which that complementary expenditure results in additional spending on local goods and services.
79. In the Application Form, the Applicant estimates complementary expenditure in the amount of \$7.3 million over the first 12 months of operation. This includes \$2.6 million for food sales (\$50,000 per week), \$2 million for beverage sales (\$40,000 per week), \$416,000 for functions (\$8,000 per week) and \$2.3 million derived from the residential hotel (based on a 50% occupancy rate).
80. Ms Peterson accepted the Applicant’s estimate as reasonable, and also noted that an economic benefit generated by the Application would be the economic stimulus through the provision of

<sup>35</sup> Transcript of Hearing; 6 March 2020; p. 100.

the residential hotel, which would increase the offer and demand for functions and conferences. This would consequently encourage additional business into the municipality.<sup>37</sup>

81. The Commission notes the Applicant's estimate of \$7.3 million for complementary expenditure in the first 12 months of operation, however considers there is some uncertainty whether these will be actually realised given the broad assumptions made by the Applicant in their calculation. Further, the Commission considers that a proportion of the food and beverage sales are likely to be transferred from venues within the City of Melton. Despite this, the Commission accepts that there will be a significant new complementary expenditure, especially in relation to the residential hotel. In the Commission's view, there will be new complementary expenditure at the Premises and potentially in other parts of the City of Melton, which is a positive economic benefit. However, there is a level of uncertainty as to the extent to which this would generate increased economic activity in the municipality.
82. For these reasons, the Commission accords the complementary expenditure associated with the Application marginal weight and is careful not to place any weight on this impact in relation to the '*no net detriment*' test that has already been accorded to the below consideration of the impact associated with supply contracts.

### Supply contracts

83. The Applicant considers that the approval of the Application will result in contracts for food and beverage suppliers, various gaming and non-gaming service providers (e.g. cleaners, security, rubbish removals) and other contracts/utilities for the Premises, all of which are separate to the anticipated gaming revenue to be generated through operation of EGMs.
84. In the Application Form, the Applicant identifies each of proposed supply contractors and estimates supply contracts in the amount of \$3.4 million over the first 12 months of operation. This includes \$1.37 million for food suppliers, approximately \$850,000 for beverage suppliers, \$762,600 for services contracts and \$412,000 for other contracts and utilities.
85. While the value of the estimated supply contracts is not insubstantial, the Commission has considered the list of proposed contractors and finds that many of the proposed suppliers are not located within the City of Melton. By way of example, over half of the \$850,000 proposed beverage supply contracts is linked with Carlton & United Breweries, and the majority food supplier (Del-Re National Food Group) is located in nearby Derrimut within the City of Brimbank.

<sup>36</sup> Statement of Mr Gauci, paras 44 and 42.

<sup>37</sup> Ratio Report, p 57, Figure 12.2.



86. Overall, the Commission accepts the Applicant's evidence that there will be supply contracts in the amount of approximately \$3.4 million but is of the view that a significant proportion of those contracts will be with entities outside the municipality in which the Premises are located. As such, the Commission considers that the supply contracts at the Premises will result in a negligible economic benefit to the City of Melton, and gives it nil to marginal weight.

#### Community contributions

87. In determining the net economic and social impact of applications of this nature, both the Commission<sup>38</sup> and VCAT<sup>39</sup> have regularly treated community contributions as a positive benefit. However, for the proposed contribution of \$90,000 annually (indexed to the Consumer Price Index (**CPI**)) as long as EGMs are in operation at the Premises is to be regarded as a benefit associated with the Application, it is necessary that they are properly regarded as community contributions and that they will result as a consequence of the Application. In assessing the weight to be placed on such a benefit, it is important that the Commission does not conflate this benefit with the social benefit associated with such contributions.
88. Having regard to the evidence and submissions made with respect to the community contributions that are set out in paragraphs 135 to 140 below, such contributions can also have a positive economic impact. The Commission considers the community contributions (distributed in accordance with conditions of any approval of this Application) and their impact on local community organisations in the City of Melton to be an economic benefit which is given marginal weight.

#### Increased gaming competition in the City of Melton

89. Increasing competition in gaming in the City of Melton is a factor in light of the statutory purposes of Chapter 3 of the GR Act<sup>40</sup> and the consumer benefits that derive from competition.
90. In the Ratio Report, Ms Peterson noted the economic benefit of increased competition and indicated that this benefit "carried some weight because competition is a relevant statutory purpose, especially given the mature Melton market".<sup>41</sup>
91. The Commission also notes the evidence of Mr Stillwell and the Commission's view in relation to anticipated transferred expenditure at paragraphs 57 to 61 above, an outcome of increased competition between venues for gaming expenditure.

<sup>38</sup> See, for example, *Richmond Football Club Ltd at Wantirna Club premises* [2015] VCGLR 31 (24 July 2015).

<sup>39</sup> See, for example, *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

<sup>40</sup> GR Act, section 3.1.1(2).

92. On the basis of an estimated adult population in the City of Melton of 115,742 for 2018, the Commission considers that this Application would (if approved):
- (a) increase the number of approved venues within the municipality by one;
  - (b) increase the overall number of EGMs within the municipality by 60 from 523 to 583;
  - (c) increase the EGM density of the municipality in which the Premises are situated from 4.5 EGMs per 1,000 people to 5.0 EGMs per 1,000 people (compared with the metropolitan average of 4.8 EGMs per 1,000 people and State average of 5.1 EGMs per 1,000 people).
93. Consequently, the Commission finds that granting approval of the Application will increase gaming competition in the City of Melton by providing an additional venue in a high population growth area at which patrons may choose to play EGMs. Additionally, the Commission considers that the Premises will be of a high quality with a range of non-gaming service options and, with reference to the accepted transferred expenditure estimate, likely to attract patrons within the catchment area and beyond. Having regard to the number of EGMs intended to operate at the Premises, the current number of EGMs and the number and location of other gaming venues in the City of Melton (and more particularly in the catchment area of the Premises), the Commission considers the impact of increased competition to be an economic benefit to which it gives marginal weight.

*Gambling expenditure associated with problem gambling*

94. To the extent that a portion of new expenditure is attributable to problem gambling, this represents an economic disbenefit.<sup>42</sup> In assessing the extent of this disbenefit, the Commission recognises that it does not include transferred expenditure because such expenditure cannot exacerbate problem gambling.<sup>43</sup> Also in assessing this impact (and other impacts involving problem gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gambling undertaken by individuals within a number of problem gambling severity index (**PGSI**) risk categories: 'problem

<sup>41</sup> Ratio Report, p. 56, Figure 12.2.

<sup>42</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 Ltd v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted: see, for example: *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [178] and following per Dwyer DP. For completeness the Commission considers both the economic and social impacts of problem gambling in its assessment of this Application.

<sup>43</sup> See *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [113] per Code PM and Nelthorpe M; *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J.



gamblers', 'moderate-risk' gamblers and 'low-risk' gamblers, as well as across the community more broadly.

95. Also in assessing the extent of the economic disbenefit of gambling expenditure associated with problem gambling, the Commission has had regard to the expenditure evidence set out in paragraphs 55 to 62 above and its views on the anticipated expenditure and transferred expenditure, summarised at paragraph 61 above.

*The vulnerability of the City of Melton and the catchment area*

96. 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 in the area surrounding the Premises. This is because communities characterised by socio-economic disadvantage are regarded as more vulnerable to problem gambling and the negative impacts of gambling.
97. In the Ratio Report and in her evidence at the Hearing, Ms Peterson notes the socio-economic characteristics of the primary and secondary catchment area and the LGA include that:
- (a) based on 2016 Census data, the catchment area currently exhibits a mixed level of socio-economic disadvantage, evidenced by:
    - (i) SEIFA rankings indicating high disadvantage in underdeveloped areas of Ravenhall (1<sup>st</sup> decile), Rockbank (1<sup>st</sup> decile), Mount Cottrell (2<sup>nd</sup> decile) as well as the established Burnside (3<sup>rd</sup> decile), compared with areas of less disadvantage in more developed suburbs of Truganina (6<sup>th</sup> decile), Caroline Springs (7<sup>th</sup> decile) and Plumpton (9<sup>th</sup> decile);
    - (ii) generally higher levels of housing stress, noting this is not unusually in growth areas with a higher proportion of first-home buyers and upgraders;
    - (iii) unemployment rate for the City of Melton of 6.7%, being higher than the Victorian and metropolitan Melbourne averages of 4.6% and 4.7% respectively;
  - (b) in relation to the future profile of the primary catchment area of Mt Atkinson:
    - (i) population is estimated to increase from 2,135 in 2021 to 12,545 in 2026;
    - (ii) EGM density will decrease to below Victorian and metropolitan Melbourne averages within 5 years of the Premises opening; and



Victorian Commission for  
Gambling and Liquor Regulation

- (iii) a high proportion of prospective residents will be first home buyers (32.7%) or subsequent upgraders (37.6%), with a further 25.9% investor purchasers;
- (c) with reference to nearby suburbs that have experienced rapid population growth (Plumpton, Truganina and Caroline Springs), there is likely to be a fluctuation in the socio-economic profile of Mt Atkinson in the short to medium term but with few signs of significant disadvantage, with:
  - (i) SEIFA scores likely to significantly rise before stabilising over time as the suburb becomes more established;
  - (ii) rates of median household income increasing to above average levels as the population grows, with median monthly mortgage repayments generally remaining above the metropolitan average; and
  - (iii) rates of housing stress being initially high (which is not uncommon for greenfield suburbs) and reducing over time, as has been the experience with Caroline Springs;
- (d) while total EGM expenditure in the City of Melton has increased by 19.9% over the period 2011 to 2019, the adult population has increased by 38.4% (from 85,361 to 118,128) and resulted in a decrease in EGM expenditure per adult by 13.3% (from 662.15 to \$573.80) over the same period;
- (e) the VRGF recorded a prevalence in the Northern and Western Metropolitan region (within which the City of Melton sits) of 0.46% of surveyed adults being problem gamblers, lower than the State average of 0.81%.<sup>44</sup> However, it is noted that there are limitations in this data given that the Northern and Western Metropolitan region includes 13 LGAs of varying demographic profiles;
- (f) information from Banyule Community Health (the provider of Gambler's Help services in the City of Melton) indicated that in 2018-19, there were 58 unique clients who presented for financial counselling and 134 unique clients who presented for therapeutic counselling, with 90.2% of clients receiving support within five business days of being referred to a Gamblers Help service;<sup>45</sup> and
- (g) while the Productivity Commission Report estimated in the order of 40% of expenditure results from problem gambling, seeking to attribute 40% of increased gaming expenditure

<sup>44</sup> Ratio Report, p.46 [9.2.4], citing Hare, S. (2015) Study of Gambling and Health in Victoria, Victoria, Australia: Victorian Responsible Gambling Foundation and Victorian Department of Justice and Regulation.

from problem gambling is a rudimentary approach, not accurate or useful for determining the impact of granting the Application. However, it is reasonable to assume that there is a risk of an increase in problem gambling as a consequence of introducing a new venue.<sup>46</sup>

98. At the Hearing, Ms Peterson also considered that the other underdeveloped suburbs within the secondary catchment area (including Rockbank, Ravenhall and Mount Cottrell) would likely become established and reflect a similar level of growth and socio-economic development as her analysis of Mt Atkinson (as outlined above).
99. The Commission notes that Ms Peterson's definition of housing stress relates to all households where mortgage repayments exceed 30% of household income. In comparison, the VCGLR Report focuses its analysis on those households within the lowest two equivalised household income quintiles paying more than 30% of household income. While Ms Peterson's analysis indicates that the secondary patron catchment generally experiences higher levels of housing stress than the metropolitan Melbourne average, the Commission's analysis indicates that the City of Melton exhibits housing stress lower than the metropolitan and State averages. While preferring its own analysis in this regard, the Commission finds that there are pockets of above average housing stress within the more established suburbs of Caroline Springs and Burnside that sit within the secondary catchment of the Premises.
100. Further, the Commission notes that although the EGM expenditure per adult has continued to decrease in the City of Melton since 2011, this level remains above the metropolitan Melbourne and State averages and is an ongoing indicator of an above average risk to problem gambling within the City of Melton.
101. Overall, the Commission accepts the view of Ms Peterson, and supported by the proposed infrastructure planning outlined in the Mt Atkinson PSP, that the future profile of Mt Atkinson will be similar to that of the nearby greenfield suburbs of Plumpton, Truganina and Caroline Springs with a growing community of above average median weekly incomes and relatively few indicators of significant disadvantage. However, the Commission finds that, consistent with that view, the community of Mt Atkinson will likely exhibit a higher level of mortgage stress and as such some financial vulnerability to the risk associated with problem gambling. Further, the Commission finds that the socio-economic profile of the secondary catchment area exhibits a mixed level of socio-economic advantage which is likely to improve with further residential developments. However, the Commission again considers that such development is likely to

<sup>45</sup> Ratio Report, p.47 [9.3.4]-[9.3.6]. Ms Peterson noted the limitations of this data as it did not capture those clients using phone or online help services, nor those that did not provide a residential address.

<sup>46</sup> Ratio Report, p.46 [9.1.4]- [9.1.6].

come with a fluctuation in the socio-economic profile, and exhibit above average levels of housing stress and associated financial vulnerability in the short to medium term.

*The convenience of the Premises*

102. In the Ratio Report, Ms Peterson stated that the subject site for the Premises is located away from the core of the proposed town centre (approximately 400m to the northwest of the subject site), but still within a business precinct in accordance with the Mt Atkinson PSP. She outlined that the Premises would be adjacent to the future business park, which was not expected to contain uses associated with day to day convenience activities. She concluded that the Premises would be accessible, but not convenient, and would be a destination venue in its own right.<sup>47</sup>
103. In its Closing Submissions, Counsel for the Applicant submitted that the location of the Premises had been “carefully planned so as to be in the best possible location to service the new community”. He noted that its location – on the edge of the planned town centre, accessible but not convenient to those persons visiting the core retail area – represented what the VCAT had termed a “Goldilocks location” as it was “just right”.<sup>48</sup>
104. The Commission accepts the evidence of Ms Peterson and considers that the Premises will be a destination venue, which has had the benefit of being planned at the early stages of the suburb’s development and incorporated into the Mt Atkinson PSP. To the extent relevant, the Commission is also satisfied that the location of the Premises appears consistent with the Melton Planning Scheme, although notes that there remains some uncertainty as to the other businesses which may occupy within the business park and accepts that the proximity of these businesses could increase or decrease the risk of problem gambling.

*Proposed Responsible Service of Gambling measures*

105. In considering the extent to which any new expenditure may give rise to problem gambling, the manner in which gaming is to be conducted at the Premises is also a relevant factor.
106. Ms Peterson noted that the potential for some increase in problem gambling behaviour, and therefore expenditure, was mitigated to some degree by the Applicant’s commitment to responsible gambling ‘best practice’ including:
- (a) the Premises being accessible but not convenient (as discussed above);
  - (b) protective factors at the venue, such as the range and availability of other entertainment options offered at the Premises while the gaming room was open, passive surveillance of

<sup>47</sup> Ratio Report, p.21, Figure 5.1.

the entries into the gaming room, no access to the gaming room from the carpark (meaning patrons have to make a deliberate decision to enter the gaming room), visual and audible screening of EGMs from non-gaming areas of the Premises, and the modest size of the gaming room compared to the total floor plan of the Premises;

- (c) the closure of the gaming room at 2 am, in line with the Productivity Commission's recommendations and the endorsed position of Council through Amendment C182 to the Melton Planning Scheme;<sup>49</sup>
- (d) the engagement of Mr Barrett, a responsible gambling consultant, who has established a best practice in-house gaming policy and helped designed the Hotel in accordance with best practice principles;<sup>50</sup> and
- (e) experience of two of the directors of the Applicant, particularly through active involvement in their management company Seachange, with excellent knowledge of the responsible service of gambling. Mr Gauci gave evidence that he and his brother have been involved in the hospitality industry in Victoria since 1994, including owning and operating a number of gaming venues for more than 20 years.

107. Under cross-examination, Ms Peterson acknowledged that one protection factor that the Premises did not incorporate was that smoking lounges should not be directly accessible from the gaming room. However, Ms Peterson noted that this was an acceptable, albeit not optimal, outcome and one that she considered would be more critical if the Premises was located in an area of greater disadvantage, where the correlation between smoking and problem gambling is much higher.<sup>51</sup> At the Hearing, Counsel for the Applicant submitted that the inclusion of the smoking lounge was a "compromise", given that it provided a benefit to the recreational gamblers and only posed a "small" risk to problem gamblers.<sup>52</sup>

108. Further, the Commission referred to the inconsistency between Amendment C182 and the Council's Gambling Harm Prevention and Reduction Policy adopted in November 2019, which recommended an eight-hour shut down of gaming room, either between 1am-9am or 3am-9am AND 3pm-5pm daily. Ms Peterson indicated that the Amendment C182 ought be given preference given the rigorous process that it had been subject to. Ms Peterson also noted that

<sup>48</sup> Closing Submissions, para 2.5; referring to the VCAT decision of *DSL Securities v Cardinia SC* [2011] VCAT 1842.

<sup>49</sup> Ratio Report, p.50.

<sup>50</sup> Ratio Report, p.52.

<sup>51</sup> Transcript of the Hearing, 6 March 2020, p-92.

<sup>52</sup> Transcript of the Hearing, 6 March 2020, p-188.

the Application otherwise had a high degree of compliance with the Gambling Harm Prevention and Reduction Policy.<sup>53</sup>

109. Ms Peterson therefore concluded that granting the Application was unlikely to increase the risk of problem gambling to the local community more than any other reasonably designed and located gaming venue.<sup>54</sup>
110. Mr Barrett gave evidence that he had been engaged by the Applicant to provide a range of regulatory compliance services in relation to the Application and the operation of the Premises, which he had also provided to the Gaucis in relation to a number of other gaming venues operated and/or managed by them. This included staff training sessions (both online and face-to-face), routine audit activities and annual reviews of RSG and associated policy documents. As part of this Application, Mr Barrett had also developed a draft Responsible Gambling Policies and Procedures Manual for the Premises, a copy of which was provided to the Commission.<sup>55</sup>
111. Mr Barrett also stated that he had assessed the Premises' plans and made recommendations regarding the layout and operation of the Premises from an RSG perspective. This included that all employees at the Premises should hold a current RSG certificate, rostering a minimum of three staff within the gaming room at all times, and locating a CCTV monitor at the cashier's station and the sports bar lounge. Mr Barrett stated that each of these recommendations has been accepted by the Applicant.<sup>56</sup>
112. Mr Barrett detailed protective factors influencing whether a venue would be likely to attract and therefore increase problem gambling in the LGA. Those factors included staff numbers, the level of interaction between staff and customers, comprehensive staff training and procedures, the size, layout and number of EGMs in the gaming room, the hours of operation of the gaming room and the availability and promotion of the Premises' broad entertainment offer. Based on these factors, Mr Barrett concluded that approval of the Application would also have a negligible effect on problem gambling prevalence in the City of Melton.<sup>57</sup>
113. Relevant to how gaming is to be conducted at the Premises is the detail of the potential management of the Premises. As outlined above, the Gaucis have broad experience in operating and managing hospitality and gaming venues within Victoria. In his statement, Mr Gauci stated that he and his brother, both as directors and through their management company Seachange, are "hands on operators who spend time on the floor in our venues" to

<sup>53</sup> Ratio Report, p.26.

<sup>54</sup> Ratio Report, p.52, [10.1.2].

<sup>55</sup> Statement of Mr Barrett, Annexure 2.

<sup>56</sup> Statement of Mr Barrett, paras 18, 24 and 29.

directly interact with staff and patrons. They also believe “strongly in customer service and ... staff our venues more densely than many of our competitors”.<sup>58</sup> At the Hearing, Mr Gauci explained that he has weekly management meetings with his key staff, and RSG is a standing items at those meetings to assess any issues and ensure continual improvement in the gaming offerings at those venues.<sup>59</sup>

114. Mr Gauci also responded to the VCGLR Compliance Report with respect to the West Waters Hotel, noting there were no gambling-relating compliance concerns and only one minor issue relating to the delayed payment of liquor licence renewal fee for the 2018 year.

*The Commission’s view*

115. The Commission finds that this Application will result in a new venue being established with 60 EGMs, and that this will be associated with new expenditure of between approximately the amounts set out at paragraph 61 above. While the Commission finds that it is not appropriate to strictly apply the Productivity Commission’s 40% estimate of expenditure associated with problem gambling to the LGA level, it accepts that a proportion of expenditure will be associated with problem gambling.
116. The Commission refers to its findings in paragraph 101 and must form a view as to the likely effect on the community of the municipal district of the City of Melton post September 2022 were the Application to be granted. The Commission notes the dramatic increase in population for Mt Atkinson in particular, expected to grow, using figures Ms Peterson presented, from 2,135 in 2021 to 12,545 by 2026, a change of 487.6%.<sup>60</sup> The Commission considers that it should exercise some caution in accepting Ms Peterson’s analysis that Mt Atkinson will reflect the experiences of Plumpton, however is satisfied that Mt Atkinson, once established, is not likely to exhibit significant signs of disadvantage.
117. The Commission finds that population growth would result in a significant proportion of new home buyers and renters moving to the area, potentially raising the risk of increased housing stress and the vulnerability of the catchment area to the effects of problem gambling.
118. In relation to the design and management of the premises, the Commission is satisfied that responsible gambling and harm minimisation initiatives, and the protective factors discussed by Mr Barrett, will contribute towards mitigating the potential harm caused by problem gambling. Specifically, the Commission is satisfied that the Applicant (through the Gaucis) has significant

<sup>57</sup> Statement of Mr Barrett, pp.5-6, [34] & [36].

<sup>58</sup> Statement of Mr Gauci, p.4, paras [24]-[25].

<sup>59</sup> Transcript of the Hearing, 6 March 2020, p-122.

<sup>60</sup> Ratio Report, p.39.

experience as a gaming operator, and would likely employ the same robust RSG practices as evidenced at the West Waters Hotel. However, the Commission notes that the Applicant must fully implement and comply with the draft Responsible Gambling Policies and Procedures Manual prepared by Mr Barrett so that the risk to problem gambling is mitigated as far as reasonably practicable.

119. Consequently, the Commission finds that there will be an economic disbenefit associated with problem gambling as a result of this Application, on which it places marginal to low weight. Issues associated with the negative social impacts associated with problem gambling are considered further in paragraphs 141 to 143 below.

Potential diversion of trade from retail facilities

120. Ms Peterson formed the view that the potential diversion of trade from retail facilities was a disbenefit of the Application. She weighted the lower spending and potential job losses from non-gaming businesses as a low disbenefit, noting this impact was difficult to determine and could trigger innovation in other businesses, as the other businesses would have to compete and improve their offering to avoid their trade being cannibalised by the Premises.
121. In terms of the impact on local retailers in the municipality, the Commission accepts that such reduced trade could arise as a result of new gaming expenditure arising from this Application as well as a proportion of complementary expenditure diverted to the Premises. The Commission also accepts that any diversion of trade is likely to be spread across a number of retail facilities and is unlikely to materially impact any single retail facility. Further, the Commission considers that any impact in this regard is likely to lessen over time as the population within Mt Atkinson and its surrounds continues to experience high growth. As such, the Commission finds that there is an economic disbenefit associated with the diversion of trade from retail facilities within the City of Melton as a result of this Application, on which it places nil to marginal weight.

Potential diversion of trade from other gaming venues

122. Mr Stillwell gave evidence that the introduction of EGMs at the Premises would cause a diversion of trade, in the form of transferred expenditure, from other gaming venues both within and outside of the municipality. The Commission's view of which is summarised above at paragraph 61(c). Ms Peterson's opinion was that the lower spending at other venues in the LGA was a low disbenefit, given the competition objectives of the GR Act.
123. In relation to the potential diversion of trade from other gaming venues, the Commission refers to and relies on its findings at paragraphs 61(c) regarding the anticipated transferred



expenditure from other gaming venues, where the Commission essentially found that while transferred expenditure could be as high as 57-59% in the first two years of operation, this factor will decrease over time. As such, the Commission considers that there remains some impact on other venue operators and the diversion of trade will have a minor detrimental economic impact. Having regard to these factors, the Commission assigns marginal weight to this impact.

### Conclusion on economic impacts

124. After considering the economic benefits of the proposal against the detriments, the Commission considers that, on balance, the proposal is likely to have a small positive economic impact.

### Social Impacts

125. The materials before the Commission, together with the evidence adduced at the public hearing, detailed a range of social benefits and disbenefits associated with the Application.

### Development of a new venue in Truganina

126. Ancillary to the capital works expenditure that will occur if this Application is granted, the development will result in new facilities being available to the community. Access to such facilities is an outcome which the Commission<sup>61</sup> and VCAT<sup>62</sup> have regularly determined is a positive social impact associated with applications of this nature.

127. The nature of these facilities has been described in detail in paragraphs 39 to 40 above. Mr Gauci referred to the experience that he and his brother had in the development of greenfield hospitality venues (such as the West Waters Hotel) and gave evidence that the Applicant's desire was to create a "premium venue [with] quality as its primary attractor". He stated that a key part of the design brief to BSPN was the importance of "open air, natural light, outdoor spaces that create interesting and pleasant places for families and space for kids to play", and concluded that the Premises will be "a first class facility that the entire community can take ownership of and be proud of".<sup>63</sup>

128. Mr Ponti gave evidence that the Premises would be "one of the largest hospitality venues ever developed in Australia", and would become a "multi-purpose entertainment facility with a generous outdoor entertainment and landscaped terraced area which can be enjoyed by a wide proportion of the growing community in which it will service". Mr Ponti concluded that the

<sup>61</sup> See, for example, *Glenroy RSL Sub-branch Inc at Glenroy RSL premises* [2015] VCGLR 40 (22 October 2015).

<sup>62</sup> See, for example, *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

Premises would be “one of the most impressive entertainment and hospitality venues in western Melbourne region”.<sup>64</sup>

129. In the Ratio Report, Ms Peterson noted the “superior quality” of the finishes and fit out at the West Waters Hotel and gave evidence that the Premises would be of a “similar, if not higher, quality”.<sup>65</sup> In conclusion, she allocated moderate weight to the expansive entertainment outlet and range of services, including the provision of a residential hotel, to the fast growing population of Mt Atkinson.<sup>66</sup>
130. With regard to the overall growth and development of the Mt Atkinson suburb and the needs of that community for services, facilities and entertainment options, Counsel for the Applicant submitted that the Premises would be “a very substantial development of extensive, modern, high quality hospitality, business and entertainment facilities to meet those needs” and would “support the establishment and vitality of a new community in its critical stage of growth”.<sup>67</sup>
131. The Commission refers to its findings in paragraph 68 above that the development of the Premises will only proceed if this Application is approved, and it is therefore appropriate to consider the social benefits arising from the community’s access to and use of the new facilities as benefits of this Application. The Commission also finds that the Premises will offer a significant and quality venue with a range of hospitality and entertainment options for a growing local community, and accept the evidence of Mr Gauci and Mr Ponti regarding the scale and scope of the proposed offering. As such, the Commission finds that the introduction of EGMs at the Premises will enable the Applicant to develop facilities at the Premises and, in relation to the gaming room, enable a greater range of services. The Commission regards access to such facilities and greater range of services as a positive social impact, upon which it places moderate weight.

*Increased gaming opportunities for those who enjoy gaming*

132. Related to the economic benefit of increased competition is the social benefit that arises from there being increased gaming opportunities for those who enjoy gaming.
133. The Commission notes the current number and location of EGMs and venues in the City of Melton, and the lower density of gaming venues in the catchment area than other parts of the LGA. The Commission finds that the establishment of the Premises will not only provide

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<sup>63</sup> Statement of Mr Gauci, paras 34-35 and 58.

<sup>64</sup> Statement of Mr Ponti, paras 15 and 21.

<sup>65</sup> Ratio Report, p.17.

<sup>66</sup> Ratio Report, p.55, Figure 12.1.

<sup>67</sup> Written submissions of the Applicant, para 2.4.



opportunity for recreational gaming by the future residents of Mt Atkinson, but also for residents in surrounding suburbs in an area where people travel predominantly by car.

134. Having regard to the evidence and submissions made with respect to increased gaming competition in the City of Melton and in view of the evidence as to gaming expenditure set out in paragraphs 55 to 62 above, the Commission finds that granting approval of the Application will serve the needs of non-problem gaming patrons (in particular those of the future community of Mt Atkinson and surrounding suburbs within the catchment area) through providing an additional venue at which they may choose to play EGMs. The Commission is also mindful not to double count the benefit of the new Premises considered above at paragraphs 126 to 131 above. Overall, the Commission considers this to be a social benefit and one on which it places marginal weight.

*Social benefit derived from increased community contributions*

135. Related to the financial impact associated with increased community contributions, such contributions can also have a positive social impact 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.
136. Summarising the evidence of Mr Gauci and Ms Peterson, if the Application were approved, the Applicant would:
- (a) for as long as 60 EGMs were in operation of the Premises, contribute \$90,000 per annum (indexed to CPI) (**Contribution**) to a Community Development Engagement Initiative Program (**Program**) targeting disadvantaged young people within the City of Melton;
  - (b) lead the Program and invite representation from the Council and community organisations, to be administered in accordance with guidelines to be developed by the Applicant and Council; and
  - (c) if any part of the Contribution remains unallocated at the end of each annual period, contribute the unallocated sum to not-for-profit community and sporting organisations in the City of Melton.
137. In relation to the Program, the Applicant submitted that it *“will have as its core focus mentoring, coaching and leadership of young people in the City of Melton, as well as aiming to remove barriers to employment, with a key focus where possible on sporting careers, creative and*

*hospitality industries. The Program will focus on creating pathways to employment, skills enhancement and personal development opportunities for program participants*".<sup>68</sup> The Applicant also committed to providing in-kind contributions (including free room hire) associated and in support and delivery of the Program for the life of the entitlements.<sup>69</sup>

138. The Commission notes that the Council were consulted as to the proposed distribution of the Contribution and that the Applicant, at the Council's request, amended its original proposal to provide a proportion of the funds direct to Council and for Council's mandatory participation in the administration of the Program. Following the amendments, the Commission notes that Council found that the proposal "accords with Council's Gambling Harm Prevention and Reduction Policy".<sup>70</sup>
139. The Commission also refers to the evidence of the Applicant in relation to in-kind contributions that will arise as part of the Application. The in-kind contributions included free or discounted room hire for community groups and schools, and participation in a traineeship program as part of the Victorian Certificate of Applied Learning (VCAL) that is currently operating at the West Waters Hotel.<sup>71</sup>
140. The Commission notes the significance of any such contributions is assessed on the effect on the community. The Commission accepts that in this matter, the Applicant's proposal provides a level of certainty about such an effect, given the evidence as to how such cash and in-kind contributions would assist particular individuals and community organisations in the City of Melton. As such, the Commission accepts the proposed community contributions will have a positive social impact. The Commission is further satisfied that the cash contributions will only occur if the Application is granted. Having regard to the increased amount of community contributions that will occur, the core focus of the Program outlined by the Applicant and that the cash contributions will be made in the manner proposed above to individuals or community groups operating in the City of Melton (in accordance with conditions of any approval of this Application), the Commission considers these contributions to be a positive benefit to which it accords a marginal to low weight.

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

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

<sup>68</sup> As set out in draft condition 1(e) prepared by the Applicant.

<sup>69</sup> As set out in draft condition 1(h) prepared by the Applicant.

<sup>70</sup> Email from Council to the Commission dated 12 February 2020, outlined in paragraph 2 above.

<sup>71</sup> Transcript of the Hearing, 6 March 2020, pp-132-3 and 152.

breakdowns, emotional harms and other social costs. Associated with these costs, the Commission also has considered the economic cost of providing community support services to assist those experiencing such social harms. Accordingly, the Commission accepts there is potential for negative social costs through possible increased problem gambling.

142. The Commission refers to and relies upon the evidence set out in paragraphs 115 to 119 with respect to the economic impact of problem gambling on the community, as well as the submissions received from community support organisations servicing the likely catchment area of the Premises, including Women’s Health West and Banyule Community Health.
143. Overall, the Commission finds that this Application will result in a new venue being established with 60 EGMs, and that this is estimated to be associated with new expenditure as summarised in paragraph 61 above, which, in the Commission’s view, is a modest but not insubstantial level of new expenditure, increasing as the Premises’ attracts new patrons. It accepts that a proportion of this expenditure will be associated with problem gambling. Further, as noted above, the Commission finds that the catchment area surrounding the Premises, while not being particularly disadvantaged or likely to become so in the short term, does exhibit and will continue to be exposed to an increased level of housing stress, and therefore vulnerability to problem gambling. The Commission is therefore of the view that granting this Application has the potential to somewhat increase the incidence and impact of problem gambling in the City of Melton. As such, the Commission accepts that the disbenefit associated with problem gambling is a negative social impact upon which it places low to moderate weight.

#### Community attitude

144. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,<sup>72</sup> the Commission recognises that while community apprehension is not an over-riding factor (in the sense that the Application is not a referendum on gaming), it is certainly a relevant factor in the consideration of particular social impact as part of the ‘*no net detriment*’ test.
145. The evidence before the Commission indicates that there has been a mixed community attitude towards the Application. In summary:
- (a) the Council, as the representative body of the relevant community and charged with statutory duties under various pieces of legislation, considered the Application and

<sup>72</sup> *Romsey* (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.



determined not to make a submission in opposition to the Application or appear at the public hearing of the Application;<sup>73</sup>

- (b) a very small number (three) of individual submissions were received by the Commission concerned with the likely impacts of the Application. However, the Commission notes that these individuals reside in municipalities neighbouring the City of Melton (not the City of Melton itself), and the content of the submissions reflected a more general opposition to EGMs rather than direct opposition to the Application. In those circumstances, the Commission places little weight on these submissions;
- (c) a number of community organisations and associations provided submissions to the Commission indicating concerns at the addition of a further gaming venue, its impact on gambling-related harms and an increase in demand for their services. These organisations included the Women's Health West, Banyule Community Health and cohealth as set out at paragraph 24 above.

146. At the time of writing the Ratio Report, the community attitudinal evidence was not available to Ms Peterson. Ms Peterson therefore weighed this impact as a negligible disbenefit in her report. During her evidence at the Hearing, Ms Peterson maintained her weighting in relation to community attitude as a negligible disbenefit.
147. In the Applicant's closing submissions, Counsel for the Applicant submitted that the public submissions in opposition represented a general opposition to EGMs and warned the Commission should not extrapolate from the submissions the attitude of the entire community of the municipality. While it accepts this with respect to the individual submissions (as noted above), the Commission considers that the submissions from the community organisations relate to the Application in question and reflect a genuine concern that the community of the City of Melton would be adversely affected due to granting the Application.
148. With respect to the Council's position in relation to the Application, the Commission notes that the Council's decision to not make a submission does not automatically indicate positive support for the Application. In fact, it was open to the Council pursuant to the GR Act to make a submission in support of the Application, an option the Council did not elect to make. As such, the Commission considers the Council's position in this matter should be treated as neutral.
149. Overall, the Commission is of the view that the matters listed above at paragraph 145 represent a mixed attitude by the community of the City of Melton to this Application, with a slight

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<sup>73</sup> See also *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [42]; *Romsey #2* [2009]

preference towards a negative attitude. In all of the circumstances, the Commission considers it appropriate to attribute nil to marginal weight to this impact.

### Conclusion on social impacts

150. After considering the social benefits of the proposal and balanced against the detriments, the Commission considers that, on balance, there is likely to be a neutral to small positive social impact of the proposal.

### **NET ECONOMIC AND SOCIAL IMPACT**

151. The '*no net detriment*' test in section 3.3.7(1)(c) of the GR Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. 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.<sup>74</sup>

152. According to Ms Peterson, the benefits of this Application, being the economic stimulus to the LGA generated by the Premises, the proposed community contributions, the development of the Premises in line with best practices, employment creation and flow-on economic benefits should be given greater weight due to their direct impact on the community of the City of Melton and certainty of outcome. Ms Peterson accepted that the key disbenefit of the Application was the potential for increased problem gambling but was of the view that the likelihood of such increase was low due to the key protective factors of the size and proposed operating hours of the gaming room, the existing access to gaming within the municipality and the separation of the Premises from essential day-to-day activities. Overall, Ms Peterson concluded that the Application would have a positive net social and economic impact on the local community and more broadly with respect to the City of Melton.

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

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VCAT 2275 at [249] and [288]-[321].

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

## OTHER RELEVANT CONSIDERATIONS

154. On the material that has been put before it, the Commission has determined that the ‘*no net detriment*’ test has been satisfied and is also satisfied of the other matters in section 3.3.7(1). However, there remains a discretion in the Commission to determine whether or not to approve the Application.
155. The Commission has considered the purposes of the GR Act generally and Chapter 3 specifically, as well as the relevant policy considerations drawn from the content and objectives of the GR Act as a whole, and is satisfied that there are no matters that would warrant the Commission exercising its discretion to refuse this Application. Accordingly, the Commission is satisfied that it should approve the Application.
156. The Commission was told during the hearing that the Applicant would be prepared to accept conditions with respect to the payment of community contributions should the Application be approved. On 7 February 2020, the Applicant provided the Commission with draft conditions prepared in consultation with the Council which could be attached to any approval of the Application. In granting approval, the Commission believes it is appropriate that such approval should be subject to conditions relating to this matter. In the circumstances and as discussed in paragraphs 136 to 140 above, the Commission imposes the following conditions with respect to its approval:

### ***Community Contributions***

- (a) *The Venue Operator is committed to leading the facilitation of a Community Development Engagement Initiative Program (**the Program**) targeting disadvantaged young people within the City of Melton.*
- (b) *The value of the Program is to be no less than \$90,000 per annum indexed to CPI (**the Contribution**) from the date of commencement of the operation of any electronic gaming machines at the Premises.*
- (c) *The Program will be coordinated by the Venue Operator and supported by a Committee, which invites representation from:*
  - (i) *Council; and*
  - (ii) *Community organisations.*
- (d) *The Program will be administered in accordance with guidelines to be developed by the Venue Operator and Council.*
- (e) *At the end of each annual reporting period, if any part of the Contribution remains unallocated, the Venue Operator must within one month allocate the entire unpaid sum to*





*not-for-profit community and sporting organisations in the City of Melton.*

- (f) *If any part of the Contribution remains unallocated at the end of the period allowed in condition (e) above, the Venue Operator must cease the operation of all electronic gaming machines at the Premises for as long as the Contributions remain unallocated.*
- (g) *In the event that the Program ceases, an alternative arrangement for distribution of the Contribution must be made by agreement between the Venue Operator and the Council with notice of same to be provided to the Commission.*

157. The Commission also recognises that the Premises has not received planning approval and still requires to be constructed before it will be in a position to operate as a gaming venue. As such, the Commission will impose the following further conditions of the approval, pursuant to section 3.3.9(3)(a), (b) and (d) respectively, that:

- The approval does not take effect until the Commission has notified the Applicant, in writing, that the Premises have been inspected for the purpose of section 3.3.7(1)(b) and the Commission is satisfied at that time that the Premises are suitable for the management and operation of EGMs.
- The approval does not take effect until the Applicant satisfies the Commission that:
  - the Applicant has obtained planning approval for the Premises, including permitting the Premises to be used for gaming on gaming machines; or
  - use of the Premises for gaming on gaming machines does not contravene the Melton Planning Scheme.
- The approval does not take effect until the construction of the Premises has been completed substantially in accordance with the plans at Annexure B to the statement of Mr Ponti. The construction of the Premises must be completed by 31 August 2022 (**Completion Date**). The Commission may, upon the request of the Applicant, agree to extend the Completion Date. The request must be made not less than sixty (60) days before the Completion Date. Without limiting the matters that may be taken into consideration by the Commission in determining any extension to the Completion Date, any request for an extension of time must include an explanation as to why the Premises has not been completed by the Completion Date.

***The preceding paragraphs are a true copy of the Reasons for Decision of Mr Des Powell AM, Commissioner, Ms Danielle Huntersmith, Commissioner, and Mr Andrew Scott, Commissioner.***

## Appendix One

### Summary of social and economic 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 Reference</b>	<b>Comments relevant to weight</b>
<b>Benefits</b>	<i>Gaming expenditure not associated with problem gambling</i>	54 to 63	<p>The portion of new expenditure not attributable to problem gambling is an economic benefit.</p> <p>It is likely the Premises in the first year of its operation (not before 16 August 2022) will earn expenditure in the amount of between \$5,124,600 and \$5,650,200. In subsequent years, expenditure at the Premises will likely rise to between \$8,541,000 and \$9,417,000 within five years of operation. Transferred expenditure will be higher for the first years of operation of the Premises, commencing at 57% in the first year of operation before decreasing to and stabilising at 50% after five years.</p> <p>Various factors suggest that the extent of problem gambling at the Premises is likely to be relatively low, including that the gaming room is of a medium size, the venue is located on the edge of the proposed activity centre of Mt Atkinson, and designed with an intent to promote responsible gambling. Noting the uncertainty as to the socio-economic profile of Mt Atkinson once established, the Premises is located in an area of lower relative socio-economic disadvantage (albeit with some financial vulnerability), and one that is anticipated to experience significant and ongoing population growth.</p> <p>As a result of the anticipated transfer rate, the extent of new expenditure at the Premises is expected to be low to moderate.</p> <p>Marginal weight.</p>



	<i>Expenditure on capital works</i>	64 to 70	<p>The development of the Premises, including the residential hotel, is estimated to cost \$26.75 million.</p> <p>Construction of the Premises will cost approximately \$26.75 million (including fit-out costs). While \$26.75 million is a significant expenditure associated with the construction and fit-out, the Applicant's intention to employ a builder based outside the City of Melton will result in a large proportion (if not all) of the cost not directly benefiting the community of the City of Melton.</p> <p>Marginal weight.</p>
	<i>Employment creation</i>	71 to 77	<p>The Applicant submitted that the Application will result in the creation of 57 EFT jobs at the Premises, including 7 EFT positions in the gaming room.</p> <p>The majority of the employees (70-80%) will be sourced from the municipality and, due to the population growth in the municipality, will be net new additional employees. However, some element of employment will likely be transferred from within the municipality (i.e. from competitive gaming and hospitality venues).</p> <p>The additional employment arising from the Application as positive, but limited due to the potential for employees to be sourced from outside the LGA and the potential for some transfer of local employment.</p> <p>Marginal to low weight.</p>



	<i>Complementary expenditure</i>	78 to 82	<p>The Applicant estimated that complementary expenditure would be approximately \$7.3 million in the first 12 months of operation. There is some uncertainty whether these estimates will be actually realised, given the broad assumptions made by the Applicant in their calculations, a proportion of the food and beverage sales are likely to be transferred from venues within the City of Melton.</p> <p>Despite this, there will be a significant new complementary expenditure, especially in relation to the residential hotel. There will be new complementary expenditure at the Premises and potentially in other parts of the City of Melton, which is a positive economic benefit. However, there is a level of uncertainty as to the extent to which this would generate increased economic activity in the municipality.</p> <p>Marginal weight.</p>
	<i>Supply contracts</i>	83 to 86	<p>The Applicant estimated that supply contracts would be approximately \$3.4 million in the first 12 months of operation.</p> <p>A significant proportion of those contracts will be with entities outside the municipality in which the Premises are located.</p> <p>Nil to marginal weight.</p>
	Community contributions of \$90,000 per annum (indexed to CPI)	87 to 88	<p>The proposed community contributions are in the amount of \$90,000 per annum (indexed to CPI) as long as the EGMs are in operation at the Premises. Further in-kind contributions offered.</p> <p>The community contributions (distributed in accordance with conditions of any approval of this Application) will result in positive economic impact on local community organisations in the City of Melton.</p> <p>Marginal weight.</p>
	Increased gaming competition in the City of Melton	89 to 93	<p>The Application will increase gaming competition in the City of Melton by providing an additional venue at which patrons may choose to play EGMs.</p> <p>Marginal weight.</p>



<b>Disbenefits</b>	Gambling expenditure associated with problem gambling	94 to 119	<p>The portion of new expenditure attributable to problem gambling is an economic disbenefit.</p> <p>The future profile of Mt Atkinson will be similar to that of the nearby greenfield suburbs of Plumpton, Truganina and Caroline Springs with a growing community of above average median weekly incomes and relatively few indicators of significant disadvantage. Consistent with that view, the community of Mt Atkinson will likely exhibit a higher level of mortgage stress and as such some financial vulnerability to the risk associated with problem gambling.</p> <p>The socio-economic profile of the secondary catchment area exhibits a mixed level of socio-economic advantage which is likely to improve with further residential developments. Such development is likely to come with a fluctuation in the socio-economic profile, and exhibit above average levels of housing stress and associated financial vulnerability in the short to medium term.</p> <p>Responsible gambling initiatives and protective factors will contribute towards mitigating the potential harm caused by problem gambling. The Applicant (through the Gaucis brothers) has significant experience as a gaming operator, and would likely employ the same robust RSG practices as evidenced at the West Waters Hotel.</p> <p>Marginal to low weight.</p>
	Potential diversion of trade from retail facilities	120 to 121	<p>Maximum impact of the potential diversion of trade from retail facilities in the municipality is at most equal to predicted new expenditure arising from this Application as well as a proportion of complementary expenditure diverted to the Premises.</p> <p>Any diversion of trade is likely to be spread across a wide number of retail facilities and unlikely to materially impact any single retail facility, and is likely to lessen over time with the high growth in population.</p> <p>Nil to marginal weight.</p>
	Diversion of trade from other gaming venues	122 to 123	<p>The Commission concluded that transferred expenditure could be as high as 57-59% in the first two years of the Premises' operation, before decreasing to 50% over the first five years. As such, there does remain some minor impact on other gaming venues.</p> <p>Marginal weight.</p>



**Social impacts**

	Impact	Paragraph Reference	Comment relevant to weight
<b>Benefits</b>	Development of a new venue in Truganina	126 to 131	<p>The Application includes a proposed development of the Premises to include the bistro within indoor and outdoor children's play areas, café, sports lounge, gaming room, three function rooms, four meeting rooms, and a 66-room residential hotel.</p> <p>The Application will enable the Applicant to develop new and quality facilities at the Premises and enable a greater range of services for a growing community.</p> <p>Moderate weight.</p>
	Increased gaming opportunities for those who enjoy gaming	132 to 133	<p>The Application will better serve the needs of gaming patrons through providing an additional venue at which they may choose to play EGMs in a growing community.</p> <p>Granting approval of the Application will serve the needs of non-problem gaming patrons (in particular those of the future community of Mt Atkinson and surrounding suburbs within the catchment area) through providing an additional venue at which they may choose to play EGMs.</p> <p>Marginal weight.</p>
	Social benefit derived from increased community contributions	135 to 140	<p>The Applicant proposes community contributions (distributed in accordance with the proposed conditions of any approval of this Application) targeting disadvantaged young people within the City of Melton.</p> <p>The Applicant's proposal provides a level of certainty about the social impact of the contributions, given how such cash and in-kind contributions would assist particular individuals and community organisations in the City of Melton. The proposed community contributions will have a positive social impact. The cash contributions will only occur if the Application is granted.</p> <p>Marginal to low weight.</p>



<p><b>Disbenefits</b></p>	<p>Possibility of increased incidence and impact of problem gambling on community</p>	<p>141 to 143</p>	<p>A proportion of total gaming expenditure at the Premises will be associated with problem gambling contributed by gaming patrons at the Premises.</p> <p>Adverse impacts include health, jobs, finances, emotional states and relationships.</p> <p>The Application will result in a new venue being established with 60 EGMs, associated with new expenditure of a modest but not insubstantial level. A proportion of this expenditure will be associated with problem gambling.</p> <p>The catchment area surrounding the Premises, while not being particularly disadvantaged or likely to become so in the short term, does exhibit and will continue to be exposed to an increased level of housing stress, and therefore vulnerability to problem gambling. The Commission is therefore of the view that granting this Application has the potential to somewhat increase the incidence and impact of problem gambling in the City of Melton.</p> <p>Moderate weight.</p>
	<p>Community attitude</p>	<p>144 to 149</p>	<p>There were a number of submissions to the Commission in opposition to the Application from individuals, associations and community organisations.</p> <p>The Council's decision to not make a submission does not automatically indicate positive support for the Application. The Council's position in this matter should be treated as neutral.</p> <p>Overall, the Commission is satisfied that there is a mixed attitude by the community of the City of Melton with a slight preference towards a negative attitude.</p> <p>Nil to marginal weight.</p>