



DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by Collingwood Football Club Limited for amendment of its venue operator's licence to vary the number of electronic gaming machines permitted in the approved premises, the Coach and Horses, located at 33-37 Maroondah Highway, Ringwood from eighty (80) to ninety (90).

Commission:

Dr Bruce Cohen, Chair
Ms Deirdre O'Donnell, Commissioner

Appearances:

Mr John Larkins of Counsel for the Applicant
(instructed by Bazzani Scully Priddle)

Mr Ian Munt of Counsel for Maroondah City Council
(instructed by Maddocks)

Mr Justin Ghattas as Counsel Assisting the Commission

Date of Hearing:

10 October 2016

Date of Decision:

9 November 2016

Date of Reasons:

9 November 2016

Decision:

The application is granted subject to the conditions outlined at paragraph 146 of these Reasons for Decision.

Signed:

A handwritten signature in blue ink, appearing to be 'Bruce Cohen', written over a white background.

Bruce Cohen
Chair



REASONS FOR DECISION

INTRODUCTION

1. On 3 June 2016, an application was made by the Collingwood Football Club Limited (**the Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) to amend its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) permitted in the Coach and Horses, located at 33-37 Maroondah Highway, Ringwood (**the Premises**) from eighty (80) to ninety (90) (**the Application**).
2. The relevant municipal authority is the Maroondah City Council (**the Council**). By a letter dated 25 July 2016 to the Commission, the Council stated that it intended to make a social and economic submission in relation to the Application.
3. The Commission considered the Application by way of a public inquiry.¹ To this end, a public hearing was conducted on 10 October 2016 (**the Hearing**). The Applicant was represented by Mr John Larkins of Counsel, and the Council were represented by Mr Ian Munt of Counsel.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (**the GR Act**). The GR Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities. For this reason the GR Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some, and a potentially harmful activity for others.
5. The objectives of the GR Act are set out at section 1.1, which provides, *inter alia*:

...

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

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

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

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

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

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

(c) *to ensure that the management of gaming equipment and monitoring equipment*

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



is free from criminal influence and exploitation;

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

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

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



(b) *promote a competitive gaming industry with the aim of providing financial and social benefits to the Victorian community.*

7. The GR Act outlines the process by which a venue operator can make application to the Commission to amend the conditions of their licence.² In addition to providing such application to the Commission in an approved form, with the required fee, and with a submission in relation to the net social and economic impact on the municipality in which the approved venue is located (and surrounding municipal districts), an applicant must also give notice to the municipal council of the municipal district in which the approved venue is located (before submitting their application to the Commission).
8. After receiving notice of a proposed amendment, a municipal council may make a submission to the Commission within 60 days of receiving such notice. These submissions may address the social and economic impact of the proposed amendment on the municipal district in which the approved venue is located, as well as the impact on surrounding municipal districts.³
9. The relevant provision concerning this Application is found at s. 3.4.17(1)(b) of the GR Act, which provides for the amendment of the venue operator's licence to vary the numbers of EGMs permitted in an approved venue in accordance with Division 2, Part 4 of Chapter 3 of the GR Act. Section 3.4.20 sets out matters that are required to be considered by the Commission with respect to such a proposed amendment. Relevantly for this Application this section provides, inter alia:

(1) *Without limiting the matters which the Commission may consider in deciding whether to make a proposed amendment the Commission must not amend a venue operator's licence unless—*

...

(b) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the regional limit or municipal limit for gaming machines for the region or municipal district in which the approved venue is located will not be exceeded by the making of the amendment; and*

(c) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the net economic and social impact of the amendment will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located; ...*

² GR Act, section 3.4.18.

³ GR Act, section 3.4.19.



...

10. Section 3.4.20(1)(c) provides for what is now commonly described as the '*no net detriment*' test. It requires the Commission to be satisfied that there is no net detriment arising from the approval through positively and objectively establishing that the net economic and social impact will not be detrimental to the well-being of the community.⁴
11. The GR Act does not specify the matters which the Commission must consider in deciding whether the '*no net detriment*' test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:
 - (a) the likely economic impacts of approval;
 - (b) the likely social impacts of approval; and
 - (c) the net effect of those impacts on the well-being of the relevant community.⁵
12. 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.⁶ 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.
13. 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.⁷ 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.⁸
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

⁴ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.

⁵ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [42]-[43] per Warren CJ, Maxwell P and Osborn AJA.

⁶ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey No 2)* [2009] VCAT 2275, [332], [348] per Bell J cited in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [58] per Dwyer DP.

⁷ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [57] per Dwyer DP.

⁸ See *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey No 2)* [2009] VCAT 2275, [352] per Bell J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [58] per Dwyer DP.



*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.*⁹

This approach has been adopted in a number of VCAT decisions.¹⁰ To enhance the clarity of Commission decisions, and to facilitate greater consistency between the Commission and VCAT, the Commission has adopted the same approach.

15. If the Commission is not satisfied that the 'no net detriment' test is met, that is clearly fatal to the application before it, given the opening words of section 3.4.20(1) of the GR Act. The test is a mandatory pre-condition to approval. However, although section 3.4.20(1) sets out certain mandatory considerations for the Commission, the provision is not 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.¹¹ The Commission must decide whether to make the proposed amendment, with or without any changes from that proposed by the Applicant, even where the applicant has satisfied the minimum threshold of the 'no net detriment' test.¹²
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;¹³ 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.¹⁴
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*¹⁵ that, if all of the mandatory considerations under the GR Act favour the grant of an approval, one would expect

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

¹⁰ 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.

¹¹ See *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M; see also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [97] and following per Dwyer DP (with respect to section 3.3.7).

¹² GR Act, section 3.4.20(2).

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

¹⁴ *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M. As to policy principles identified for consideration, see *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

¹⁵ [2013] VCAT 101, [98].



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.

18. Finally, it is noted that pursuant to section 3.4.20(1)(a) of the GR Act the Commission must be satisfied that the proposed amendment does not conflict with a Ministerial direction, if any, given under section 3.2.3 of the GR Act. Additionally, pursuant to section 9(4) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)* the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation.
19. There is no relevant direction issued pursuant to section 3.2.3 of the GR Act that relates specifically to this Application. However, on 16 October 2013 a Ministerial guideline was published in the Victorian Government Gazette pursuant to section 5 of the VCGLR Act concerning applications for approvals of venues for EGMs and children's play areas incorporated in the venue. This guideline concerned the assessment of the suitability of a premises for gaming. As such, it appears strictly to apply to a premises applying to be a new gaming venue, rather than an increase in the number of EGMs at an existing gaming venue. While this guideline is therefore not directly applicable to this Application, the Commission's view is that it is proper for the Commission to have regard to the underlying policy intent of such a guideline (which in this instance appears to relate to the legislative objective under section 1.1(2)(ab) of the GR Act that minors are neither encouraged to gamble nor allowed to do so) when considering this Application, given that it involves the renovation of the Premises and this renovation relates, albeit only in small part, to changes to the existing children's play areas at the Premises.

MATERIAL BEFORE THE COMMISSION

20. The Applicant provided the Commission with the following material in support of the Application:
 - (a) Social and Economic Impact Statement (**SEIS**) prepared by Ratio Consultants Pty Ltd (**Ratio**), dated 17 May 2016 (**the Ratio Report**) and Addendum Social and Economic Impact Assessment prepared by Ratio, dated October 2016 (**the Ratio Addendum**);
 - (b) Expenditure Report, prepared by PVS Australia Pty Ltd (**PVS**), dated March 2016 (**the PVS Report**);
 - (c) Witness Statement of Thomas Benjamin Streater, a director of Dickson Wohlsen Victoria Pty Ltd trading as DWS Hospitality Specialists (**DWS**), dated June 2016;
 - (d) Witness Statement of Danielle Burston, General Manager of Gaming Venues for the Applicant;



- (e) Witness Statement of Kate Patricia May McNamara, Duty Manager at the Premises;
 - (f) Application for approval of modification to a gaming machine area in an approved venue, dated 3 June 2016; and
 - (g) a copy of the public notice as appearing in the Herald Sun newspaper, dated 28 June 2016.
21. Following receipt of correspondence from the Council on 25 July 2016 indicating that it would make a submission in relation to the Application, the Commission received a request, by way of email correspondence dated 31 August 2016, to extend the time by which the Council could make a submission from 12 September 2016 to 23 September 2016. The Applicant consented to such an extension and, subsequently, the Commission granted an extension to the Council to permit additional time to make a submission in relation to the Application.
22. The Council provided the Commission with the following material with respect to the Application:
- (a) Economic and social impact submission with the following attachments:
 - (i) Report titled "*SEIA For Coaches [sic] and Horses EGM expansion application*" prepared by MGN Consultancy (**MGN**), September 2016 (**the MGN Report**);
 - (ii) Correspondence from the City of Whitehorse, dated 25 July 2016, in opposition to the Application; and
 - (iii) Correspondence from Eastern Access Community Health (**EACH**), dated 13 September 2016, in opposition to the Application.
23. The Commission also received additional information in relation to the Application, being:
- (a) correspondence and a submission from Women's Health East (**WHE**), dated 23 September 2016, in opposition to the Application; and
 - (b) correspondence from Knox City Council, dated 4 August 2016, in which it notified the Commission that it did not intend to make any comment or submission in relation to the Application.
24. The following reports, prepared by Commission officers, were provided to the Applicant and the Council, and were considered by the Commission in relation to the Application:
- (a) Economic and Social Impact Report, dated October 2016 (**the VCGLR Report**); and
 - (b) Pre-Hearing Inspection and Compliance Report, dated 28 September 2016 (**the Pre-Hearing Report**).



25. At the Hearing, the following witnesses gave evidence:¹⁶
- (a) from the Applicant:
 - (i) Ms Colleen Peterson, a director of Ratio;
 - (ii) Mr Michael Clyne, an independent gaming consultant working with PVS;
 - (iii) Mr Streater, a director of DWS; and
 - (iv) Ms Burston, General Manager of Gaming Venues for the Applicant; and
 - (b) from the Council:
 - (i) Ms Jan McGannon, Projects Director of MGN.
26. The Commission was also provided with the following additional materials at the Hearing:
- (a) from the Applicant:
 - (i) correspondence from Ms Peterson of Ratio responding to evidence presented at the Hearing, dated 10 October 2016 (**the Ratio Reply**);
 - (ii) correspondence from Bazzani Scully Priddle in relation to previous Commission and VCAT decisions, dated 11 October 2016;
 - (iii) Responsible Gambling Charter in place at the Premises, signed by Gary Pert (CEO of the Applicant), dated 7 May 2014 (**the RSG Charter**);
 - (iv) data provided by Mr Clyne in relation to the percentage impact on expenditure at various premises located near to the Premises, undated, provided to the Commission on 10 October 2016;
 - (v) suggested conditions to attach to the approval (if the Application is granted), undated, provided to the Commission on 10 October 2016 (**Proposed Conditions**); and
 - (vi) a proposed floor plan of Premises if the Application is granted, dated November 2015; and
 - (b) from the Council:
 - (i) an extract of the Victorian Responsible Gambling Foundation (**VRGF**) report titled "*Study of Gambling and Health in Victoria: Findings from the Victorian Prevalence Study 2014*", pages 69-73, dated November 2015 (**the Prevalence Study**);
 - (ii) an extract of the VRGF report titled "*Background Paper: Risk Factors for Problem Gambling: Environmental, Geographic, Social, Cultural, Demographic, Socio-*

¹⁶ While a witness statement of Ms McNamara had been provided to the Commission, she was unavailable to attend the Hearing to give oral evidence.



economic, Family and Household", pages 3-10, dated May 2015 (**the Risk Factors Study**); and

(iii) a written outline of submissions on behalf of the Council.

27. Prior to the Hearing, the Commissioners separately visited the Premises. Commissioner O'Donnell also visited surrounding venues following the Hearing.

DECISION AND REASONS FOR DECISION

Background

28. The Premises is located at 33-37 Maroondah Highway in the City of Maroondah (**Maroondah**). Maroondah is a metropolitan Local Government Area (**LGA**) which is located approximately 30 kilometres east of the Melbourne CBD and covers an area of 61 square kilometres. Major centres in Maroondah include Ringwood, Croydon and Heathmont. Maroondah had an estimated adult population of 89,259 as at 30 June 2016 and the annual rate of population growth was projected by the then Victorian Department of Transport, Planning and Local Infrastructure to be 1.0% per annum for the period 2017-2022, as compared with the projected Victorian average of 1.7% per annum over the same period.
29. Maroondah is subject to a municipal limit of 806 EGMs.¹⁷ There are ten gaming venues within the municipality with approvals to operate 780 EGMs; however, only 746 EGMs are currently operational within venues in Maroondah.
30. Maroondah has an EGM density of 8.4 EGMs per 1,000 adults, which is 58.6% higher than the metropolitan average (5.3) and 49.2% higher than the State average (5.6). This ranks Maroondah as the highest municipality in terms of EGM density per 1,000 adults. If the Application was approved, the EGM density per 1,000 adults would rise by 1.3% to 8.5.
31. In 2015-16, Maroondah had an average gaming expenditure of \$730 per adult, which was 27% higher than the metropolitan average (\$575) and 32% more than the State average (\$553). Applying the estimate of increased gaming expenditure as received from the Applicant, approval of the Application would result in an increase in average gaming expenditure per adult of 0.4%. Overall gaming expenditure in Maroondah has decreased by 19.7% in real terms over the past six years to June 2016, which is a lower decrease than the metropolitan average of 21.7% over the same period.

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



32. In relation to the area immediately surrounding the Premises, approximately 24.1% of Statistical Area Level 1 (SA1s)¹⁸ areas within 2.5 kilometres of the Premises are in the two most disadvantaged quintiles of the Socio-Economic Indexes for Areas (SEIFA)¹⁹ Index of Relative Socio-economic Disadvantage (indicating high relative disadvantage). Of the remaining SA1s within 2.5 kilometres of the Premises, approximately 55.1% are in the fourth or fifth quintiles (indicating low relative disadvantage), while the remaining 20.7% fall within the third quintile, indicating neither low nor high relative disadvantage.
33. As at 30 June 2016, the unemployment rate in Maroondah was 5.3%, which is below both the metropolitan unemployment rate of 5.9%, and the State unemployment rate of 5.9%.
34. The Premises is situated immediately east of the Eastlink off-ramp in Ringwood. It is located at the western edge of the Ringwood Major Activity Centre, approximately one kilometre west of the nominated 'town centre' near Eastland Shopping Centre. It is within, and surrounded by, commercial zones to the east and south. To the north of the Premises land is zoned as part of a Residential Growth Zone.
35. The Premises currently comprises:
 - (a) a bistro with seating for 296 patrons in two separate areas, including 40 alfresco seats;
 - (b) a lounge/sports bar with pool table, large-screen televisions, outdoor smoking area, TAB facilities and jukebox;
 - (c) an indoor children's play area associated with the sports bar area, providing play equipment and three play stations to children under the age of ten;
 - (d) a beer garden;
 - (e) an upstairs function room with capacity for up to 280 patrons (cocktail style) or 200 patrons (banquet style), secondary kitchen/bar areas, and conference facilities;
 - (f) an upstairs meeting/storage room and associated offices; and
 - (g) a gaming room with 80 EGMs.

Issues for determination

36. Pursuant to section 3.4.20 of the GR Act, the Commission cannot grant the Application unless it

¹⁸ SA1s have been designed by the Australian Bureau of Statistics (ABS) as the smallest unit for the release of Census data.

¹⁹ SEIFA is a product developed by the ABS that ranks areas in Australia according to relative socio-economic advantage and disadvantage. It consists of four different indexes, including the Index of Relative Socio-economic Disadvantage.



is satisfied of the following two matters:²⁰

- (a) that the regional or municipal limit for EGMs in Maroondah will not be exceeded by the making of the amendment the subject of the Application; and
- (b) that the net social and economic impact of the increase in EGMs will not be detrimental to the well-being of the community of Maroondah (the '*no net detriment*' test).

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

A. Municipal limit

37. A municipal limit of 806 EGMs applies for Maroondah.²¹ At the time of determining the Application, the Commission notes that, besides the Premises, there are nine other operational gaming venues in Maroondah – four hotel venues licensed to operate 380 EGMs, and five club venues licensed to operate 320 EGMs, exclusive of the EGMs operated by the Applicant. Approval of the Application will cause the total number of EGMs licensed to operate in Maroondah to increase from 780 to 790.
38. On that basis, the Commission is satisfied that granting the Application would not cause the municipal limit for the number of EGMs in Maroondah to be exceeded and hence considers this aspect of the statutory test under section 3.4.20 of the GR Act to be met.

B. 'No net detriment' test

39. The Commission is required to be satisfied that if this Application is granted the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the Premises are located. Set out below (and summarised in tabular form at Appendix One) is the Commission's assessment of the economic and social benefits and disbenefits associated with this Application, including the weighting given to each of these impacts.

²⁰ The Commission also considered and was satisfied as to the matters set out in section 3.4.20(1)(a) and (d) of the GR Act.
²¹ While the number of entitlements operating within a particular region or municipality is capped (see Footnote 17), the Commission notes that there is nothing to preclude the aggregate number of EGMs for which approved venues may be licensed from exceeding that cap.



Economic Impacts

Expenditure on capital works

40. A potential economic benefit associated with this Application is that which arises from the expenditure on the proposed refurbishment of the Premises.
41. According to Ms Peterson and Ms Burston, the Applicant proposes to undertake renovations at an estimated cost of around \$3.8 million if the Application is successful. Further details as to the nature of these renovations are set out in paragraph 109 below. It was Ms Burston's evidence that while these renovations will not proceed if the Application is not successful, a more modest \$1.2 million refurbishment will occur. The nature of this more modest refurbishment is set out in paragraph 110 below.
42. As was noted in *Branbeau*,²² in assessing benefits associated with an application of this nature, regard must be given to the marginal impact arising from the proposed increase in EGMs. As such, in assessing the nature of the benefit associated with capital expenditure, the relevant amount to be assessed is the difference between the expenditure that would occur if the Application is granted (\$3.8m) and the expenditure if it is not granted (\$1.2m), being expenditure of \$2.6 million.
43. While the Commission recognises that expenditure of this amount – which is substantial – would generally constitute an economic benefit, as Ms McGannon noted, in this instance only limited evidence was provided as to the extent to which the goods and services required for these renovations would be procured from within Maroondah. Given the limited nature of the evidence before it, together with the fact that Maroondah is located within metropolitan Melbourne and the Premises are located in very close proximity to major transport infrastructure (which make it possible for goods and services to be brought in from outside of Maroondah), the Commission considers this expenditure is an economic benefit but one that should only be given a marginal weight.
44. In making this assessment, the Commission notes it is important that the benefits associated with the renovation are not double counted, having regard to the social impact that may result from the improved facilities and services that result from any renovation. This aspect has been considered separately, and is detailed below at paragraphs 108 to 121.

²² *Branbeau Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2005] VCAT 2606 at [47].



Employment creation

45. Employment benefits associated with the Application may involve short term employment benefits associated with renovation activities, and longer term benefits following the completion of the renovations and the introduction of additional EGMs.
46. No information was provided as to the direct short term impact of the renovation on employment in Maroondah, and as such this aspect is given no weight by the Commission.
47. Over the longer term, the Ratio Report indicated that, should the Application be granted, the Applicant would require an additional three (3) full-time equivalent (FTE) positions to service the increased patronage at the Premises, which includes one position in the gaming room.
48. Further, according to Ms Peterson, these three FTE positions “are the difference between the \$1.2 million renovation and the \$3.8 million” – that is, there is a net increase as a consequence of the Application being granted, as compared to the employment situation if only the more limited refurbishment of the Premises were to occur. This was supported by the evidence of Ms Burston, who also stated that the three FTE positions to be created would be a cook, a gaming supervisor and a receptionist.
49. In her evidence, Ms McGannon questioned the robustness of the estimated employment effect, arguing that it was not based on a ‘trigger’ that would justify the level of additional employment proposed to occur. Ms McGannon considered that the data available, particularly in relation to the low rates of EGM utilisation, did not support the proposition that genuine, sustainable employment would result if the Application was granted. Ms McGannon considered there was a lack of clarity surrounding this information and, on that basis, the Commission ought be cautious in relying on the evidence of Ms Peterson in relation to the proposed creation of additional employment at the Premises.
50. The Commission accepts the evidence of Ms Peterson and Ms Burston that, if the Application was granted, an increase in the level of employment at the Premises will likely result. However, the Commission is also mindful that the additional employment that occurs at the Premises is likely to be, in large part, the result of transferred gaming and non-gaming expenditure (the nature of which is addressed further below).
51. Having regard to Ms McGannon's evidence, in these circumstances the Commission considers that there is only likely to be a very small net increase in employment in the municipal district in which the Premises are located if the Application was to be granted. Further, the evidence available to quantify this benefit is limited. As such, while the Commission considers that the grant of the Application would result in some additional employment which is an economic benefit, in



the circumstances it a benefit to which it assigns only a marginal weight for the purposes of the 'no net detriment' test.

Gaming expenditure not associated with problem gambling

52. To the extent that gaming expenditure is not associated with problem gambling, it has been recognised that such expenditure can be treated as an economic positive.²³ As Bell J notes in *Romsey No. 2*, this approach also brings to account the benefit obtained from pure consumption by the lone gambler who does not use EGMs for social reasons.²⁴
53. The Commission was provided with written evidence from Mr Michael Lupton Clyne, an independent gaming consultant working with PVS. Mr Clyne has approximately 20 years' experience in the gaming industry and has advised a broad cross-section of industries including gaming and hospitality.
54. In summary, Mr Clyne gave evidence that:
 - (a) based on the outputs of the Geotech model (which utilises measures of venue attractiveness in assessing likely future gaming expenditure) and analysis of recent trends in gaming expenditure, the estimated additional gross gaming expenditure generated from an increase of ten EGMs at the Premises would be \$569,806 in the first 12 months following installation of the additional EGMs;
 - (b) of the additional expenditure predicted to result if the Application was granted, the level of expenditure transferred from other existing venues would be approximately 87% (\$492,597), based on the stable population, the number of nearby gaming venues and the proximity of those venues to the Premises. However, if there were to be an increase in gaming expenditure in Maroondah, this estimate would be revised down to 80%;
 - (c) in light of the transferred expenditure coming in part from venues located outside Maroondah, the increase in expenditure in Maroondah in the first 12 month was estimated to be \$271,908. Of this, the amount of expenditure that would be new expenditure on gaming was estimated to be \$77,209;
 - (d) based upon the adult population published by the Commission for 2015-16, the average net amount of gaming expenditure per adult in Maroondah if the Application is granted will be \$733, which is an increase of three dollars, or 0.4%, per adult. This remains greater

²³ *Romsey No. 2* at [351] per Bell J.

²⁴ *Ibid.* Bell J further notes at [352] that the other approach is to say (as Morris J did in *Branbeau Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2005] VCAT 2606 at 79) that gaming extends 'substantial economic and social benefits' to gaming machine users, which treats consumption as a benefit without saying whether it is economic or social. While Bell J states both approaches are correct, for the purposes of this Application, this benefit is treated as an economic benefit.



than the State average of \$553 per adult;

- (e) the EGM density in Maroondah is currently 8.4 EGMs per 1,000 adults, which is approximately 49.2% higher than the State average of 5.6 EGMs per 1,000 adults. If the Application was granted, the EGM density would increase to 8.5 EGMs per 1,000 adults in Maroondah; and
- (f) considering these factors in combination, Maroondah is not a concerning municipality in terms of gaming statistics or profile, and it does not exhibit signs or adverse trends that are cause for concern for the Commission.

55. Mr Clyne also provided the Commission with estimates of the level of expenditure that individual gaming venues within the trade area in which the Premises operates would transfer to the Premises if the Commission granted the Application. This included, to some extent, venues located outside of Maroondah. This evidence was broadly consistent with evidence provided by Ms Peterson which stated that based on a patron survey, the proportion of the Premises' clientele who lived outside the area immediately surrounding the Premises was higher than average – an outcome she attributed to the proximity of Eastlink, which on the one hand created a physical barrier for all those living west of it from attending the Premises, while at the same time making access easier for others living further away.
56. In response to questions from the Council, Mr Clyne indicated that the assessment of the attractiveness of the Premises, should the Application be granted, was based on the assumption that the works to be undertaken were in the amount of \$3.8 million. Further, Mr Clyne conceded that no assessment was undertaken of the Premises if the Application was refused and the Applicant nonetheless undertook the 'cosmetic' renovation in the amount of \$1.2 million. Rather, in undertaking his assessment of the anticipated changes in gaming expenditure that would occur if the additional EGMs were to be permitted, Mr Clyne utilised attractiveness scores for the Premises in its current state.
57. As such, it appears to the Commission that for the purposes of this Application, Mr Clyne's estimates with respect to changes in gaming expenditure are likely to be overstated. This is because if the ten new EGMs are not permitted at the Premises, the Applicant has committed to undertake the \$1.2 million 'cosmetic' renovation. It is anticipated that this would enhance the attractiveness of the Premises relative to its current state, and hence result in greater gaming expenditure at the Premises than would otherwise be the case.
58. This conclusion is supported by the evidence of Ms Burston who indicated that if the Applicant were not to proceed with either the redevelopment or the 'cosmetic' renovation, the Premises would probably lose between 5-10% of revenue per annum, across both gaming and non-gaming



areas. Ms Burston thought, at a minimum, the Applicant must undertake some level of improvement at the Premises – even if it is only the ‘cosmetic’ renovation – to ensure that the Premises remain commercially viable, competitive, and maintain the current level of patronage and expenditure. Relatedly, Ms Peterson stated she expected there would be some uplift in patron numbers if the ‘cosmetic’ renovation were undertaken, although she did not know what the extent of this change would be.

59. In providing her evidence as a witness of the Council, Ms McGannon disputed how some of the evidence on behalf of the Applicant was presented to the Commission. Specifically she noted that she was uncertain that the level of transferred expenditure estimated was an accurate reflection of what would occur if the Application was granted, as she considered that patrons were moving to the Premises temporarily to engage in gaming whilst another gaming venue in Maroondah underwent a refurbishment.
60. In the view of Ms McGannon, the evidence given on behalf of the Applicant failed to consider this and, to some extent, the Ratio Report did not provide enough supporting material to assess the veracity of the PVS Report which, in the view of Ms McGannon, overstated the level of transferred expenditure likely to result if the Application was granted. In this regard, Ms McGannon also highlighted that Maroondah has the highest level of EGM expenditure of all adjoining municipalities and, further, that gaming expenditure at the Premises had increased by over \$120,000 in 2015-16, or approximately 2.6%, while in Maroondah gaming expenditure had risen by just under \$3.5 million, or 5.7%, over the same period.
61. The Commission considers generally that the portion of new expenditure not attributable to problem gambling is an economic benefit. In assessing the extent of the benefit associated with increased gaming expenditure in this Application, the Commission notes that it has also had regard to the evidence outlined in paragraphs 83 to 107 below regarding problem gambling.
62. The Commission is mindful that Mr Clyne did not provide an assessment in relation to the extent of any difference in expenditure that will result at the Premises following the proposed \$1.2 million ‘cosmetic’ renovation, as compared to the \$3.8 million renovation. Given that this ‘cosmetic’ renovation will occur if the Application is not granted, the Commission considers the estimates of additional gross gaming expenditure that have been provided by Mr Clyne to be overstated.
63. While the level of additional gross gaming expenditure is uncertain, the Commission does, however, consider that it is able to find that the majority of any new expenditure will be transferred expenditure, and that the proportions are likely to be in the order estimated by Mr Clyne.
64. As such, the Commission considers it can be satisfied that there will be some increased gaming



expenditure that is not associated with problem gambling, which it should regard as a positive economic impact. However, having regard to the basis upon which the estimates of additional gaming expenditure have been calculated, and noting also that these estimates did not take into account 2015-16 expenditure data, it also considers that the evidence upon which it is required to assess the weight to place upon this benefit is not as robust as could be. In light of both this uncertainty and the low levels of estimated new expenditure in any event, the Commission attributes this benefit only marginal weight.

Complementary expenditure

65. Complementary expenditure is a potential benefit where it results in increased economic activity in the municipal district in which the premises the subject of an application are located. 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 for entertainment purposes as compared to transferred expenditure from other venues within the municipality, as well as the extent to which that complementary expenditure results in additional spending on local goods and services.
66. In the Ratio Report, Ms Peterson stated that, as a result of the Application being granted, there would be approximately \$260,000 in complementary expenditure, which would result in an additional \$87,000 in food and beverage supply costs. According to Ms McGannon in the MGN Report, there was no clear evidence as to the extent that this might constitute new expenditure in the municipality in which the Premises are located, nor the extent to which this expenditure would result in the greater supply of goods or services from businesses within Maroondah. Related evidence suggests that there will be some level of net additional complementary expenditure in Maroondah, though this is likely to be low. In this, the Commission has regard to the evidence of Mr Clyne which indicated that the majority of additional expenditure arising from the introduction of ten new EGMs at the Premises was likely to be transferred expenditure – some of which comes from venues outside of Maroondah (see above), and that of Ms Burston, who in support of the Application highlighted the competitiveness of the gaming and entertainment market in Maroondah, and stated that without substantial expenditure on the proposed renovations and the additional EGMs, it was anticipated that the Premises would probably lose between 5-10% of revenue per annum, across both its gaming and non-gaming activities.
67. Having regard to the circumstances relating to this Application, the Commission considers that whilst complementary expenditure is often an economic benefit in an application of this nature, and that it is likely to arise as a result of a grant of this Application, in the current circumstances



the evidence to support the conclusion that there will be net complementary expenditure as a result of the grant of this Application is limited. Therefore, it is a positive economic impact which the Commission considers should be given only marginal weight.

Increased community contributions

68. In determining the net economic and social impact of applications of this nature, both the Commission²⁵ and VCAT²⁶ have regularly treated community contributions as a positive benefit.
69. In the Ratio Report, Ms Peterson stated that if the Application is granted, the Applicant would commit \$50,000 per annum in community contributions, specifically targeted towards sporting and wellbeing organisations within Maroondah. This commitment is approximately \$20,000 per annum greater than the current level of contributions made by the Applicant to the local community. In her oral evidence, Ms Peterson confirmed that this would be in addition to the Applicant maintaining the level of contributions that are made currently to community organisations outside Maroondah. The nature and extent of the proposed community contributions were also supported by Ms Burston, who stated further that the Applicant intended to make a contribution of up to \$10,000 per annum to EACH. In addition, the Applicant provided the Commission with a draft condition outlining the intended manner in which the community contribution would be distributed.
70. Ms Peterson also outlined the in-kind contributions currently made by the Applicant, such as food and drink vouchers and free or discounted use of the function space at the Premises. Ms Peterson estimated these in-kind contributions amounted to approximately \$4,490 per annum, of which \$2,550 was donated to groups located outside of Maroondah. It was not proposed that, should the Application be granted, these in-kind contributions would depart from what is currently provided.
71. In assessing the nature of these community contributions, Ms McGannon stated that the proposed community contributions would be a benefit for Maroondah. In this regard, Ms McGannon also considered that the evidence provided at the Hearing regarding the Applicant's commitment to increasing community contributions provided greater understanding and focus as to how those contributions would be made.
72. However, Ms McGannon considered that the proposed benefit is, to some extent, mitigated by the fact that the proposed contributions would only occur if the Application is granted, and further, she considered that there remained some level of uncertainty as to whether the proposed

²⁵ See, for example, *Richmond Football Club at Wantima Club premises* (Gaming-EGM increase) [2015] VCGLR 31 (24 July 2015).

²⁶ See, for example, *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms Hotel*.