



contribution to EACH was made as part of, or in addition to, the proposed \$50,000 contributions. On this issue, the Commission has proceeded on the basis that the proposed community contribution to EACH was part of that \$50,000 intended to be provided per annum in community contributions to Maroondah.

73. The Commission notes the proposed condition received from the Applicant as it relates to community contributions. The Applicant proposes to distribute the relevant contributions by way of a committee established by the Applicant, consisting of two representatives of the Applicant and one of the Council. If the Council does not wish to provide a representative, the proposed conditions provide for the Applicant to nominate a community representative.
74. The Commission also notes the process described in relation to the advertisement for submissions from community and sporting organisations within Maroondah, assessment of those submissions, and engagement with the Council throughout the process (should the Council elect to not nominate a representative for the committee).
75. The Commission accepts that the proposed additional community contributions to Maroondah of approximately \$20,000 per annum are an economic benefit to the community. The Commission also accepts these additional contributions would not occur without the grant of the Application, and notes that they do not result in a decrease in community contributions to community and sporting organisations outside Maroondah.
76. In determining weight to be assigned to this benefit, the Commission has had regard to the relatively small quantum of the additional community contribution, though noting that it is to be distributed through a committee process involving the local community. On that basis, the Commission has assigned this benefit a marginal weight.

Increased gaming competition in the municipal district

77. Increasing competition in gaming in Maroondah is a relevant impact in light of the statutory purposes of the GR Act and the consumer benefits that derive from competition.
78. The Application is for a relatively small proportional increase in the number of EGMs in Maroondah, in an existing gaming venue. Further, the utilisation rates at the Premises do not indicate that demand for gaming is high relative to the number of EGMs that are currently available at the Premises.
79. There is also considerable evidence that Maroondah is already a highly competitive gaming market. As such, while an increase in the number of the EGMs permitted at the Premises can be expected to enhance the Applicant's competitiveness in this market, as is illustrated by the



proportion of transferred expenditure estimated to result if the Application is granted, it is not clear that it will have a substantial impact on the overall competitiveness of the gaming market in Maroondah generally.

80. In these circumstances, for the purposes of this Application the Commission considers there is only a limited economic benefit associated with an increase in gaming competition in Maroondah as a result of the addition of 10 EGMs at the Premises, and hence gives this impact marginal weight.

Possibility of increased incidence and impact of problem gambling

81. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an economic disbenefit.²⁷ This was supported by Ms Peterson, who stated that problem gambling has an economic cost, including the financial losses of gamblers, as well as the cost of providing support services for problem gamblers and their families. However, in assessing the extent of this disbenefit, the Commission recognises that it does not include transferred expenditure because such expenditure cannot exacerbate problem gambling.²⁸
82. The extent to which it can be considered that any new expenditure may be associated with problem gambling, and regarded as a disbenefit associated with this Application, is influenced by the socio-economic status of the community surrounding the location of the Premises.
83. According to Ms Peterson, the socio-economic characteristics of Maroondah and more specifically, Ringwood – which she posits is a major component of the primary catchment area for the Premises – are mixed. Having regard to indicators such as gender, occupation, income level, and ethnicity, she stated that these areas were above average in respect of some characteristics associated with higher risks of problem gambling, but conversely were also above average in characteristics less likely to be associated with problem gambling (such as technicians/trades workers, clerical staff, personal income less than \$31,999 or migrants to Australia within the last five years).²⁹
84. Ms Peterson also referred to the indicators associated with problem gambling (such as indigenous

²⁷ The Commission recognises that, on review, the key likely disbenefit of 'problem gambling' has, for convenience, been treated under the heading of 'social impacts' in various instances: see *Mount Dandenong Tourist Hotel Pty v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted; see, for example, *Mount Alexander Shire Council* at [178] and following per Dwyer DP. For completeness, the Commission considers both the economic and social impacts of problem gambling in assessing this Application.

²⁸ See *Bakers Arms Hotel* at [11] per Code PM and Nelthorpe M; *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J.

²⁹ In this regard, reference was made both to problem gamblers, and also those who may be categorised as "low at risk" and "medium at risk" gamblers (although there was no evidence from either Ms Peterson or Ms McGannon as to how the socio-economic characteristics of these categories differed).



persons, sales workers, machinery operators, and personal income between \$31,200 and \$51,999), for which the primary catchment areas within Maroondah (being Ringwood and Mitcham) exhibited below average levels.

85. On that basis, Ms Peterson's analysis was that Maroondah had a mixed socio-economic profile but one that generally ranked better than the metropolitan average in terms of relative disadvantage, and exhibited indicators that make the community less likely to be vulnerable to problem gambling. Further, Ms Peterson also considered that the community within the Premises' catchment area ought not be considered 'vulnerable' as there is a mixture of both advantaged and disadvantaged SA1s within this catchment.
86. In response to questions from the Council, Ms Peterson disputed the reference made to the Prevalence Study as evidence that the Commission ought prefer over that which was used in the Ratio Report.³⁰ In particular, Ms Peterson disagreed with the direct application of the measurements of problem gambling in the Prevalence Study, as she considered it referenced a less specific and geographic area larger than Maroondah. Ms Peterson acknowledged that areas exhibiting signs of disadvantage are more likely to include community members that are more vulnerable to the impacts of problem gambling, comparative to members of a community that exhibit signs of relative advantage, and that the resilience of a disadvantaged community may be lower than that of a comparatively advantaged community. However, she stated that the level of EGM expenditure in Maroondah was not necessarily indicative of the level of vulnerability in the community to problem gambling. Ms Peterson also reiterated that the primary and secondary patron catchments nearest the Premises exhibit lower signs of problem gambling when compared to the Greater Melbourne average.³¹
87. In summary, Ms Peterson considered that the area did not exhibit a comprehensive pattern that allowed a general conclusion to be formed in relation to the risk of problem gambling in Maroondah, but that it was fair to consider that the municipality was not at risk of an increase in problem gambling as a result of the Application being approved having regard to the socio-economic characteristics of both the municipal district as a whole and also given the population living in the immediate surrounds of the Premises.
88. In contrast, Ms McGannon made reference to a range of characteristics which she considered indicated that Ringwood differed from Maroondah as whole, and as a result presented as having greater vulnerability to problem gambling. This included that:
- (a) Ringwood has a weekly median household income over \$120 lower than that of

³⁰ Throughout the Ratio Report, Ms Peterson referred to the equivalent study released in 2009 by the Department of Justice.

³¹ Outlined at Figures 9.5 and 9.6 of the Ratio Report.



Maroondah;

- (b) Ringwood has double the rate of social housing of Maroondah; and
- (c) according to the ABS March 2016 Quarter Small Area Labour Market, Ringwood's unemployment rate was 7.0% (compared to Maroondah's unemployment rate of 5.3%).

89. Ms McGannon noted that while Ringwood was more disadvantaged than other areas of Maroondah, including Ringwood East and Mitcham, it was less disadvantaged than the Greater Melbourne average. Nonetheless, she concluded that Ringwood has a higher level of vulnerability to problem gambling than Maroondah as a whole, and that given the need to have particular regard to the area immediately surrounding the Premises in assessing the impact on the municipal district in which the Premises are located, the approval of an additional ten EGMs would increase the risk of problem gambling, which was a negative impact of this Application.
90. In determining the potential impact of the proposed additional ten EGMs on problem gambling, regard need also be given to the nature of the Premises, as well as existing level of gaming activity at both the Premises and the municipal district as a whole.
91. According to Ms Peterson, in this context there were a range of factors that pointed towards the potential risks of problem gambling being low in this instance:
- (a) as the Application relates to additional EGMs at an existing venue that already operates 80 EGMs, the potential for impact on the local community is less significant than if it were a new venue, as there is already an underlying level of accessibility to EGMs at the Premises. Further, the small number of the proposed increase in EGMs at the Premises does not fundamentally alter the attractiveness of the Premises for gamblers or problem gamblers alike. Recognising that the Premises can already be characterised as a large venue, the level of anonymity afforded at the Premises will not fundamentally alter with an additional ten EGMs;
 - (b) adding ten EGMs at the Premises was unlikely to be significant in terms of both the net machine revenue (**NMR**), and any increase to the level of utilisation of the additional EGMs. In this regard, Ms Peterson stated that the NMR in 2015-16 at the Premises (\$168.58) is a slight increase on the previous financial year (\$164.38) but is less than the metropolitan club average of \$201.18;
 - (c) given the Premises exhibit low rates of EGM utilisation (i.e. the level of EGM usage during a two-week period at the Premises never exceeded 70%), she considers that new expenditure occurring as a result of problem gambling is an unlikely outcome as it suggests that problem gambling is not an existing problem at the venue;



- (d) it is unlikely that adding ten EGMs at the Premises will materially increase the level of risk to any vulnerable members of the community, but rather that the new EGMs would add greater machine and denomination choice to serve existing patrons; and
- (e) the Premises was one of several within the area, and that the vast majority of the catchment area primarily accessed gaming venues by car, with little foot traffic. This level of accessibility made Maroondah a competitive market, and made the Premises one choice for patrons amongst several that were both available and readily accessible. Given that a mature and established gambling market exists in Maroondah, it was likely that patrons attending the Premises would simply be transferring from other venues within Maroondah or the broader trade area.

92. Ms Peterson also noted that, given a considerable amount of expenditure at venues within Maroondah is likely to come from patrons residing outside of the municipality, considering gaming expenditure per adult as an indicator of problem gambling was not a useful measurement for the Commission to rely on. On this aspect, Ms Peterson further stated that the dollar value of EGM expenditure in a particular municipality is not a useful measurement in isolation, as it does not consider the broader social and economic situation of the community. According to Ms Peterson, the level of expenditure in one location in Victoria may be higher than other areas, but that does not equate to a particular location being more (or less) likely or prone to be affected by problem gambling. Ms Peterson did not consider there was a definitive link between EGM expenditure and problem gambling nor that the above average EGM expenditure of Maroondah indicated problem gambling in the municipality, but rather that the municipality enjoyed a higher level of socio-economic advantage, comparative to other municipalities in metropolitan Victoria.
93. In contrast, Ms McGannon stated that accessibility to EGMs is a significant factor to increasing problem gambling outcomes, and local communities in environs where there is increased access to EGMs (as is the case for Maroondah and the suburb of Ringwood) consistently record higher levels of problem gambling. As a result, given that approval of the Application would increase accessibility to EGMs in Maroondah, and in particular Ringwood, this would increase the risk of problem gambling.
94. A further factor potentially relevant in assessing the likely impact of the Application on problem gambling is the manner in which the Applicant implements Responsible Service of Gaming (RSG) practices.
95. According to Ms Peterson, RSG practices at the Premises are strong and would assist in minimising the risk of problem gambling occurring. Further, since Maroondah was unlikely to experience a significant level of population growth that other municipalities (such as Casey,



Wyndham or Whittlesea) may experience, it was likely that any increase in EGM utilisation and NMR at the Premises would result from existing gaming and to an extent, existing problem gambling, and therefore would not create incremental disbenefit to the community.

96. Ms Peterson indicated that the proposed redevelopment at the Premises would also be of benefit with respect to RSG practices, as it would reduce the floor space of the gaming area (from 23.7% to 20.1% of the Premises' floor space), and also provide better physical separation of that area from the rest of the Premises. She conceded, however, there was no available research that supports the implementation of a reduction in the floor area of the Premises as affecting, or reducing, the prevalence of problem gambling at the Premises.
97. Nonetheless, Ms Peterson did not consider that the Premises presents as one where problem gambling is a significant issue and expected that the implementation of such measures would result in positive outcomes in any event. Ms Peterson considered that having such measures in place would be protective and effective in mitigating the risk of harm and prevalence of problem gambling.
98. These views were supported by the evidence of Mr Streater and Ms Burston, who both provided evidence with respect to the provision of RSG at the Premises.
99. Mr Streater detailed the activities DWS undertakes on behalf of the Applicant. He stated that DWS provided ongoing training of staff and management in relation to the awareness of gaming risks, compliance audits relating to the Code of Conduct and Self-Exclusion program and a physical site inspection. DWS also reviews and updates all documentation in relation to the RSG practices at the Premises and provides ongoing updates to the Applicant in relation to current and new issues that may emerge in the gaming sphere.
100. Relatedly, Ms Burston assured the Commission that the Applicant takes its RSG obligations seriously and noted, with regard to the name recognition of the Applicant within the Australian sporting landscape, that it was important for the Applicant that it applies its best endeavours to ensure that the Premises are operated as responsibly as possible. She also referred to the Responsible Gambling Charter that the Applicant is signatory to, which aims to minimize the focus of gambling within sporting clubs in Victoria. Ms Burston considered that the Applicant properly balances RSG requirements with the commercial realities of operating the Premises with a view to enjoying financial success.
101. In addressing questions from the Council, Ms Peterson acknowledged that she relied on the RSG practices in place at the Premises as a mitigating factor in relation to reducing the risk of problem gambling. Ms Peterson also conceded that, irrespective of the outcome of the Application, these



RSG practices would continue to operate at the Premises in any event.

102. On this aspect, the Council submitted that the consideration of RSG practices is not relevant to the Commission in determining the Application, as that factor does not add or detract from the Application as it remains unchanged irrespective of the decision of the Commission. While the Commission recognises that these practices may remain unchanged, it notes that if the Application is granted, they would be applicable to new EGMs, and hence affect the extent to which gaming on those EGMs would involve a risk of problem gambling.
103. In this Application, in assessing the extent of the disbenefit attributable to problem gambling, the Commission refers to and relies upon the evidence and findings with respect to the gaming expenditure likely to result should this Application be granted as set out above at paragraphs 52 to 64. It is noted that the Commission found the evidence was uncertain and as such that it meant less weight could be placed on the benefit associated with new gambling expenditure not associated with problem gambling than would have otherwise been the case. This is because the Commission was unable to assess the extent to which the estimated new expenditure had been overstated.
104. With respect to the likely disbenefit associated with problem gambling, while there are similar uncertainties, the evidence provided does give the Commission an upper bound with respect to the new expenditure estimated to be associated with the Application and, therefore, the maximum expenditure that may be associated with a risk of increased problem gambling. Having regard to the inherent uncertainties associated with estimating the risk of increased problem gambling in any application of this nature, the Commission considers, adopting a conservative approach, that the evidence before it provides a sufficient basis for it to assess the likely extent of such a disbenefit in this instance. As such, it has a greater capacity to assess the weight it should place upon this impact than was the case with respect to new expenditure not associated with problem gambling.
105. In considering the extent to which any new expenditure may give rise to problem gambling, the Commission finds that the area surrounding the Premises does not present as particularly vulnerable to problem gambling and is satisfied that the potential for an increase in problem gambling is low, particularly having regard to the significant level of accessibility to gaming venues that already exists within Maroondah.
106. Further, the manner in which gambling is conducted at the Premises is a relevant consideration. The Commission is satisfied from the evidence of Ms Peterson, Mr Streater and Ms Burston that the Applicant understands the requirements of RSG and the regulatory framework applying to gaming. The Commission is also satisfied that the Applicant has practices and procedures in



place in relation to complying with RSG obligations, which reduces the risk of an increase in problem gambling.

107. In these circumstances, the Commission finds that there is an economic disbenefit associated with the risk of an increase in problem gambling as a result of this Application, and having regard to the relevant mitigating aspects, it places a low weight on this factor.

Social Impacts

Improved facilities enabling greater range of services

108. Separate from the economic benefit that may be associated with expenditure involved in capital works at a venue, there are also potential social benefits to the community that may arise having regard to the nature of the renovations that are intended to take place.

109. The Applicant submitted that if the Application was granted it would undertake a redevelopment of the Premises at an estimated cost of \$3.8 million that included the following proposed works:

- (a) expansion of the bistro to cater for 300 patrons;
- (b) relocation and upgrade of indoor children's play area;
- (c) reconfiguration of the bar area associated with the bistro;
- (d) creation of a new sports bar area and covered outdoor sports lounge area;
- (e) refurbishment of main kitchen floor and soft furnishings for amenities;
- (f) reconfiguration of main entrance including installation of lift to first floor;
- (g) construction of new gaming entrance and coffee lounge, with covered outdoor café area;
- (h) reconfiguration of gaming room;
- (i) construction of new café/bar and cashier area, as well as a new kitchen, cool room, administration office and cash room;
- (j) construction of new covered outdoor smoking area (to be accessed via the gaming room);
- (k) installation of disabled-access toilets in the upstairs function room; and
- (l) reconfiguration of amenities area and removal of room from meeting room to allow for an outdoor smoking balcony on the first floor level.

110. Further, according to Ms Burston, should the Application be refused, the venue will undergo a lesser 'cosmetic' renovation at an estimated cost of \$1.2 million. This would involve a refurbishment of the facilities to include updated paint and carpeting at the Premises, with some updated furniture and equipment, subject to budgetary constraints.



111. It was the evidence of both Ms Peterson and Ms Burston that some renovations were required as the Applicant had not dedicated any expenditure to improving the appearance and facilities at the Premises for some time. As a result, the Premises had lost some level of attractiveness and were struggling to compete with other gaming venues in Maroondah.
112. Further, according to Ms Peterson the Premises are fairly rundown and indicative of older venues that have evolved over the course of time, with extensions added as the patronage increased. Ms Peterson considered that the Premises was somewhat of a 'rabbit warren', with several entry and exit points, which has created challenges in relation to surveillance of the gaming room. Ms Peterson considered that the proposed \$3.8 million redevelopment would go some way to remedying both the challenges faced by staff and improving the patron experience for users of the Premises.
113. At issue for the Commission, therefore, is the extent of the benefit associated with additional facilities and services that result from the \$3.8 million expenditure, but not the \$1.2 million cosmetic renovation. On its face, the Commission considers the major differences include:
- (a) improvements to the gaming area to better separate it from the rest of the Premises;
 - (b) improved access to, and facilities associated with, the upstairs function area (including the installation of a lift enabling disabled access); and
 - (c) shifting the children's play area away from the gaming area.
114. In respect of the gaming area, Ms Peterson stated that whilst the Premises would be redeveloped, the actual floor space occupied by the gaming room would decrease. Ms Peterson considered this particular aspect to be beneficial of itself. Further, Ms Burston noted that the Premises would be improved by better separating the gaming area from the rest of the Premises, which would assist staff in ensuring that the Applicant complied with all regulations relating to the provision of gaming.
115. Ms Burston indicated that DWS had raised several matters in relation to creating barriers between the gaming and non-gaming facilities at the Premises, with particular regard to ensuring that children are not unnecessarily exposed to gaming if it can be avoided. She further noted that the proposed improvements were significant measures to undertake and were not financially viable to undertake without the provision of the additional EGMs sought in the Application.
116. Ms Burston also considered that a vital aspect of the proposed renovation was the construction of disabled access to the upper level of the Premises, and related facilities on the first floor. Ms Burston described instances where the Applicant was forced to turn away community groups that sought to use the function spaces at the Premises due to a lack of adequate facilities for disabled



patrons.

117. While Ms McGannon acknowledged that the construction of a disabled access lift was a benefit, she also considered that it ought to have been undertaken by the Applicant in any event. Ms McGannon considered that the disabled access issues that currently exist at the Premises are issues that should not be addressed only on the contingency that the Application be granted, and that access to facilities is something that the Applicant should provide without linking it to a proposed business improvement.³² She took a similar view with respect to the proposed physical changes to the gaming area.
118. The proposed renovations also include relocating and upgrading the indoor children's play area to the western edge of the bistro. The Commission notes that this area is proposed to be further away from the gaming area and that there will be a greater separation between minors and gaming. This aligns with the purposes of the GR Act and, in the Commission's view, is consistent with the policy intent underlying the Ministerial Guideline referred to in paragraphs 18 and 19.
119. In assessing the extent of the benefit associated with improved services and facilities, the Commission notes the difference between the two proposed undertakings – being a 'cosmetic' improvement as opposed to more substantial redevelopment – though it also considers that the evidence describing the substantive similarities or differences between the proposals could have been clearer.
120. Nevertheless, the Commission accepts the description of the additional proposed works associated with the \$3.8 million and considers that changes clearly associated with this renovation (as compared to the \$1.2 million 'cosmetic' renovation) include a reconfigured gaming room, improved access to upstairs facilities (including the installation of a disabled access lift) and alterations in the location of the children's play area. Further, the Commission considers that these changes will be a benefit to the community of Maroondah, although the extent of this benefit is somewhat uncertain in that little specific evidence was provided as to the extent to which Maroondah already enjoys venues with such facilities. In this regard, the MGN Report stated that Maroondah was not in need of any new community facilities given the current level of retail and recreational spaces provided.
121. Noting that the extent of the social benefit derived as a result of the proposed 'major' development

³² It was further submitted on behalf of the Council that no weight should be placed on renovations involving improvements with respect to disabled access as such changes would be required if the 'cosmetic' \$1.2 million renovation were to occur. The Applicant disputed this submission, noting that this matter had not been put to any witnesses, that no evidence was led in support of the proposition, and further that the submission was inconsistent with the evidence provided as to the scope of the 'cosmetic' renovation. Having regard to the evidence before it, the Commission did not accept the submission of the Council in this regard.



is distinct from the benefit associated with the capital expenditure associated with this renovation, the Commission considers that there will be a social benefit associated with this factor, to which it attributes a low weight.

Increased community contributions

122. Community contributions may have both an economic and a social impact. In this instance, the increased expenditure has been counted as an economic benefit. However, the Commission considers it may not be double counting to consider the social impact of the community contributions in circumstances where such contributions create a social benefit distinct from the economic benefit associated with increased expenditure.
123. However, while there is some evidence which points to the positive nature of the activities that would be supported by the proposed additional community contributions (as outlined in paragraphs 68 and 76 above), the Commission does not consider that the evidence is sufficient such as to warrant these contributions being categorised as an additional social benefit to which it places any weight for the purposes of the 'no net detriment' test.

Increased gaming opportunities for those who enjoy gaming

124. 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.
125. According to the Ratio Report, a survey of the Premises' current gaming activity found utilisation rates did not exceed 70% at any stage during the two-week survey period of 15 February 2016 to 28 February 2016. The highest level of utilisation was recorded on 22 February 2016, with 49% of EGMs at the Premises being utilised at approximately 1pm.
126. Having regard to the evidence and submissions made with respect to increased gaming competition in Maroondah, and more generally those contained in paragraphs 52 to 64 in relation to the way in which those expenditure figures have been calculated, the Commission finds that granting approval of the Application will marginally better serve the needs of gaming patrons. However, given the current number of EGMs and venues in Maroondah, the Commission considers this to be a negligible social benefit and hence one on which it places no weight.



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

127. Wherever accessibility to EGMs is increased, there is a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, family breakdowns and other social costs. In addressing the submission from WHE, Ms Peterson acknowledged that for every problem gambler, there can be a flow-on impact to approximately six to eight persons, and that problem gambling may have an impact on the level of domestic violence that occurs within a community.³³ Accordingly, the Commission accepts that there is potential for negative social costs through possible increased problem gambling.
128. The Commission refers to and relies upon the considerations set out in paragraphs 81 to 107 with respect to the economic impact of problem gambling on the community.
129. As such, the Commission has had regard to the level of EGM utilisation at the Premises, the evidence provided in relation to the mixed levels of socio-economic disadvantage surrounding the Premises, and the likely impact that granting the Application would have in relation to the increased harm relating to problem gambling that may result.
130. The Commission finds that whilst the area immediately surrounding the Premises presents as one with mixed levels of socio-economic advantage and disadvantage, the Commission is satisfied that the potential for an increase in problem gambling at this particular venue is low, having regard to the existing level of gaming available (and the relatively low utilisation that occurs at the Premises) as well as the Applicant's approach to problem gambling and RSG practices.
131. The Commission is mindful of the benefits of the proposed redevelopment, which seeks to better separate the gaming room from other parts of the Premises, both physically and visually. The proposed reconfiguration of the gaming room will likely enhance the capacity for RSG practices to be properly implemented, which may reduce the potential impact of problem gambling arising from use of the additional EGMs, as well as any that currently occurs with existing EGMs.
132. Consequently, the Commission finds that there is social disbenefit associated with problem gambling which in the circumstances of this Application is accorded a low weighting.

Community attitude

133. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,³⁴ the

³³ While Ms Peterson accepted the position and role of WHE within the community, she did not consider that an increase in domestic violence was a likely outcome if the Application was granted, as Ms Peterson did not consider that an increase in problem gambling would result.

³⁴ (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.



Commission recognises that whilst community apprehension is not an over-riding factor (in the sense that the Application is not a referendum on gaming), it is certainly a relevant factor in the consideration of particular social impact *within*, and as part of, the 'no net detriment' test.

134. Clause 52.28 of the Maroondah Planning Scheme (**the Planning Scheme**) addresses gaming and EGMs. The Planning Scheme does not support the further expansion of EGMs in Maroondah, any gaming application that results in an increase in EGMs per adult, gaming venues per adult, or gaming expenditure per adult. In this regard, the Commission is mindful that Maroondah has the highest density of EGMs per 1,000 adults of all municipal districts. However, it also recognises that the number of EGMs permitted to operate is, and would remain, below the municipal cap set in accordance with the GR Act should the Application be granted.
135. The Commission also received correspondence from surrounding municipal councils – Knox City Council (**Knox**) and Whitehorse City Council (**Whitehorse**) – in relation to the Application. By correspondence dated 4 August 2016, Knox informed the Commission that it did not wish to offer comment in relation to the Application. However, by correspondence dated 25 July 2016, Whitehorse provided notification that it opposed the Application.
136. The Commission also received correspondence from WHE (dated 29 September 2016) and EACH (dated 19 September 2016) that opposed the Application.
137. The submission from EACH was, in summary, that the likelihood of an increase in problem gambling in the Maroondah community was an outcome that may not be mitigated by benefits proposed by the Applicant, as the profits derived from the Premises may be diverted by the Applicant into other endeavours and, in fact, could be considered a detriment to Maroondah.
138. The WHE submission recommended that the Application be declined by the Commission because of the potential links between problem gambling and family violence. WHE, which operates as a regional women's health service covering the eastern metropolitan region of Melbourne, cited evidence of the link between problem gambling, EGM accessibility, and family violence, with specific reference to Maroondah. For instance, it noted that women in Maroondah experience higher rates of family violence than surrounding areas.³⁵
139. WHE provided details of its work in partnership with Women's Health in the North in a project exploring and addressing the links between violence against women and harm from gambling. This project evolved from research indicating that family violence is three times more likely to

³⁵ Source: *Crime Statistics Agency Victoria, Family Violence Affected Family Members by LGA and sex, January 2014 to December 2014*, reported at <http://victorianwomenshealthatlas.net.au/reports%2Ffactsheets%2FViolence%20against%20Women%2FMaroondah%2FVWHAAtlas%20Fact%20Sheet%20Violence%20against%20Women%20Maroondah.pdf>



occur in families in which there is significant harm from gambling than in families in which there is no harm from gambling³⁶. WHE noted that “while the link between these issues is acknowledged in both Australian and international literature, it is not yet well researched, nor understood”³⁷.

140. WHE urged the Commission to adopt a cautionary approach towards the Application, based on its assertions that poker machine density is associated with family violence, as is problem gambling. It did not believe that any of the purported benefits of the installation of additional EGMs justified the potential risks that might flow as a consequence.
141. Whilst the Commission acknowledges the opposition from these respective organisations to the Application, the Commission also notes that no community survey was undertaken specifically in relation to the Application. In these circumstances and having regard to the evidence before it, the Commission finds that the community attitude is a negative impact to be considered in assessing this Application, upon which it places a marginal weight.

Net economic and social impact

142. The ‘*no net detriment test*’ in section 3.4.20(c) of the GR Act requires the Commission to weight the likely positive social and economic impacts of an application against the likely negative social and economic impacts. This test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impact of approval on the well-being of a relevant community will be either neutral or positive.³⁸
143. After consideration of the material before it, including the evidence provided at the public hearing (and weighted as outlined above and in tabular form at Appendix One of this Decision and Reasons for Decision), the Commission is satisfied that there will be a neutral social and economic impact to the well-being of the Maroondah community if the Application is approved, and hence the ‘*no net detriment*’ test has been met.

Determination of the Application

144. On the material before it, the Commission has determined that the ‘*no net detriment*’ test has been met and that the total number of EGMs will be under the relevant municipal limit. The Commission notes that there remains a discretion to determine whether or not to approve the

³⁶ Dowling, N.A., Ewin, C., Youssef, G.J., Thomas, S.A., & Jackson, A.C. *Problem gambling and family violence: Findings from a population representative community study*. Manuscript in preparation.

³⁷ WHE submission, page 4.

³⁸ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 at [52] per Dwyer DP.



Application.

145. The Commission is satisfied that the Applicant understands and will continue to act in accordance with its obligations to, so far as is reasonable, take measures to prevent problem gambling. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the Application and make the proposed amendment to the Venue Operator's Licence to vary the number of EGMs permitted at the Premises from eighty (80) to ninety (90), subject to the conditions set out in paragraph 146 below.

146. The Conditions are as follows:

A. *Works*

- (1) *If the Works (as defined in this condition) are not substantially completed by 30 June 2018 or such later date as agreed to in writing by the Commission, this approval will lapse.*
- (2) *The Commission may, upon the request of the owner or operator of the Premises, agree to extend the time for substantial completion of the Works. Any request for an extension of time must include an explanation as to why the Works have not been substantially completed by 30 June 2018.*
- (3) ***The Works** generally comprise the plans prepared by Round 6 Architects with reference project R150016 as lodged with Maroondah City Council in conjunction with planning permit application number M/2016/624.*

B. *Community Contributions*

- (1) *The Venue Operator will make the following annual cash contribution (**the Contribution**), without impacting on the level of existing contributions to sporting or community groups and organisations outside of Maroondah:*
 - (a) *In the sum of not less than \$50,000 per annum (indexed each year by CPI, all groups Melbourne), from the commencement of the approval of the ten (10) additional electronic gaming machines (**EGMs**) at the Premises.*
- (2) *The Contributions will be allocated as follows:*
 - (a) *Subject to Eastern Access Community Health (EACH) agreeing to accept such a contribution, not less than \$10,000 annually to be donated to EACH for the purposes of a project, or projects, aimed at addressing problem gambling within the Maroondah municipality, as determined jointly by the Venue Operator and EACH in*



consultation with one another; and

- (b) The balance to be donated to not-for-profit community groups and sporting organisations providing services and facilities to residents in Maroondah.*
- (3) The distribution of the Contributions in accordance with condition 2(b) above will be determined by a committee (**the Committee**) established by the Venue Operator, comprising:
 - (a) Two representatives of the Venue operator; and*
 - (b) One representative of Council or, in the event that Council does not provide a representative, a community representative nominated by the Venue Operator.**
- (4) The Committee will advertise annually in a newspaper circulating in Maroondah for submissions from not-for-profit community and sporting organisations, providing services and facilities to residents within Maroondah regarding the distribution of the Contributions to be made by the Venue Operator each year. The Committee will assess requests for cash contributions in accordance with guidelines to be established by the Committee.*
- (5) In the event that Council does not provide a representative on the Committee, the Venue Operator will contact Council officers prior to the distribution of the Contribution on an annual basis to discuss proposed recipients of funding and will, where appropriate, consider any feedback provided by Council in relation to the distribution of the Contributions.*

The preceding 146 paragraphs and Appendix One are a true copy of the Reasons for Decision of Dr Bruce Cohen, Chair and Ms Deirdre O'Donnell, Commissioner.

Appendix One

Summary of social and economic impacts

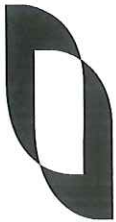
Economic impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	Expenditure on capital works	40-44	Substantial capital expenditure to result if Application approved, but limited evidence provided as to the extent to which the goods and services required for these renovations would be procured from within Maroondah. Marginal weight.
	Employment creation	45-51	Likely to be a very small net increase in employment in Maroondah. Further, the evidence available to quantify this benefit is limited. Marginal weight.
	Gaming expenditure not associated with problem gambling	52-64	While satisfied that there will be some increased gaming expenditure, the evidence upon which the Commission is required to assess the weight to place upon this benefit is not as robust as could be. In any event, the estimated level of new expenditure was low. Marginal weight.
	Complementary expenditure	65-67	Evidence to support the conclusion that there will be net complementary expenditure as a result of granting the Application is limited, although supported by related estimates of transferred gaming expenditure and competition within Maroondah. Marginal weight.
	Increased community contributions	68-76	Relatively small quantum of the additional community contribution, though noted this is to be distributed through a committee process involving the local community. Marginal weight.



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	Increased gaming competition in the municipal district	77-80	Considerable evidence that Maroondah is already a highly competitive gaming market. Increase in the number of the EGMs permitted at the Premises can be expected to enhance the Applicant's competitiveness in this market; however, not clear that it will have a substantial impact on the overall competitiveness of the gaming market in Maroondah Marginal weight.
Disbenefits	Possibility of increased incidence and impact of problem gambling	81-107	While determined to be a disbenefit, the area surrounding the Premises does not present as particularly vulnerable to increased risks of problem gambling. Further, the potential for an increase in problem gambling is also less likely given the significant level of accessibility to gaming venues and EGMs that already exists within Maroondah, and the existing number of EGMs at the Premises. Low weight.



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Social impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	Improved facilities enabling greater range of services	108-121	Range of benefits to be derived as a result of the proposed 'major' development as compared 'cosmetic' renovation, including better separation of gaming area from rest of Premises, and improved disability access and facilities on upper floor of Premises. Low weight.
	Increased community contributions	122-123	Some evidence pointing to the positive nature of the activities that would be supported by the proposed additional community contributions; however, not such as to warrant the contributions being categorised as an additional benefit. No weight.
	Increased gaming opportunities for those who enjoy gaming	124-126	Granting approval of the Application will marginally better serve the needs of gaming patrons; however, existing high number of EGMs at Premises and at other venues in Maroondah. No weight.
Disbenefits	Possibility of increased incidence and impact of problem gambling on the community	127-132	Problem gambling can lead to significant negative social impacts, but the potential for increased risks of problem gambling at this particular venue as a result of this Application is low, having regard to the existing level of gaming available (and the relatively low utilisation that occurs) as well as the Applicant's approach to problem gambling and RSG practices. Low weight.
	Community attitude	133-141	The Commission notes the opposition from Council, the City of Whitehorse and community organisations to the Application; however, it also notes that no community survey was undertaken specifically in relation to the Application. Marginal weight.