

Victorian Commission for Gambling and Liquor Regulation

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 the Melbourne 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 Bentleigh Club, located at 33 Yawla Street, Bentleigh, from eighty (80) to eighty eight (88).

Commission:

Dr Bruce Cohen, Chair
Ms Helen Versey, Deputy Chair

Appearances:

Ms Louise Hicks of Counsel for the Applicant (instructed by Bazzani Scully Priddle)

Ms Caitlin McAlister as Counsel Assisting the Commission

Date of Hearing:

14 November 2016

Date of Decision:

6 December 2016

Date of Reasons:

6 December 2016

Decision:

The application is granted subject to the conditions outlined at paragraph 87 of the Reasons for Decision.

Signed:

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

Bruce Cohen
Chair



REASONS FOR DECISION

INTRODUCTION

1. On 22 August 2016, the Melbourne Football Club Limited (**the Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) to amend its venue operator's licence to increase the number of electronic gaming machines (**EGMs**) permitted in the Bentleigh Club, located at 33 Yawla Street, Bentleigh, (**the Premises**), from 80 to 88 (**the Application**).
2. The relevant municipal authority is the City of Glen Eira (**the Council**). By correspondence dated 12 October 2016 to the Commission, the Council advised that it did not intend to make an economic and social impact submission on the Application.¹
3. The Commission considered the Application by way of a public inquiry.² To this end, a public hearing was conducted on 14 November 2016 (**the Hearing**). The Applicant was represented by Ms Louise Hicks of Counsel, instructed by Bazzani Scully Priddle. Consistent with its decision not to make a submission, the Council did not appear and was not represented at the Hearing.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

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

...

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

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

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

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

¹ The Commission also received correspondence from a council from an adjoining municipal district, the Bayside City Council, dated 13 October 2016, which stated that it raised no objection to the Application.

² As to the manner in which the Commission is to conduct an inquiry, see generally Pt 3 Div 2 VCGLR Act (Inquiries), see also Pt 2 Div 3 VCGLR Act (Performance and exercise of the Commission's functions, powers and duties).

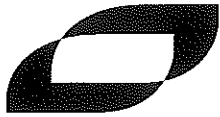


Victorian Commission for
Gambling and Liquor Regulation

- (ab) to ensure that minors are neither encouraged to gamble nor allowed to do so;*
- (b) to ensure that gaming on gaming machines is conducted honestly;*
- (c) to ensure that the management of gaming equipment and monitoring equipment is free from criminal influence and exploitation;*
- (d) to ensure that other forms of gambling permitted under this or any other Act are conducted honestly and that their management is free from criminal influence and exploitation;*
- (e) to ensure that-*
 - (i) community and charitable gaming benefits the community or charitable organisation concerned;*
 - (ii) practices that could undermine public confidence in community and charitable gaming are eliminated;*
 - (iii) bingo centre operators do not act unfairly in providing commercial services to community or charitable organisations;*
- (f) to promote tourism, employment and economic development generally in the State.*

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

- (1) The purpose of this Chapter is to establish a system for the regulation, supervision and control of gaming equipment and monitoring equipment with the aims of—*
 - (a) ensuring that gaming on gaming machines is conducted honestly; and*
 - (b) ensuring that the management of gaming equipment and monitoring equipment is free from criminal influence or exploitation; and*
 - (c) regulating the use of gaming machines in casinos and other approved venues where liquor is sold; and*
 - (d) regulating the activities of persons in the gaming machine industry; and*
 - (e) promoting tourism, employment and economic development generally in the State; and*
 - (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 apply to the Commission to amend the conditions of their licence, including to increase the number of gaming machines permitted at an approved venue. An applicant must apply to the Commission in an approved form, with the required fee, and make a submission in relation to the net social and economic impact on the municipality in which the approved venue is located (and taking into account surrounding municipal districts).³ 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.⁴
9. Section 3.4.17(1)(b) of the GR Act provides for the amendment of the venue operator's licence to vary the number 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:

(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*

³ GR Act, section 3.4.18.

⁴ GR Act, section 3.4.19.



- (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;*

...

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.⁵
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.⁶
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.⁷ 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.⁸ 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

⁵ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.

⁶ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [42]-[43] per Warren CJ, Maxwell P and Osborn AJA.

⁷ *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.

⁸ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [57] per Dwyer DP.



the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.⁹

14. The Commission also notes that, on review, it has been indicated by VCAT that:

*A table of likely economic and social benefits and disbenefits, and with some comments relevant to the relative weight to be given to particular factors ... is a useful way of transparently dealing with the 'no net detriment' test, and might perhaps be considered for wider application.*¹⁰

This approach has been adopted in a number of VCAT decisions.¹¹ 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, as given the opening words of section 3.4.20(1) of the GR Act, satisfaction of the test is a mandatory pre-condition to approval. However, although section 3.4.20(1) sets out certain mandatory considerations for the Commission, the provision is not exhaustive. If the Commission is satisfied that the 'no net detriment' test is met, it still has an ultimate discretion as to whether or not to grant the approval.¹² 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.¹³

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;¹⁴ 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.¹⁵

⁹ 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.

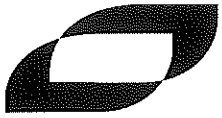
¹⁰ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [60] per Dwyer DP.

¹¹ 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.

¹² See *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M; see also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [97] and following per Dwyer DP (with respect to section 3.3.7 GR Act).

¹³ GR Act 2003, section 3.4.20(2).

¹⁴ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [98] per Dwyer DP.



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*¹⁶ that, if all of the mandatory considerations under the GR Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval - other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.
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. There are no relevant directions 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 the creation of a children's play room at the Premises.

MATERIAL BEFORE THE COMMISSION¹⁷

19. The Applicant provided the Commission with the following material in support of its Application:
 - a) Social and Economic Impact Statement (**SEIS**), prepared by Ratio Consultants Pty Ltd (**Ratio**), authored by Colleen Peterson, dated June 2016 (**the Ratio Report**). Ms Peterson

¹⁵ *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.

¹⁶ [2013] VCAT 101, [98].

¹⁷ In addition to the materials referred to below, the Commission also had before it the correspondence referred to in paragraph 2 above.



was a witness at the Hearing, adopted the Ratio Report as her evidence and provided oral evidence to the Commission;

- b) Expenditure Report, prepared by Tim Stillwell, Partner of ShineWing Australia, dated 23 June 2016 (**the ShineWing Report**). Mr Stillwell was a witness at the hearing, adopted the ShineWing Report as his evidence and provided oral evidence to the Commission;
- c) Witness Statement of George de Crespigny, Chief Commercial Officer of the Applicant, dated June 2016. Mr de Crespigny was a witness at the Hearing, adopted his statement as evidence and provided oral evidence to the Commission;
- d) Witness Statement of Craig Braddy, Victorian Manager of Club Management Services, dated June 2016. Mr Braddy was a witness at the Hearing, adopted his statement as evidence and provided oral evidence to the Commission;
- e) Application for approval of modification to a gaming machine area in an approved venue, dated 22 August 2016; and
- f) Copy of the public notice as appearing in the Herald Sun newspaper, dated 24 August 2016.

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

- a) Report titled "*Economic and Social Impact Report*," dated November 2016 (**the VCGLR Report**); and
- b) Report titled "*Pre-Hearing Inspection and Compliance Report*," dated 31 October 2016 (**the Pre-Hearing Report**).

21. At the Hearing the Applicant provided the Commission with the following further material in relation to the Application:

- a) Submissions on behalf of the Applicant;
- b) Suggested conditions to attach to the approval (if the Application is granted), undated (**Proposed Conditions**);
- c) Correspondence from the Council to the Applicant, dated 9 June 2016, confirming no requirement for a planning permit;
- d) Analysis by the Applicant regarding the difference in tax benefits between 80 EGMs and 88 EGMs;



- e) Copy of the reasons for the Commission's decision in July 2015 on the internal review application made by Richmond Football Club Limited; and
 - f) Copy of the decision of *Monash City Council v L'Unico Pty Ltd*.¹⁸
22. Subsequent to the Hearing, the Applicant provided the Commission with the following additional material in relation to the Application:
- a) Supplementary submissions from Ms Peterson, dated 15 November 2016;
 - b) Amended suggested conditions to attach to the approval (if the Application is granted);
 - c) Summary table prepared by Mr Stillwell in relation to projected expenditure and actual expenditure generated for recent top-up applications; and
 - d) Responsible Gambling Code of Conduct (2014) for the Premises.
23. Prior to the Hearing, Commissioner Cohen visited the Premises.

DECISION AND REASONS FOR DECISION

The Premises and City of Glen Eira

24. The Premises are a social club established over 60 years ago. In 2011, the Applicant took over its ownership and operation. The Premises are located in Glen Eira, which is a metropolitan Local Government Area (LGA) located approximately 15 kilometres south-east of Melbourne and covering an area of approximately 38 kilometres². Major centres in Glen Eira include Caulfield, Bentleigh and Elsternwick. As at 2016, Glen Eira has an estimated adult population of 117,233.¹⁹ The Victorian Department of Environment, Land, Water and Planning predicts an annual rate of population growth of 0.9% for Glen Eira for the 2017 to 2022 period, below the Victorian average of 1.7%.
25. Glen Eira is subject to a municipal limit of 1,061 EGMs.²⁰ There are 11 gaming venues operating within the municipality with approvals to operate a total of 789 EGMs.
26. Glen Eira has an EGM density of 6.6 EGMs per 1000 adults, which is 25% higher than the State average (5.6). This ranks Glen Eira the seventh highest municipality of 31 metropolitan LGAs in terms of EGM density per 1,000 adults. If the Application was approved, Glen Eira's EGM density would rise by 1% to 6.7 EGMs per 1,000 adults.

¹⁸ [2013] VCAT 1545.

¹⁹ Department of Environment, Land, Water and Planning, *Victoria in Future*, 2016.

²⁰ 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.



27. In 2015-16, Glen Eira had an average gaming expenditure of \$650 per adult, which is 13% more than the metropolitan average (\$575) and 17.5% more than the State average (\$553). Applying the highest estimate of increased gaming expenditure as received from the Applicant, approval of this Application would result in an increase in average gaming expenditure per adult of 0.1% in Glen Eira. Overall gaming expenditure within Glen Eira has decreased by 4.54% in real terms over the past six years to June 2016, which is a lower decrease than the metropolitan average of 7.7% over the same period.
28. In relation to the area immediately surrounding the Premises (i.e. within two and a half kilometres), the majority of Statistical Area Level 1 (SA1)²¹ areas are in the eighth decile of the Socio-Economic Indexes for Areas (SEIFA)²² index of relative socio-economic disadvantage. Further, there are no SA1 areas that are within the bottom 20% (i.e. within the first and second deciles) in the area immediately surrounding the Premises. Together, this indicates the Premises are situated in a relative advantaged area.
29. As at 30 June 2016, the unemployment rate in Glen Eira was 4.1%, which is below both the metropolitan unemployment rate of 5.9%, and the State unemployment rate of 5.9%.
30. The Premises is within, and surrounded by, a residential area; however, there are few exceptions located to the east and south of the Premises.
31. The Premises currently comprise of:
 - a) a bistro with seating for 100 patrons;
 - b) a ground floor function room, including an adjoining deck area with a capacity of 380 patrons (cocktail style) or 200 patrons (seated);
 - c) a first floor function room with a capacity of 120 (cocktail style) or 60 patrons (seated);
 - d) a sports bar and members lounge with TAB facilities;
 - e) a barbeque area and private garden;
 - f) a gym, billiards room, sauna and two squash courts;
 - g) a bowling green;

²¹ SA1s have been designed by the Australian Bureau of Statistics (ABS) as the smallest unit for the release of Census data.

²² 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.



- h) a gaming room with 80 EGMS; and
- i) a car park for 173 cars.

Issues for determination

32. Under section 3.4.20 of the GR Act, the Commission cannot grant the Application unless it is satisfied of the following two matters:²³
- a) that the municipal limit for EGMs in Glen Eira 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 permitted in the Premises will not be detrimental to the well-being of the community of Glen Eira (**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.²⁴

A. Municipal limit

33. A municipal limit of 1061 EGMs applies for Glen Eira.²⁵ At the time of determining the Application, the Commission notes that besides the Premises, there are ten other operational gaming venues in Glen Eira. Approval of the Application will cause the total number of EGMs licensed to operate in Glen Eira to increase from 789 to 797.²⁶
34. On that basis, the Commission is satisfied that granting the Application would not cause the municipal limit for gaming machines for Glen Eira to be exceeded, and hence considers this aspect of the statutory test set out in section 3.4.20 of the GR Act to be satisfied.

B. 'No net detriment' test

35. 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

²³ 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.

²⁴ *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [40], per Morris J.

²⁵ While the number of entitlements operating within a particular region or municipality is capped (see Footnote 20), 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.

²⁶ At the date of this Decision, the number of gaming machines with attached entitlements actually operating in Glen Eira is 772.



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.

Economic Impacts

Expenditure on capital works

36. A potential economic benefit associated with this Application is that which arises from the expenditure on the proposed refurbishment of the Premises.
37. According to Mr de Crespigny, the Applicant proposes to undertake renovations at an estimated cost of around \$700,000 if the Application is successful. Further details as to the nature of these renovations are set out in paragraphs 62 to 64 below. It was Mr de Crespigny's evidence that these renovations had been assessed having regard to the life of its current EGM entitlements, and would not proceed if this Application was unsuccessful. This position was supported by the evidence of Mr Braddy, who outlined that a range of renovation proposals had been put forward to the Applicant's board, but that more expensive options had been ruled out as being cost prohibitive in the circumstances.
38. While the proposed renovations involve sizeable expenditure which would generally constitute an economic benefit, the Commission notes that no evidence was provided as to the extent to which the goods and services required for the renovations would be procured from within Glen Eira. Further, Mr de Crespigny stated that the builder the Applicant may use for the works was based outside Glen Eira. Given that Glen Eira is located within metropolitan Melbourne and the Premises are relatively easily accessible to major transport infrastructure (which make it possible for goods and services to be brought in from outside of Glen Eira), the Commission considers this expenditure is an economic benefit but, in the circumstances, one that should only be given a marginal weight.
39. The Commission acknowledges that it is important to avoid double counting the benefits associated with the renovations, having regard to the social impact that may result from the improved facilities. This aspect has been considered separately, and is detailed below.

Employment creation

40. Employment benefits associated with the Application may involve short term employment benefits associated with renovation activities, and longer term benefits, being additional staff shifts at the Premises, following the completion of the renovations and the introduction of



additional EGMs.

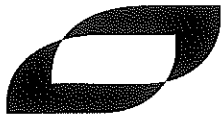
41. No information was provided as to the direct short term impact of the renovation on employment in Glen Eira, and as such this aspect is given no weight by the Commission.
42. According to the Ratio Report and the evidence of Mr Braddy, existing staff are expected to be afforded additional shifts, equating in combination to one additional FTE worker.
43. While the Commission accepts that the grant of the Application would have a long-term result of some additional staff shifts at the Premises which is an economic benefit, given the scale of this impact the Commission considers this a benefit to the community to which it attributes a marginal weight.

New expenditure not associated with problem gambling

44. 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.²⁷ 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.²⁸
45. In the Hearing, Mr Stillwell gave evidence on the expected increase in gaming expenditure should the application be granted.
46. Based on the utilisation of statistics, the historical and recent expenditure trends across the LGA and at the Premises, Mr Stillwell estimated that the additional gaming expenditure generated from an increase of eight EGMs at the Premises would be between \$0 and \$54,377 per annum, in the first 12 months of trade.
47. Of the additional gaming expenditure, Mr Stillwell expected 40 per cent would be transferred expenditure, with 20 per cent from within Glen Eira, and 20 per cent from neighbouring LGAs, with the remaining expenditure being new expenditure. This would equate to new expenditure in Glen Eira of between \$0 and \$43,502, albeit some of which has transferred from venues in neighbouring LGAs.
48. Having regard to the estimated size of additional gaming expenditure and the portion of it

²⁷ *Romsey No. 2* at [351] per Bell J.

²⁸ *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.



transferred from other venues, the Commission considers that expenditure which will not be associated with problem gambling is limited and should be given marginal weight.

Increased community contributions

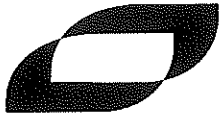
49. In determining the net economic and social impact of applications of this nature, both the Commission²⁹ and VCAT³⁰ have regularly treated community contributions as a positive benefit. However, for such contributions to be regarded as a benefit associated with the Application, it is necessary that they are a consequence of the Application.
50. Evidence was provided by Mr de Crespigny and Mr Braddy in relation to the existing community contributions made by the Applicant. As the contributions are not contingent on the Application, the Commission will give no weight to them for the purpose of the Application.
51. At the Hearing, the Applicant indicated that if the Application is granted, it would commit \$10,000 per annum in community contributions within Glen Eira, for the life of its current entitlements (that is, up to 15 August 2022). In addition, a draft condition was provided to the Commission by the Applicant outlining the intended manner in which such community contributions would be distributed.
52. The Commission accepts that the proposed contribution is an economic benefit to the community. The Commission also accepts that this additional contribution would not occur without the grant of the Application.
53. Notwithstanding that, in determining weight to be assigned to this benefit, the Commission has had regard to the relatively small quantum of the proposed contribution and that it is only intended that the contribution be made for the life of its current entitlements. On that basis, the Commission has assigned this benefit a marginal weight.

Complementary expenditure

54. 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

²⁹ See, for example, Application by Richmond Football Club [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

³⁰ See, for example, *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.



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.

55. In the Hearing, Mr de Crespigny stated that he expected a portion of complementary expenditure as a result of the Application being granted, which he indicated would result in additional food and beverage supply costs. The Commission notes, however, that there was limited evidence on this impact; in particular, as to the extent to which this may result in a reduction in expenditure elsewhere in Glen Eira (although it was noted by Ms Peterson in the Ratio Report as a potential impact). Further, while noting that the Ratio Report stated that some of the Premises' suppliers were local, it was also the evidence of Mr Braddy that in many instances, the food and alcohol sold at the Premises were supplied under arrangements with the Applicant's sponsors and as such, were not supplied locally from within Glen Eira. In these circumstances, the Commission considers only marginal weight should be assigned to this economic benefit.

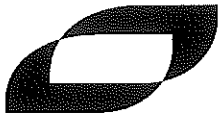
Increased gaming competition in the municipal district

56. Increasing competition in gaming in the Glen Eira is a relevant impact in light of the statutory purposes of the GR Act and the consumer benefits that derive from competition. However the Application is only for a relatively small proportional increase in the number of EGMs in Glen Eira, in an existing gaming venue. Further, the utilisation rates at the Premises do not indicate that supply of gaming is outstripping demand, nor does the anticipated additional expenditure at the Premises suggest a substantive increase in gaming competition in the municipal district. As such, for the purposes of this Application the Commission considers there is negligible benefit associated with an increase in gaming competition in Glen Eira as a result of the addition of eight EGMs at the Premises, and hence gives this impact no weight.

Possibility of increased incidence and impact of problem gambling

57. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an economic disbenefit.³¹ In assessing the extent of this disbenefit, the Commission recognises that it does not include transferred expenditure because such expenditure cannot

³¹ The Commission recognises that, on review, the key likely disbenefit of 'problem gambling' has, for convenience, been treated under the heading of 'social impacts' in various instances: see *Mount Dandenong Tourist Hotel Pty v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted; see, for example, *Mount Alexander Shire Council* [2013] VCAT 101 at [178] and following per Dwyer DP. For completeness, the Commission considers both the economic and social impacts of problem gambling in assessing this Application. Finally, in assessing these impacts, the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gambling undertaken by those who may be defined as "problem gamblers", and also those who may be otherwise regarded as at low or medium risk of engaging in problem gambling.



exacerbate problem gambling.³²

58. In assessing the extent of this disbenefit, the Commission accepts the expenditure evidence of Mr Stillwell as set out at paragraphs 46 and 47 above.
59. Various factors suggest that the risk of increased incidence and impact of problem gambling is likely to be low should this Application be granted. These include:
- (a) the size of the gaming area in the Premises;
 - (b) the location of the Premises within Glen Eira;
 - (c) the socio-economic profile of the immediate area;³³
 - (d) the new expenditure that is anticipated as a result of approving the Application is relatively low; and
 - (e) the Applicant has also demonstrated a commitment to Responsible Service of Gambling (RSG) practices. In this regard, Mr Braddy and Mr de Crespigny provided evidence to the Commission with respect to these practices, including:
 - (i) further detail of the layout of the gaming area and the location of the cashier;
 - (ii) the involvement of Gambler's Help at the Premises and the engagement between staff and contractors at the Premises; and
 - (iii) the Applicant's management with respect to gaming activities.
60. Accordingly, the Commission ultimately considers that there is a relatively low risk in the potential for an increase in problem gambling as a result of approving the Application, therefore it attributes a marginal weight to this economic disbenefit.

Social Impacts

Improved facilities at the Premises

61. 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

³² 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.

³³ In relation to this aspect, Ms Peterson provided evidence with respect to a range of indicators of social and economic status, together with a range of demographic characteristics associated with problem gamblers. She concluded that the patron catchment for the Premises exhibits few characteristics that are commonly found in problem gamblers, and both over and under representation with respect to characteristics generally underrepresented amongst problem gamblers.



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

62. In relation to this Application, the proposed renovations include:
- a) refurbishment of the sports bar/TAB to the northwest corner of the building, away from the main bistro;
 - b) conversion of the existing function room to the bistro area to accommodate 250 patrons, an increase of 150 people;
 - c) relocation of the function room to the existing bistro area;
 - d) reconfiguration of gaming machines to accommodate the additional eight EGMs;
 - e) cosmetic improvements including painting and re-carpeting; and
 - f) refurbishment of male and female toilet facilities.
63. Of these renovations, according to both Ms Peterson and Mr Braddy the most substantial impact was anticipated to result from the conversion of the current function room to the bistro area, and vice versa. This will enable an improved level of service to members of the community, while making the area to be allocated to the function space more suitable having regard to the level of demand. In this regard, evidence was provided as to the changing nature of the Premises' customer base, and recent effort to encourage greater community use of the facility, including running a Sunday "pop-up" community market.
64. Evidence was also provided that the creation of the new bistro area would involve the establishment of a children's play room, and also better enable them to play outside in the grounds adjacent to the proposed new bistro area. It was submitted on behalf of the Applicant that consistent with the policy underpinning the Ministerial guidelines relating to children's play areas in new venues, the play room would be physically and visually separated from the gaming area, and that the gaming areas would not be visually accessible from the outdoor areas in which children were anticipated to play. Further, a screen is to be placed to block the line of sight of the gaming area from the passageway leading to the new bistro area, and it was the evidence of Mr Braddy that children are, and will continue to be discouraged from entering the lounge area adjacent to the current gaming area. The Commission considers that all of these factors contributed to the separation of the gaming area from any minors who may be at the Premises, which is an important aspect of the proposed renovation.
65. Having regard to the nature of the proposed renovations and previous consideration given to the capital expenditure associated with the renovations, (in particular the need to ensure that it does



not double count potential impacts), the Commission finds that the cumulative effect of the improved facilities on the community is a positive impact to which it attributes a low weight.

Increased community contributions

66. 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.
67. In this instance, however, the Commission does not consider that the scope of the evidence provided is sufficient such as to warrant the increased expenditure 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

68. 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.
69. 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 1 December 2015 to 14 December 2015. The highest level of utilisation was recorded on 10 December 2015, with 53% of EGMs at the Premises being utilised at approximately 3pm.
70. The Commission acknowledges that there is a benefit in not only increasing gaming competition, but also machine choice for recreational players and catering for (non problem gambling) demand. However, in this instance given the low EGM utilisation rates, the anticipated low level of increased gaming expenditure, and the evidence of Mr Braddy that no decision has been made as to the type of new machines that may be added at the Premises if the Application is granted, the Commission considers this impact to be negligible, and hence one to which it allocates no weight.

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

71. Wherever accessibility to EGMs is increased, there is a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, family breakdowns and other social costs. Accordingly, the Commission accepts that there is potential for negative social



costs through possible increased problem gambling expenditure.

72. The Commission refers to and relies upon the considerations set out in paragraphs 57 to 60 with respect to the economic impact of problem gambling on the community. As such, the Commission has had regard to the level of EGM utilisation at the Premises, the evidence provided in relation to socio-economic levels 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.
73. The Commission is satisfied that the potential for an increase in problem gambling at the Premises is low, having regard to the existing level of gaming available at the Premises and in Glen Eira more generally (and the relatively low utilisation that occurs at the Premises) as well as the Applicant's approach to RSG practices.
74. In summary, the Commission finds that there is social disbenefit associated with problem gambling which in the circumstances of this Application is accorded a marginal weighting.

Community attitude

75. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,³⁴ the 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.
76. By letter dated 12 October 2016, the Council advised that it did not intend to make a submission on the Application. Further the Commission has not received any submissions from members of the Glen Eira community in relation to the Application.
77. It was submitted by the Applicant that the Commission should have regard to, and place positive weight on, the fact the Council did not make a submission in opposition to the Application. However, it should be noted that Council did not make a positive statement of support for the Application either. In the absence of other evidence, the Commission does not consider that the lack of a submission by Council to be a basis for determining community attitudes with respect to this aspect of the '*no net detriment*' test. In relation to this issue, the Commission is also mindful that:
 - (a) previously 100 EGMs have been permitted to operate at these Premises;

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.



- (b) it did not receive any objections from individual or groups from within Glen Eira and the adjoining LGA; and
- (c) a council for the adjoining municipal district, Bayside City Council, did not object to the Application.

78. In all of these circumstances, the Commission considers it should attribute no weight to this particular impact.

Net economic and social impact

79. 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.³⁵
80. 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 these Reasons for Decision), the Commission is satisfied that there will be a small net positive social and economic impact to the well-being of the Glen Eira community if the Application is approved, and hence the '*no net detriment*' test has been met.

Other Relevant Considerations

81. Having determined that the '*no net detriment*' test has been satisfied, there remains a discretion in the Commission to determine whether or not to approve the Application.
82. Submissions were made by the Applicant regarding the extent that an approval of this Application will result in a reduction of taxation revenue.
83. In this instance, the Commission acknowledges that the Applicant will benefit from a reduction in gaming taxes as a result of the Application being granted. To this end, the Commission refers to, and relies on, the considerations with regard to taxation effects of applications of this nature detailed in Reasons for the Commission's decision, in July 2015, on the internal review application made by Richmond Football Club Limited.³⁶

³⁵ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101at [52] per Dwyer DP.

³⁶ Richmond Football Club Ltd at Wantirna Club premises (Gaming-EGM increase) [2015] VCGLR 31 (24 July 2015).



84. In such circumstances, while it is the case that the Applicant will benefit from a reduction in gaming taxes, the Commission does not, in this instance, consider there is a clear and compelling basis for it to exercise a discretion not to approve the Application.

Determination of Application

85. According to the material and evidence that was put before it, the Commission has determined that the '*no net detriment*' test has been satisfied and that the total number of EGMs will be under the relevant municipal limit. However, the Commission notes that there retains a discretion in determining whether or not to grant the Application.³⁷

86. 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 in the Premises from eighty (80) to eighty eight (88), subject to the conditions set out in paragraph 87 below.³⁸

87. The conditions are as follows:

A. Community Contributions

- a) The operator of the Premises (**the Venue Operator**) undertakes to do the following:
 - (i) Establish the Bentleigh Club Community Support Fund (**the Fund**).
 - (ii) Make the cash contributions referred to in Condition 1(a)(iii) whilst and so long as any of the additional eight (8) additional electronic gaming machines (**Additional EGMs**) operate at the Premises up to 15 August 2022.
 - (iii) The annual cash contribution will be in the sum of at least \$10,000 (indexed each year by CPI all groups Melbourne) (**the Contribution**).
 - (iv) The Contribution will be allocated each year to not-for-profit community groups and sporting organisations providing services and facilities to residents in the City of Glen Eira.
 - (v) The Venue Operator must provide a true and correct record of its contributions to the Victorian Commission for Gambling and Liquor Regulation (**Commission**)

³⁷ *Branbeau Pty Ltd v Victorian Commission for Gaming Regulation* [2005] VCAT 2606 per Morris J at [40]; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [97] per Dwyer DP; *Molwin Pty Ltd v Mornington Peninsula SC* [2015] VCAT 1982 at [9] per Smithers SM.

³⁸ Under section 3.4.20 GR Act, an amendment may be made subject to any conditions that the Commission thinks fit.



annually by no later than 31 July in each year.

- (vi) If the Contribution is not made by the end of each financial year, the operation of the Additional EGMs must cease immediately for as long as the contributions or the outstanding part remains outstanding.
- b) The distribution of the Contribution in accordance with Condition 1(a) above would be determined by a committee (**the Committee**) established by the Venue Operator comprising:
- (i) One representative of the Venue Operator; and
 - (ii) The Manager of the Premises.
- c) The Applicant will advertise annually in a newspaper circulating in the City of Glen Eira area for submissions from not-for-profit community and sporting organisations, providing services and facilities to residents within the City of Glen Eira, regarding the distribution of the Contribution 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.
- d) The Venue Operator currently makes in kind donations to a range of community and sporting groups in the City of Glen Eira (**Existing Contributions**). The Venue Operator will continue to make each year the Existing Contributions or equivalent contributions should the existing beneficiaries change, in addition to the Contribution, whilst and so long as any of the additional EGMs operate at the Premises up to 15 August 2022.

B. Works

- a) The works at the Premises (as defined in clause 2(b)) must be substantially completed to the satisfaction of the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) by the date that is nine (9) months after the commencement of the operation of any of the Additional EGMs at the Premises.
- b) For the purpose of this clause, **the Works** must be generally in accordance with the floor plan of the Premises prepared by Red Design Group (dated 30 May 2016), as presented to the Commission at the Hearing.
- c) If the Works referred to in condition 2(b) are not substantially completed by the date that is nine (9) months after the commencement of the operation of any of the Additional EGMs at the Premises then the approval to operate the Additional



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EGMs at the Premises will lapse.

- d) The Commission may, on the request of the Venue Operator agree to extend the time for completion of the Works referred to in condition 2(b). The request must be made no later than the date that is eight (8) months after the commencement of the operation of any of the Additional EGMs. Any request for an extension of time must include an explanation as to why the Works have not been substantially completed.

The preceding 87 paragraphs and the following Appendix are a true copy of the Reasons for Decision of Dr Bruce Cohen, Chair, and Ms Helen Versey, Deputy Chair.



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Appendix One

Summary of economic and social impacts

The following table is a summation of the economic and social benefits and disbenefits considered by the Commission in reaching its decision. The table is to be read in conjunction with the main body of the Reasons for Decision, as the weight attributed to each factor is determined in light of the particular circumstances of the Application and the evidence presented.

Economic impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	Expenditure on capital works	36-39	The expenditure on capital works is sizeable, but there is uncertainty as to the extent to which it will be spent on goods and services procured in the relevant municipal district in which the Premises are located. Also, as there is a social benefit associated with the renovations which has been assessed, care must be taken to ensure benefits relating to such work are not double counted. Marginal weight.
	Additional employment	40-43	As no evidence was provided as to employment benefits associated with the proposed renovations, this aspect does not impact on this assessment. Over the longer term, additional shifts are expected for existing staff equivalent in combination to around 1 FTE. Marginal weight.
	Gaming expenditure not associated with problem gambling	44-48	The portion of new expenditure not attributable to problem gambling is an economic benefit. Overall, the anticipated level of new expenditure at the Premises is expected to be low. Marginal weight.

	Community contributions	49-53	<p>Relatively small quantum of the additional contribution and only for a limited period, with funds to be distributed through a committee process following advertising in the local community.</p> <p>Marginal weight.</p>
	Complementary expenditure	54-55	<p>A low level of complementary expenditure is anticipated as a consequence of this Application. However, there is uncertainty as to the whether this would increase expenditure overall in the municipal district in which the Premises are located, and goods used in earning this additional revenue were generally not anticipated to come from local suppliers.</p> <p>Marginal weight.</p>
	Increased gaming competition in the municipal district	56	<p>The Application will increase the availability of EGMs in an existing venue in which utilisation rates are not currently high, and which the levels of anticipated new and transferred expenditure are both estimated to be low.</p> <p>No weight.</p>
	Impact	Paragraph numbers	Comment relevant to weight
Disbenefit	Possibility of an increased incidence and potential impact of problem gambling on the community	57-60	<p>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.</p> <p>Marginal weight.</p>

Social impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	Improved facilities enabling greater range of services	61-65	The renovations would enable better use of the Premises by its patrons, in particular by reconfiguring the bistro and function room areas, and enabling better integration between the new bistro area and the outdoor areas Low weight.
	Increased community contributions	66-67	Some evidence pointing to proposed additional contributions; however, not such as to warrant the nature of these contributions being categorised as an additional benefit separate from that considered elsewhere. No weight.
	Increased gaming opportunities for those who enjoy gaming	68-70	Small increase in the number of the EGMs permitted at the Premises expected to have a negligible impact given current low EGM utilisation rates and anticipated low level of additional expenditure. No weight.
	Impact	Paragraph numbers	Comment relevant to weight
Disbenefits	Possibility of an increased incidence and potential impact of problem gambling on the community	71-74	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 level of accessibility to gaming venues and EGMs that already exists within Glen Eira, the existing number of EGMs at the Premises and the low level of anticipated new expenditure resulting from the additional EGMs. Marginal weight.
	Community attitude	75-78	The Commission does not consider there is sufficient evidence for it to assess community attitudes with respect to this Application, in particular having regard to not having the benefit of receiving either written or oral submissions from the Council on this aspect. It is also mindful that previously 100 EGM have been permitted to operate at these Premises, and further that it did not receive any objections from individuals or groups from within Glen Eira. No weight.