



Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application by Werribee Football Club Ltd under section 3.3.4(1) of the *Gambling Regulation Act 2003* for approval of the proposed premises, Club Tarneit, to be located at 115 Woods Road, Truganina, as suitable for gaming with seventy (70) electronic gaming machines.

Commission: Ms Helen Versey, Deputy Chair
Mr Andrew Scott, Commissioner

Appearances: Ms Nicola Collingwood of Counsel for the Applicant (instructed by BSP Lawyers)

Mr John Rantino of Counsel (instructed by Maddocks Lawyers)

Mr Lee Konstantinidis as Counsel Assisting the Commission

Date of Hearing: 9 & 10 March 2021

Date of Decision: 1 April 2021

Date of Reasons: 4 May 2021

Decision: The Application is granted subject to the conditions set out in Appendix A.

Signed:



Helen Versey
Deputy Chair

REASONS FOR DECISION

INTRODUCTION

1. This is an application by Werribee Football Club Ltd (**the Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) for approval of a new premises, Club Tarneit, to be located at 115 Woods Road, Truganina (**Premises**), as suitable for gaming with seventy (70) electronic gaming machines (**EGMs**) (**the Application**).
2. The relevant municipal authority is the City of Wyndham (**the Council**). On 3 February 2021, the Council provided the Commission and the Applicant with its submission in opposition to the Application.
3. The Commission considered the Application by way of a public inquiry¹. A public hearing took place on 9 and 10 March 2021 (**the Hearing**). The Applicant was represented by Ms Nicola Collingwood of Counsel, instructed by BSP Lawyers. The Council was represented by Mr John Rantino of Maddocks.

PRELIMINARY MATTER

4. The Commission has considered this matter on all the available evidence before it. The Commission is aware that the COVID-19 pandemic, and associated restrictions implemented by government have had, and are likely to continue to have, some impact on the social and economic conditions of Victoria, including the community of the City of Wyndham. The continued nature and extent of this impact on the municipality is not able to be forecast with certainty. However, it is expected that any deferral of the likely positive impacts associated with the Application resulting from future government-imposed restrictions on the operation of EGMs will be balanced by a matching deferral of the likely negative impacts.
5. The *Gambling Regulation Act 2003* (**the Act**) expressly states that “*the Commission must use its reasonable endeavours to determine an application within the required period*” (see section 3.3.8(1A) of the Act), and the Commission has accordingly used its reasonable endeavours to determine this matter on the basis of the information and evidence before and available to it within the required period, noting that there is no information or evidence before the Commission to suggest that the continued impacts of the COVID-19 pandemic are likely to

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



materially skew its assessment of the social and economic benefits and disbenefits associated with the Application.

6. The Commission also notes that the parties to this Application have a right of review to the Victorian Civil and Administrative Tribunal (**VCAT**) should they wish for the Commission's decision to be reviewed under section 3.3.14 of the Act.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

7. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the Act. The 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 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.

8. The objectives of the Act are set out in section 1.1(2), which provides, inter alia:

...

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

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

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



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- (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.*

10. Section 9(3) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)* provides, inter alia:

The Commission must, when performing functions or duties or exercising its powers under the Gambling Regulation Act 2003 ... or any other Act, have regard to the objects of the Act conferring functions on the Commission.

11. The relevant provisions concerning this Application are to be found in sections 3.3.7 and 3.3.8 of the Act:

- (a) section 3.3.7 provides:

- (1) *The Commission must not grant an application for approval of premises as suitable for gaming unless satisfied that—*
 - (a) *the applicant has authority to make the application in respect of the premises; and*
 - (b) *the premises are or, on the completion of building works will be, suitable for the management and operation of gaming machines; and*
 - (c) *the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located.*
- (2) *In particular, the Commission must consider whether the size, layout and facilities of the premises are or will be suitable.*



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(3) *The Commission must also consider any submission made by the relevant responsible authority under section 3.3.6².*

...

(5) *The Commission cannot approve an area as a gaming machine area unless that area is wholly indoors.*

(b) section 3.3.8 provides, inter alia:

(1) *The Commission must determine an application by either granting or refusing to grant—*

(a) *approval of the premises as suitable for gaming; and*

(b) *if applicable, approval for 24 hour gaming on the premises on any one or more days.*

...

(2) *An approval must specify—*

(a) *the number of gaming machines permitted; and*

(b) *the gaming machine areas approved for the premises; and*

(c) *if applicable, the days on which 24 hour gaming is permitted on the premises.*

...

12. Section 3.3.7(1)(c) provides for what is now commonly described as the ‘*no net detriment*’ test. It requires the Commission to be satisfied that there is no net detriment arising from the approval through positively and objectively establishing that the net economic and social impact will not be detrimental to the well-being of the community³.

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

- the likely economic impacts of approval;
- the likely social impacts of approval; and
- the net effect of those impacts on the well-being of the relevant community⁴.

14. 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 community⁵. The test will be satisfied

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

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

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

⁵ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [332], [348] per Bell J (‘*Romsey #2*’) cited in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [58] per Dwyer DP.

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.

15. 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 versa⁶. On review, decisions in VCAT have held that for impacts that may be both economic and social – for example the benefits of gaming consumption – it does not matter whether the impact is considered on the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test⁷.

16. 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 application⁸.

This approach has been adopted in a number of VCAT decisions⁹. To facilitate greater consistency between the Commission and VCAT, the Commission has adopted the same approach in this matter.

17. If the Commission is not satisfied that the '*no net detriment*' test is met, that is clearly fatal to the application given the opening words of section 3.3.7(1) of the Act. The test is a mandatory precondition to approval. However, although section 3.3.7(1) sets out certain mandatory considerations for the Commission, the provision is not cast in exhaustive terms. If the Commission is satisfied that the '*no net detriment*' test is met, it still has an ultimate discretion as to whether or not to grant the approval¹⁰. The Commission must decide whether to grant the approval, even where an applicant has satisfied the minimum threshold of the '*no net detriment*' test¹¹.

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

⁷ See *Romsey #2* [2009] VCAT 2275, [352] per Bell J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [58] per Dwyer DP.

⁸ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [60] per Dwyer DP.

⁹ 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.

¹⁰ See *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [97] and following per Dwyer DP; see also *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M.

¹¹ *Gambling Regulation Act 2003*, section 3.3.8(1).

18. In considering the exercise of this discretion:
- (a) it must be exercised having regard to the purposes of the Act and, in particular, the specific purposes of Chapter 3 of the Act dealing with the regulation, supervision and control of gaming machines¹²; and
 - (b) it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the Act as a whole¹³.
19. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*¹⁴ that, if all of the mandatory considerations under the Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval – other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.
20. Finally, it is noted that pursuant to section 9(4) of the VCGLR Act, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation.
21. On 16 October 2013, Ministerial decision-making guidelines were published in the Victorian Government Gazette pursuant to section 5 of the VCGLR Act concerning applications for approvals of venues for EGMs (**Children’s Play Area Ministerial Guidelines**). The Children’s Play Area Ministerial Guidelines concern the assessment of a premises as suitable for gaming which contain, or will contain, a children’s play area, to ensure that the venue operator provides a responsible gambling environment. The Children’s Play Area Ministerial Guidelines provide the following matters to be considered by the Commission when assessing the suitability of premises for gaming that contain a children’s play area:

It is the policy of the Government that, when the Victorian Commission for Gambling and Liquor Regulation is assessing the suitability of premises for gaming that contain, or will contain, a children’s play area, the Commission should, in the course of making its decision on the suitability of the premises, have regard to the objectives of ensuring, as far as practicable, that the children’s play area is designed such that it:

- (1) is located as far away as practicable from the gaming machine area;

¹² *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [98] per Dwyer DP.

¹³ *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M. As to policy principles identified for consideration, see *Romsey* (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

¹⁴ [2013] VCAT 101, [98].



(2) does not have a line of sight from the play area into the gaming machine area or from the gaming machine area into the play area;

(3) does not permit sounds from gaming machines to be heard in the children's play area;

(4) is not directly accessible from the gaming machine area; and

(5) is conducive to being monitored by venue staff to help ensure that minors are not left unattended.

The Victorian Commission for Gambling and Liquor Regulation should have regard to any other aspect of the design and location of a children's play area that it deems relevant to ensuring that the approved premises for gaming will provide a responsible gambling environment.

For the purposes of these decision-making guidelines:

- *'children's play area' means any area or facility designed specifically for children or that could reasonably be expected to be used by children; and*
- *'venue' or 'premises' means the gaming venue and any other facility provided by the venue operator for use by patrons, including car parks.*

22. The Children's Play Area Ministerial Guidelines also state that the Commission should have regard to any other aspect relevant to ensuring that the approved premises for gaming will provide a responsible gambling environment.
23. The Commission notes that the Permanent Residential Accommodation Ministerial Guidelines do not apply, as residential accommodation is not proposed to be located in the Premises.

MATERIAL BEFORE THE COMMISSION

24. The Applicant provided the Commission with the following material in support of the Application:
- (a) an application form for the approval of premises for gaming, dated 24 August 2020 (**the Application Form**);
 - (b) evidence that the Applicant had advertised the Application by public notice in the Herald Sun Newspaper, on 26 October 2020;
 - (c) evidence from the registered proprietor of the land on which the Premises are proposed to be located, showing the proprietor's approval for the Applicant to make the application, dated 27 July 2020;
 - (d) a copy of a planning permit application for the Premises, dated 15 October 2020;
 - (e) a Social & Economic Impact Assessment, prepared by Colleen Peterson of Ratio Consultants, dated October 2020 (**the Ratio Report**), who gave evidence at the Hearing;
 - (f) an expenditure report prepared by Mr Tim Stillwell, Director of ShineWing Australia, dated 3 July 2020 (**the ShineWing Report**), who gave evidence at the Hearing;



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- (g) a written statement of Mr Luke Ponti, registered architect who prepared plans for the development of the proposed Premises, who gave evidence at the Hearing;
- (h) a Responsible Service of Gambling (**RSG**) report prepared by Leigh Barrett and Associates, dated 1 September 2020 (**the Barrett Report**). Mr Barrett gave evidence at the Hearing;
- (i) a written statement of Martin Carter, President of the Applicant, with annexures, dated October 2020. Mr Carter gave oral evidence at the Hearing, including information regarding the financial position of the Applicant;
- (j) a written statement of Mr Mark Robert Penaluna, Chief Executive Officer of the Applicant, dated October 2020, who also gave evidence at the Hearing. His written statement annexed the following in support of the Application;
 - (i) a letter from Wyndham City, thanking him for his contribution to the sport and recreation in across Wyndham;
 - (ii) a letter from Rick Bell from AFL Victoria, congratulating Mr Penaluna on his work in the community and contribution towards the VFL;
 - (iii) a letter from Tim Pallas MP, Treasurer of Victoria, supporting the Werribee Football Club and acknowledging the proposal for the development of the Premises, without indicating support for it or objecting to it;
 - (iv) a letter from the Wyndham Suns Football Club, acknowledging the work of the Applicant as “of huge benefit to all local clubs and groups”;
 - (v) a letter from the Western Region Football League, supporting the Applicant in its proposal for the development of the Premises;
 - (vi) a letter from the Truganina Thunder Football Club Inc., acknowledging the work of the Applicant and supporting the development of the Premises;
 - (vii) a letter from the Mercy Health Foundation, supporting the Applicant, acknowledging its contributions and supporting the Application;
 - (viii) a letter from the local branch of the Salvation Army, thanking the Applicant for its contributions while noting that it could not express specific support for the Application; and
 - (ix) a letter from Soujourners Church, thanking Mr Penaluna for the Applicant’s contributions to it;

- (k) a written statement of Hamish MacInnes, Community Development Manager of the Applicant, dated October 2020. Mr MacInnes gave evidence at the Hearing; and
 - (l) a written statement of Rhys New, General Manager of the Tigers Clubhouse and nominee under the venue operator's licence held by the Applicant, dated October 2020. Mr New gave evidence at the Hearing.
25. The Council provided the following material in opposition to the Application:
- (a) An economic and social impact assessment, prepared by SGS Economics and Planning (**the SGS Report**) dated January 2021, Mr Julian Szafraniec, Principal of SGS Economics and Planning gave evidence at the Hearing.
26. The following material, prepared by Commission officers, was provided to the Applicant and the Council and was considered by the Commission:
- (a) a report titled *Economic and Social Impact Report*, dated 10 February 2021¹⁵ (**the VCGLR Report**);
 - (b) a report from the Commission's Licensing Division titled *Size, Layout and Facilities Report – Club Tarneit*, dated 4 March 2021; and
 - (c) a pre-hearing inspection and compliance report prepared by the Commission, dated 4 March 2021 (**the Compliance Report**). This report contained the compliance history of the gaming venue known as the Tigers Clubhouse, at 70 Old Geelong Road, Hoppers Crossing, operated by the Applicant under venue operator's licence V99095217.
27. In addition, the Commission received correspondence in opposition to the Application from six community-based organisations and one individual, including:
- (a) Correspondence from Hobsons Bay City Council dated 29 January 2021, enclosing a report titled '*Problem Gambling – Electronic Gaming Machines Policy Statement*', dated July 2015. This report contained some information specific to the LGA, such as information relating to the SEIFA Index and indicia of disadvantage;
 - (b) CoHealth, dated 2 March 2021, stating that it provided a number of health services to the City of Wyndham, particularly to people experiencing social disadvantage and marginalisation from mainstream health and support services. These services include alcohol and drug services and mental health services. This also made reference to indicators of vulnerability within the LGA;

¹⁵ The Commission had previously issued three versions of its report. A fourth version was provided to the parties during February 2021 in order to correct inaccuracies in the earlier versions.



- (c) IPC Health, with several offices including one in the LGA, dated 25 February 2021. This correspondence referred to statistics showing indicators of the LGA's vulnerability to gambling-related harms;
 - (d) an individual who expressed personal opposition to the Application;
 - (e) Women's Health West, dated 23 December 2020. This report gave statistics to indicate that there was a significant increase in family violence support provided by the organisation to the Wyndham region in 2020. It stated that family violence is three more times likely to occur in families in which there is problem gambling and that there is a correlation between electronic gaming machine losses per adult and the rate of police callouts to family incidents but did not provide references aside from its internal data;
 - (f) HealthWest Partnership, whose catchment includes the City of Wyndham, dated 22 February 2021. This correspondence referred to a link between the incidence of family violence and problem gambling, with family violence more than three times more likely to occur in families where there is problem gambling; and
 - (g) Western Community Legal Centre Ltd, which provides outreach across the western suburbs, dated 2 March 2021. This submission was directed to the Council rather than the Commission, urging it to reject an associated planning application.
28. During the Hearing, the Commission was provided with:
- (a) financial statements of the Werribee Football Club Limited, for the year ended 30 October 2020;
 - (b) a printed architectural presentation from BSPN Architecture provided as an aid to the evidence of Mr Luke Pontj;
 - (c) an excerpt from the Productivity Commission in its report number 10, titled '*C: Estimating Consumer Surplus*';
 - (d) Appendix H of the Productivity Commission's *Counting the Cost* inquiry labelled '*Economic costs of excess gambling expenditure*';
 - (e) an excerpt from the guidelines of the Australia Transport Assessment and Planning (**ATAP Guidelines**); and
 - (f) a copy of VCAT decision *Truganina Metropolitan v Wyndham CC [2020] VCAT 1343*, where VCAT affirmed the decision of the Council to refuse to grant a permit for a development along Leakes Road involving EGMs, and plans for the subsequent development of that site

as a hospitality and residential premises, with no EGMs.

29. Prior to the Hearing, both Commissioners visited the site of the proposed Premises.
30. After the Hearing, the Commission received and considered:
 - (a) the written closing submission of Ms Collingwood for the Applicant dated 10 March 2021, including a document containing proposed conditions for the Commission to impose if it determined to grant the Application (**the Proposed Conditions**). The Proposed Conditions varied the originally proposed conditions annexed to the witness statement of Mr Penaluna, changing the date for the completion of the works from 31 August 2022 to 31 March 2023. The Proposed Conditions also included a new condition, proposing to amend the plans of the premises to remove the outdoor smoking terrace adjacent to the gaming room, requiring smokers to travel further to the other smoking area;
 - (b) an addendum to the SGS Report dated 12 March 2021, containing additional sensitivity testing material from Mr Szafraniec which was requested by Commissioner Scott;
 - (c) the written closing submission of Mr Rantino for the Council, dated 12 March 2021, together with the statement of grounds and objection from the Victorian Planning Authority, to a planning proposal for EGMs at 115 Woods Road, Truganina; and
 - (d) the written submission of Ms Collingwood for the Applicant dated 16 March 2021 in response to the submission referred to in paragraph (c).

DECISION AND REASONS FOR DECISION

Background

31. The City of Wyndham is a local government area (**LGA**) in the outer the south-western edge of Melbourne, approximately 40km from the city centre. It covers an area of 542km² and its major centres include Hoppers Crossing and Werribee. The estimated total adult population is 203,152, ranking the City of Wyndham as the second most populous of the 31 metropolitan municipalities¹⁶. The City of Wyndham's estimated annual population growth of 5.2% in 2020 is projected by the Department of Environment, Land, Water and Planning (**DELWP**) to be higher than the Victorian average of 1.3%. The City of Wyndham's percentage of population over 50 of 19.9% in 2019 is projected by DELWP to be lower than the Victorian average of 37.9%.
32. The Ratio Report notes that the population of Truganina in the City of Wyndham, of 37,574 in

¹⁶ Source: DELWP, 2018.

2021, is projected to increase by 52,220 in 2031.¹⁷

33. The Ratio Report sets out that the City of Wyndham had a population of 217,122 in 2016, which is projected to increase from this figure by 63.3% to 354,540 in 2026.¹⁸

Current gaming in the City of Wyndham

34. Currently, there are 13 gaming venues operating within the City of Wyndham with 903 EGMs¹⁹ in operation. The City of Wyndham contains an area subject to a regional cap of 638 entitlements, and a municipal limit of 552. The proposed Premises is located in an area within the City of Wyndham that is not subject to the municipal cap²⁰, but that is subject to the regional limit of 638. Approval of the Application will not cause the municipal or regional limit to be exceeded.
35. The VCGLR Report notes that the City of Wyndham has an EGM density of 4.4 EGMs per 1000 adults, which is 5.8% lower than the metropolitan LGA average of 4.7 and 11.9% lower than the State average of 5.0, placing the City of Wyndham as the 17th of 31 metropolitan LGAs in terms of EGM density per 1000 adults. If the Application is approved, the impact would be a 7.75% increase to 4.79 gaming machines per 1000 adults.
36. As also stated in the VCGLR Report, in the 2019-20 financial year, the City of Wyndham had an average gaming expenditure of \$372.90 per adult (based on the 2019 population estimate), which is 3.0% lower than the metropolitan average of \$384.44 and 1.24% lower than the State average of \$377.57. Applying the Applicant's estimate of the increased new gaming expenditure arising from the operation of 70 EGMs in the first year of operation would result in an increase in average gaming expenditure per adult of 5.3% in the LGA to \$392.68.

Location

37. The Premises are to be situated at 115 Woods Road, Truganina, near the corner of Leakes Road and the Skeleton Creek. The proposed site is currently vacant, as is the land to the west and north. The development of several new residential estates in the area has begun, including the Westbrook Estate Elpis, Albright and Elements.²¹ The area south of the Premises is developed.²²

The Premises is located along the Western Growth Corridor of Greater Melbourne, within the

¹⁷ The Ratio Report, p 44, Fig. 8.4: Estimated Population Growth in Patron catchment

¹⁸ *ibid*, p. 43.

¹⁹ Attached entitlements are gaming machine entitlements attached to an approved venue by the venue operator owning the entitlements, and indicates the number of gaming machines actually operating.

²⁰ See the Ministerial Order under sections 3.2.4 and 3.4A.5(3A) of the Act, Victorian Government Gazette, No. S 318 Wednesday 20 September 2017, p.5.

²¹ Ratio Report, p.8.

²² Ratio Report, pp.7-9.

future Tarneit Major Activity Centre.²³

Details of the proposed Premises

38. It is proposed by the Applicant that once construction is completed, the Premises will have a total floor area of 2,394 square metres over two levels.
39. The ground floor is proposed to include:
- (a) a bistro with an alfresco terrace, with total seating for 200 patrons;
 - (b) a children's play area;
 - (c) a café and lounge area with seating for 30 patrons;
 - (d) a sports bar with seating for 76 patrons and an external deck with seating for an additional 16 patrons;
 - (e) a gaming machine area with 70 EGMs;
 - (f) a community hub resource centre;
 - (g) a foyer and reception area; and
 - (h) a staff room.
40. The first floor is proposed to consist of:
- (a) three function rooms with a total patron capacity of 200; and
 - (b) a pre-function area and bar.
41. The Premises is also proposed to include car parking for 228 cars, of which four will be accessible spaces.

Catchment area of the Premises

42. The '*no net detriment*' test refers to 'the community of the municipal district in which the approved venue is located'. In determining the impact of an application of this nature on a municipal district, previous Commission and VCAT decisions have had particular regard to the area serviced by the relevant premises, which is generally referred to as the 'catchment area'²⁴. The determination of the likely catchment area in this instance is important in the Commission's consideration of the

²³ SGS Report, p.6.

²⁴ See for example, *Romsey #2* [2009] VCAT 2275; *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 (7 April 2011).

identity of those residents who will be most affected by the Application in terms of gambling-related benefits and harms.

43. The VCGLR Report classifies the municipality of the City of Wyndham as a metropolitan municipality in accordance with its classification as a city council under the *Local Government Act 1989 (Vic)*. According to the VCGLR Report, the immediate surrounding area for a metropolitan municipality is a 2.5-kilometre radius around the relevant premises. The VCGLR Report does not aim to define the origins of patrons likely to visit the venue, but rather, it enables a statistical profile of the area immediately surrounding the venue²⁵.
44. The Ratio Report did not expressly state what the catchment area would be, but its analysis was based on the area within a 5km radius of the Premises, implying that this was the appropriate catchment area.²⁶ In cross-examination at the Hearing, Ms Peterson indicated that her analysis was predicated on a 5km catchment area which was determined to be appropriate given that the area was a “growth area”. Applying the 5km radius of the Premises as the catchment area, the Ratio Report indicated that the suburbs of Tarneit, Truganina, Hoppers Crossing and Williams Landing would fall within the catchment area, and this view of the likely catchment area was shared by the ShineWing Report. The SGS Report also stated the majority of patrons (54%) travel less than 5km to access EGMs.
45. Noting the views expressed by the expert reports and noting that the Application relates to a greenfield site in a growth area, the Commission determines that the appropriate catchment area is the 5km radius of the Premises (**the Catchment Area**).

Reasons for Decision

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

AUTHORITY TO MAKE APPLICATION

47. The first element in relation to which the Commission is required to be satisfied is that the Applicant has authority to make the Application in respect of the Premises.
48. In the Application Form, the Applicant stated that it was not the owner of the Premises. However, the Applicant provided evidence of the owner’s consent, consisting of a written authorisation dated 27 July 2020.

²⁵ VCGLR Report, p.5.

²⁶ Ratio Report, p.64.

49. Based on this evidence, the Commission is satisfied that this first element has been met.

SUITABILITY OF PREMISES FOR THE MANAGEMENT AND OPERATION OF GAMING MACHINES

50. The second element in relation to which the Commission is required to be satisfied, is that the Premises are, or on the completion of building works will be, suitable for the management and operation of gaming machines. In particular, the Commission must consider whether the size, layout and facilities of the Premises are, or will be, suitable²⁷.
51. The Commission was provided with a Size, Layout and Facilities report prepared by staff at the Commission. This report assessed the Applicant's indicated gaming machine area (**GMA**) and site plans of the Premises. According to the Size, Layout and Facilities report, new venues are assessed by Commission Licence Management and Audit Inspectors against standards and guidelines in relation to the size, location and layout of the GMA, type and height of perimeter barriers, floor numbering and layout of gaming machines, windows, proximity of the GMA to other facilities within the venue (e.g. children's play areas) and any liquor or statutory authority conditions imposed. Based on the plans submitted, and subject to any planning issues, the report concluded that the size, layout and facilities of the Premises would be suitable for gaming with 70 EGMs, and the Commission accepts this report as indicating that the Premises would be suitable.
52. During the Hearing, the Commission also heard evidence from Mr Ponti regarding the location of the GMA within the Premises. Mr Ponti submitted that the location was determined with consideration of the Children's Play Area Ministerial Guidelines and to give 'activated edges' on all aspects of the Premises, including to the north and facing onto Skeleton Creek. When asked at the Hearing whether the children's play area could have been designed to be further away from the gaming room of the Premises, Mr Ponti's evidence was that it would not have been practicable from an architect's perspective to have these areas further separated.

Consistency with Ministerial Guidelines

53. As set out in paragraphs 20 to 24, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation. The Children's Play Area Ministerial Guidelines and the Permanent Residential Accommodation Ministerial Guidelines are ministerial decision-making guidelines that are relevant to the Commission's determination of an application for approval of premises as suitable for gaming,

²⁷ Section 3.3.7(2) of the Act.

particularly in relation to the second element of whether the premises are, or on completion of building works will be, suitable for the management and operation of gaming machines²⁸.

54. The gaming room is located on the north-western edge of the premises, while the children's play area is located along the eastern edge, with the bistro separating these two areas.
55. As noted in paragraph 52, on behalf of the Applicant, Mr Ponti gave evidence indicating compliance with the Children's Play Area Ministerial Guidelines. While the Commission notes it may have been theoretically possible to position the children's play area further from the gaming room, it is satisfied on the evidence of Mr Ponti that it would not have been practicable to do so. Accordingly, the Commission is satisfied that the intention behind the guidelines is achieved by making EGMs inaccessible to, and unable to be seen and heard by, children.
56. Based on the evidence above, the Commission is satisfied that the second element of the test in section 3.3.7(2) is met.

'NO NET DETRIMENT' TEST

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

Economic Impacts

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

Gaming expenditure not associated with problem gambling

59. As the economic category of gaming expenditure not associated with problem gambling includes consumption, then to the extent that such expenditure is not associated with problem gambling, it has been recognised (by, for example, the Productivity Commission in its 1999 report) that it can be treated as an economic positive²⁹. As Bell J further notes, this approach also brings to

²⁸ Section 3.3.7(2)(b) of the Act.

²⁹ See *Romsey #2* [2009] VCAT 2275 at [351] per Bell J.

account the benefit obtained from pure consumption by the lone gambler who does not use machines for social reasons³⁰.

Expenditure estimates

60. The ShineWing Report forecast gaming expenditure of between \$8,687,000 and \$9,453,500 for the first year in which the 70 EGMs would operate, were the Application granted. The ShineWing Report estimated that new expenditure would increase by approximately 15% in the second year of operation.
61. In arriving at this estimate, Mr Stillwell conducted an analysis of “greenfield” venues and venues currently operating within the LGA, in a manner similar to how it is proposed that the Premises will operate.
62. The factors considered by the ShineWing Report in its benchmarking analysis of similar venues included:
 - (a) the number of EGMs in operation;
 - (b) the location of those venues with respect to strip shopping, accessibility and general location;
 - (c) the number of competing gaming venues within the LGA;
 - (d) the average gaming expenditure in the LGA, per adult;
 - (e) the SEIFA scores relating to the LGA;
 - (f) the EGM density within the LGA and Net Machine Revenue (NMR);
 - (g) the non-gaming offering of competing gaming premises; and
 - (h) the expected population growth within the LGA.
63. In relation to transferred expenditure, the ShineWing Report adopted a notional transfer rate of 45% to 50%,³¹ and new expenditure was also estimated at 45% to 50%. At figure 9.10 of the ShineWing Report, it appears that the 50% rate was adopted for the first 12 months of operation, as the new and transferred expenditure are both projected to be between \$3,691,975 and \$4,017,738, . Accordingly, the Commission accepts that the transfer rate will be 50%.

³⁰ See *Romsey #2* [2009] VCAT 2275 at [351]. Bell J notes further at [352] that the other approach is to say, as did Morris J in *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [79] that gaming extends ‘substantial economic and social benefits’ to gaming machine users, which treats consumption as a benefit without saying whether it is economic or social. While Bell J states both approaches are correct, for the purposes of this Application this benefit is treated as an economic benefit.

³¹ The estimate of transferred expenditure at 50-55% was also referred to at 9.9 of the ShineWing Report. While it was not clear whether the 45-50% estimate was an error, the adoption of a 50% transfer rate and new expenditure rate would mean that this is of no consequence.

64. The ShineWing Report indicated that its estimate of the transfer rate was based upon its consideration of the following:
- (a) the number of gaming venues (four) located within five kilometres of the Premises, and the further 11 gaming venues located within 10 kilometres;
 - (b) evidence regarding the actual, rather than predicted transfer rates for existing 'greenfield' venues;
 - (c) the expectation that by the commencement of EGM operations by the Applicant in 2023, there would be a significant number of patrons residing in or relocating to the immediate catchment area who do not currently play EGMs, representing new expenditure to the area;
 - (d) the attractiveness of the Premises as a club venue to patrons residing in the immediate catchment area due to providing a more accommodating and welcoming environment than its immediate competitors;
 - (e) a large portion of the anticipated gaming patrons reside in nearby suburbs with existing convenient access to EGMs and the Applicant may attract market share from these venues; and
 - (f) due to being a 'greenfield' venue with a substantial non-gaming offering, this offering may attract patrons who would otherwise have played at their local/preferred venue of choice.
65. The Ratio Report gave the benefit of EGM expenditure not associated with problem gambling a low benefit, noting the expenditure estimate provided by the ShineWing Report, but refraining from attempting to quantify the amount which would not be associated with problem gambling.
66. The SGS Report provided a quantitative as well as qualitative assessment of the benefits and detriments associated with the Application. Its quantitative assessment ascribed a \$10.6 million dollar benefit to "the net present value of these benefits over the project life", described as the 20-year evaluation period. It assumed that the proportion of expenditure attributable to problem gamblers would be 41%, and that 59% of expenditure representing \$4,548,731 in the first year of EGM operation, would therefore be attributable to non-problem gamblers.
67. In its qualitative assessment, the SGS Report listed the economic benefit of increased EGM expenditure as of *moderate* benefit to the LGA and referred to the factors considered by its quantitative assessment in arriving at this assessment.

The Commission's view

68. The ShineWing Report estimates that 45 to 50% of expenditure would be transferred from competing EGM venues, reducing expenditure in those venues. In arriving at this estimate, the ShineWing report considered the outcome of a 2003 Victorian Longitudinal Community Attitudes

Survey, which found that 59% of EGM users travel less than 5 kilometres to a gaming venue and 39.7% travel less than 2.5 kilometres.

69. The estimate of transferred and new expenditure in the ShineWing Report was also based upon the considerations listed in paragraph 64 above. As the notional transfer rate adopted by the ShineWing Report was not challenged by the Council, the Commission accepts the estimated 50% of expenditure being both new and transferred in the first 12 months as the best estimate of the transferred expenditure associated with the Application.
70. The evidence indicates that the majority of new expenditure to the LGA will not be associated with problem gambling. However, the Commission also notes that a significant portion of this expenditure is likely to be transferred from other venues in the LGA. Therefore, the Commission's view is that the benefit associated with the expenditure at the Premises not associated with problem gambling should be given low weight.

Expenditure on capital works

71. A potential key economic benefit associated with this Application arises from the expenditure on the proposed development of the Premises.
72. Mr Carter's evidence was that the development of the Premises, with all the associated benefits, would not occur unless the Application were approved. While not stated by the ShineWing Report, Mr Stillwell's oral evidence was that the development of these "kinds" of venues in *greenfield* areas was generally not a financially viable prospect, but for the inclusion of EGMs and the revenue generated by them. This proposition was contested by Mr Rantino who referred to the decision of *Truganina Metropolitan v Wyndham CC*, referred to in paragraph 28(f), as illustrative of how revenue from EGMs was not required for these "kinds" of development to occur.
73. The Ratio Report assessed the proposed \$12 million development of the Premises to be of negligible benefit, noting that there was no proposal by the Application to engage persons or companies from within the LGA to carry out the works or supply materials for the proposed development.
74. The SGS Report stated that the \$12 million associated with the construction of the Premises should not in its entirety be assessed as the quantum of benefit which would accrue to the LGA. Instead, the SGS Report submitted that 22% of this amount, corresponding to the "value added component associated with the works" should be regarded as the potential benefit to the LGA. The SGS Report noted that some of the benefit associated with this proportion of the expenditure would fall outside of the LGA and should therefore not be counted as a benefit. Finally, the SGS Report stated that only \$1,320,000 of the expenditure on capital works would benefit the LGA in



the year of 2023, and that this benefit associated with the capital works should be given marginal weight.

The Commission's view

75. The Commission is able to draw an inference from Mr Rantino's submission that, in some cases where it is claimed that EGMs are necessary to finance the development of an entertainment complex, these claims may be incorrect. However, an inference cannot be drawn from the decision of VCAT referred to by Mr Rantino that the proposal for the development of the Premises represented by the Application, could or would occur without income from EGMs at the Premises.
76. On the other hand, the contention that entertainment complexes of the type proposed by the Application cannot generally be developed, but for the existence of EGMs, is not relevant to the Commission's assessment of the *no net detriment* test in this case.
77. Conversely, there is insufficient evidence before the Commission to indicate that an entertainment complex substantially similar to that proposed by the Application would be built were the Application refused. The Commission notes that its statutory function is to assess a particular application before it, applying the *no net detriment* test. While the land on which the Premises is proposed to be located may be developed irrespective of whether the Application is successful, it is not the role of the Commission, or otherwise practicable, to speculate as to how this might occur.
78. Mr Carter's evidence indicated, in summary, that the proposed development would not occur without the approval of this Application. Further, the Commission is mindful of VCAT's decision in *Monash CC v L'Unico Pty Ltd*³² where it held (albeit in relation to an EGM increase application) that it is not appropriate under the relevant statutory framework to either engage in a 'project feasibility' or 'existing financial capacity' assessment, but rather (with two provisos³³) that it is appropriate to simply take the proposal for what it is and then assess its likely social and economic impacts as per the '*no net detriment*' test. Here, the Commission considers that neither of those two provisos are enlivened and finds that the development of the Premises would not proceed if this Application (as amended by the Proposed Conditions) were not to be successful.

³² [2013] VCAT 1545.

³³ The first proviso was that common sense suggests that there needs to be a reasonable degree of corroborating information, to at least provide comfort that the "estimated project value" of the proposed works is more than just an ambit or "back of the envelope" calculation. As such, less weight should be given to purported proposed works where there is a concern about the bona fides of the "project value" figure being relied upon. The second proviso was that it seemed appropriate to recognise that the proposed works may in practice be easier to achieve financially if the Application were approved.

79. The Commission accepts that it is anticipated that the construction of the Premises will cost approximately \$12 million, however it notes that evidence has not been given to suggest that contractors or suppliers within the LGA will be engaged to carry out this work. Consequently, while it is likely that some benefit will accrue to the LGA the Commission determines that this should be given marginal weight.
80. In making this assessment, the Commission notes it is important that the benefits associated with the development are not double counted, having regard to the social impact that may result from the proposed facilities and services at the Premises. This aspect has been considered separately in detail at paragraphs 161 to 167.

Employment creation

81. The economic benefit of employment creation arising from this Application can be described as both short term and longer term:
- (a) short term employment benefits that arise during the development of the Premises (related to but separate from the economic benefit associated with the expenditure on capital works); and
 - (b) longer term employment benefits arising from the introduction of EGMs and patronage of facilities at the Premises.
82. In relation to short term employment benefits, the extent of the works are described generally in paragraphs 71 to 80 above. As noted above, it is not clear to what extent this work will be undertaken by individuals who live in the City of Wyndham because the Applicant intends to put the work out to tender.
83. Based on the evidence presented relating to short term employment, the Commission concludes that it should not place any weight on this economic benefit. To the extent that any such short term employment arises in relation to this Application, the Commission considers that the value of this benefit has been captured in the benefit associated with the expenditure on capital works considered in paragraphs 71 to 80 above.
84. Separate from the short-term economic benefits associated with the capital works is the potential benefit associated with longer term employment arising from the Application. In relation to this benefit, the Ratio Report estimated that 42 full-time equivalent employee (**FTE**) positions would be created in the following areas of the Premises:
- (a) management – 5.3 positions;

- (b) gaming room – 8 positions;
 - (c) café – 5.5 positions;
 - (d) bar and kitchen – 14.5 positions;
 - (e) function staff – 3 positions; and
 - (f) administration and reception – 5.6 positions.
85. The written evidence of Mr Penaluna stated a belief that at least 80% of the roles created would be filled by staff who resided in the LGA.
86. The written evidence of Mr Penaluna also annexed proposed conditions for the Commission’s consideration, to be attached if it granted the Application, which included a condition that a part-time “Community Development Manager” role occupied by Mr MacInnes would be increased to a full-time role, at an annual cost of \$25,000. The written evidence of Mr Penaluna did not specifically address whether this role was considered as part of the 42 FTE positions referred to in paragraph 84 above. The Commission assumes that the Ratio Report and SGS Report have not double counted the benefits of this increased role with respect to both community contributions and employment creation and considers this better dealt with under the community contributions section below.
87. The SGS Report expressed an opinion that employment creation would be largely transferred. In its qualitative assessment, it gave marginal weight to the benefit associated with the new roles, stating that in its assessment the lasting economic impact on the community would be relatively small.³⁴
88. The Ratio Report regarded the creation of 42 EFT positions as not being of significant impact given the size of the local economy, however gave the benefit associated with the creation of these positions a moderate weight.
89. The Commission considers the additional long term employment arising from the Application as of positive impact, taking into account the anticipated numbers of employees, the anticipated population growth in the Catchment Area and the likelihood that most employees will be from within the LGA. The Commission has determined to consider the social and economic benefit associated with this together, and considers this combined benefit to the LGA to be of low to moderate weight.

³⁴ SGS Report, p.56.

Complementary expenditure

90. Complementary expenditure is the increased economic activity in the LGA (aside from gaming expenditure) that may arise if the Application is granted. However, the extent of this benefit depends upon a range of factors including the extent to which the expenditure is a consequence of new spending, for example, as a result of additional people coming to the municipal district as tourists or for business as compared to transferred complementary expenditure from other venues within the municipality, and the extent to which that complementary expenditure results in additional spending on local goods and services.
91. The written evidence of Mr Penaluna estimated that complementary expenditure would be \$3.161 million dollars over the initial 12 months of EGM operation. At the Hearing, Mr Penaluna explained that this estimate was provided by the accountant of Tigers Clubhouse and based upon the historic performance of that clubhouse.
92. The Ratio Report assessed the benefit associated with this complementary expenditure to be of low benefit.
93. The SGS Report assessed the economic benefit associated with this factor to be of marginal benefit to the LGA, asserting that the expenditure is “relatively modest and only experience over a relatively short period of time”.
94. The Commission accepts that, in light of the non-gaming facilities proposed at the Premises, there will be complementary expenditure generated. As the quantum of such expenditure estimated by the Applicant was not contested, the Commission is satisfied that this will be in the vicinity of \$3m over the initial 12 months of EGM operation.
95. For these reasons, while the Commission assesses the \$3m of complementary expenditure as of benefit to the LGA, it is careful not to double-count this impact when considering the economic value of supply contracts or the social benefit associated with complementary expenditure. The Commission therefore weights this benefit together with the benefit associated with supply contracts in the following paragraphs.

Supply contracts

96. The Applicant considers that the approval of the Application will result in supply contracts for the maintenance and operation of the Premises, all of which are separate to the anticipated gaming revenue to be generated through operation of EGMs.



97. The written evidence of Mr Penaluna contained an estimate that the value of supply contracts for the initial 12 months of EGM operation at the Premises would be \$2.087 million dollars. Mr Penaluna's oral evidence was that he estimated that over half of all supply contracts would be with suppliers from within the LGA.
98. The SGS Report assessed the value of supply contracts to be of marginal benefit to the LGA, noting that while some benefit would likely accrue to the LGA, in the absence of evidence to the contrary, decisions to award contracts should be assumed to be based upon cost rather than a preference for local suppliers.
99. The oral evidence of Mr Penaluna was that up to half of supply contracts would be with suppliers local to the LGA and that local suppliers would be used where possible. However, he also stated that local suppliers were unlikely to be able to provide the full range of goods and services required and did not indicate whether the Applicant had any policy which favoured local suppliers to competitors outside the LGA. Accordingly, there is limited information suggesting that a significant proportion of supply contracts will be in favour of local suppliers. Noting this, together with the estimated value of the supply contracts and complementary expenditure, the Commission gives this benefit low weight.

Community contributions

100. In determining the net economic and social impact of applications of this nature, both the Commission³⁵ and VCAT³⁶ have regularly treated community contributions to be of positive impact. However, for the proposed contributions to be regarded as a benefit associated with the Application, it is necessary that they are properly regarded as community contributions and that they will result as a consequence of the Application. In assessing the weight to be placed on such an economic benefit, it is important that the Commission does not conflate this benefit with the social benefit associated with such contributions.
101. The Applicant's evidence was that it makes current cash and in-kind to the value of over \$100,000 per annum.³⁷ The written statement of Mr Penaluna described how the Applicant was involved in local football and provided sporting facilities at Chirnside Park for a range of local sporting groups.
102. Mr Penaluna's witness statement annexed proposed conditions relevant to community contributions (which were unchanged by the Proposed Conditions referred to in paragraph 30(a))

³⁵ See, for example, *Richmond Football Club Ltd at Wantirna Club premises* [2015] VCGLR 31 (24 July 2015).

³⁶ 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.

³⁷ Ratio Report, p.22.

for the Commission to attach to the grant of the Application if it chose to do so. These proposed to make cash contributions in the sum of \$50,000 per annum indexed to CPI. It was proposed that these contributions would be allocated each year to not-for-profit community groups and sporting organisations providing services and facilities to residents of the LGA.

103. The Proposed Conditions also proposed to increase the remuneration associated with the Community Development Manager role referred to in paragraph 86, by \$25,000 per annum, transforming this from a part-time role into a full-time role. The Commission accepts on the evidence that this position is engaged in community activities.
104. The SGS Report assessed the value of the community contribution as \$75,000 per annum and considered the social benefit associated with this to be of marginal to low benefit. The SGS Report indicated that it was uncertain whether this contribution would continue in perpetuity, and it is unclear whether this statement was a basis for the *marginal to low* weighting of this benefit. As the Commission's general practice is to enforce such a condition as a requirement, so long as EGMs to which an application relates continue to operate, the assessment of the benefit associated with this factor by the SGS Report is of limited use to the Commission.
105. In the absence of submissions indicating a contrary view, the Commission considers it appropriate to regard the contribution amount represented by the Proposed Conditions as \$75,000 per annum.
106. The Commission assumes that the Applicant's current level of contributions, assessed at \$100,000 are the contributions which it is required to make pursuant to a decision of the Commission in 2018. Accordingly, the Commission considers that these are a separate matter to the Application before the Commission and that the Applicant will continue to make these contributions regardless of the outcome of the Application.³⁸
107. The Commission accepts the evidence of the Applicant that the \$50,000 of proposed community contributions associated with the Application would be distributed to local community organisations as determined by the Applicant and Council and, as below, the Commission requires this by way of a condition on the grant of the Application.
108. While the entire \$75,000 will be of benefit to the community, this is a small amount in the context of the economy of the LGA. The economic benefit associated with these contributions is considered together with the social benefit below at paragraphs 176 to 184.

³⁸ See decision: *Werribee Football Club Limited at The Tigers Clubhouse premises (Gaming - EGM Increase) [2018] VCGLR 18 (4 May 2018)*.

Increased gaming competition in the City of Wyndham

109. In light of the statutory purposes of Chapter 3 of the Act³⁹ and to the extent that it does not relate to problem gambling, an increase in gaming competition in the LGA and the consumer benefits which derive thereof are of benefit to the LGA.
110. The assessment of this benefit by the SGS Report did not separate this factor from the possible increased incidence of problem gambling in the LGA, noting that “increased gaming competition that generates an increase in total EGM expenditure is also likely to generate an increase in expenditure attributable to problem gamblers.”⁴⁰ In determining that this benefit should be given “neutral” weight due to the potential benefit being “offset” by the detriment associated with the possible increase in problem gambling, the SGS Report has clearly double-counted the detriment associated with the possible increase in problem gambling associated with the Application.
111. The Ratio Report assessed this factor to be of low benefit to the LGA but did not provide detailed reasons for this weighting.
112. The ShineWing Report estimated a rate of transferred expenditure at the Premises of between 45% and 50%. In this respect the proposed venue would add to gaming competition, with four existing gaming venues within 5km of the Premises and a further 11 located within 10km. Noting this and the statutory purposes of the Act, this is given marginal weight.

Gambling expenditure associated with problem gambling

113. To the extent that a portion of new expenditure is attributable to problem gambling, this represents an economic disbenefit⁴¹. In assessing the extent of this disbenefit, the Commission recognises that it does not include transferred expenditure because such expenditure does not exacerbate problem gambling⁴².
114. Also in assessing this impact (and other impacts involving problem gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and

³⁹ The Act, section 3.1.1(2).

⁴⁰ SGS Report, p.4, at [224].

⁴¹ The Commission recognises that on review, the key likely disbenefit of ‘problem gambling’ has for convenience been treated under the heading of ‘social impacts’ in various instances: see *Mount Dandenong Tourist Hotel Pty Ltd v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted: see, for example: *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [178] and following per Dwyer DP. For completeness the Commission considers both the economic and social impacts of problem gambling in its assessment of this Application.

⁴² See *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [113] per Code PM and Nelthorpe M; *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J.

indirectly as a consequence of gambling undertaken by those who may be defined as 'problem gamblers', as well as by those who may be otherwise regarded as 'low-risk' or 'moderate-risk' category gamblers on the Problem Gambling Severity Index (**PGSI**). The Commission accepts that harms associated with the incidence of problem gambling are wide-ranging and attributable to all PGSI categories of gamblers and across the community more broadly.

115. In assessing the extent of the economic disbenefit of gambling expenditure associated with problem gambling, the Commission has given regard to the expenditure evidence set out in paragraphs 60 to 68 above.
116. The qualitative assessment contained in the SGS Report assessed the detriment associated with the possible increased incidence of problem gambling on the community as representing a high detriment to the LGA. In arriving at this weighting, the SGS Report referred to its quantitative assessment of the costs associated with problem gambling, which purported to quantify these costs in dollars. The total cost indicated by its quantitative assessment was \$47.10 million dollars between 2023 and 2041.
117. The SGS Report adopted the notional rate of 41% as being the percentage of expenditure which would be from problem gamblers, representing \$1,580,000 in the first 12 months of EGM operation. At the Hearing, Mr Szafraniec explained that this percentage was based upon data provided by the Productivity Commission during 2010 and pertained to gaming venues throughout Australia generally.
118. In arriving at its assessment of the likely cost of problem gambling, the SGS Report referred to demographic features of the catchment and LGA as indicating vulnerability. The Commission refers to the demographic factors referred to in paragraphs 129(a) to 129(i) as indicating that, as a whole, the catchment and LGA do not show significant signs of disadvantage compared to average indicia of disadvantage.
119. The Ratio Report acknowledged that the Application would increase the accessibility of EGMs in the LGA, and that there would therefore be some corresponding increase in the incidence of problem gambling within the LGA, though this was mitigated by the protective features associated with the proposed layout of the Premises and the proposed RSG practices and management of the Applicant. The Applicant contested the assessment by the SGS Report with respect to problem gambling, and in particular, the assumption that 41% of gambling expenditure would be associated with problem gamblers.
120. Following the Hearing, SGS Economics and Planning provided additional sensitivity-testing information with respect to the cost of problem gambling. This showed how the assumption of

varying percentages of expenditure related to problem gambling (from 41% down to 22%) would still result in the net harms outweighing the net benefits associated with the Application in almost every assumed scenario.

121. The Commission agrees that the SGS Report has considered relevant factors in attempting to quantify the proportion of expenditure associated with the possibility of problem gambling. However, it does not accept that its estimate of this proportion is sufficiently accurate or justified to an extent which permits reliance upon this assumption, noting in particular that there is little information to indicate whether the findings of the Productivity Commission in 2010, which looked at gaming premises across Australia, should be used to evaluate newly designed Victorian gaming venues.
122. The submissions of the Council noted that while the Victorian Competition & Efficiency Commission (**VCEC**) provided an estimate that 35% of expenditure was attributable to problem gambling on EGMs in Victoria within its “Counting the Cost” report, the sensitivity testing of Mr Szafraniec adopted a 22% rate, which was lower than the estimate provided by VCEC. Noting this, simply adopting either a 22% or 35% figure as the proportion of expenditure derived from problem gamblers fails to account for the differences between an established venue in 2012, and a new, well-managed gaming premises in 2023.
123. In the absence of clear information indicating whether, or by how much, the likely level of problem gambling generally across Australia would differ from that in this specific community, the Commission needs to be cautious before assuming that any particular percentage range of expenditure would be attributable to problem gambling. To complete the Commission’s assessment as to the extent which gambling expenditure will be associated with problem gambling, other factors also need to be considered. These are the vulnerability of the relevant community, whether the venue is a destination venue or not and the level of RSG protections proposed. These elements are discussed below.

The vulnerability of the City of Wyndham and the Catchment Area

124. The extent to which it can be considered that new expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with this Application, will be influenced by the socio-economic status and vulnerability of the community in the area surrounding the Premises. This is because communities characterised by socio-economic disadvantage are regarded as more vulnerable to problem gambling and the negative impacts of gambling. As referred to in paragraph 45 above, the Commission has determined the 5km radius of the Premises to be the appropriate catchment area relevant to the Application.

125. The SGS Report referred to 2016 data as indicating that the immediate catchment population was neither significantly disadvantaged nor advantaged. However, it noted that there were pockets of significant disadvantage within the catchment area towards Werribee to the south and that SEIFA scores relating to newly established suburbs could be a misleading indicator of disadvantage in an area. This, it submitted, was because as populations grew, this would result in levels of disadvantage trending towards the mid-point of SEIFA levels over time.
126. In the SGS Report and in his evidence at the Hearing, Mr Szafraniec indicated that his assessment of the following led to the conclusion that the net impact of the Application on the LGA would be negative:
- (a) the rapidly growing catchment area, resulting in a demographic which becomes increasingly disadvantaged;
 - (b) existing pockets of disadvantage within the catchment area;
 - (c) the transferral of economic benefits within the LGA rather than the creation of new benefits; and
 - (d) what he considered to be the overwhelmingly negative impacts associated with the possible incidence of problem gambling.
127. The SGS Report also considered the following factors as relevant to assessment:
- (a) projected population growth in the LGA of 4% per annum;
 - (b) a young population profile with a higher than average proportion of residents aged 0-14 and 25-54 years old;
 - (c) a higher proportion of *family* type households;
 - (d) a relatively high number of owner-occupied dwellings and a higher rate of mortgages;
 - (e) a lower rate of educational attainment than Greater Melbourne and Victoria;
 - (f) equivalised household income; and
 - (g) labour force participation.
128. The SEIFA index of Relative Socio-economic Index of Advantage and Disadvantage (**SEIFA IRSAD**) scores relevant to the Application⁴³ indicate that:

⁴³ Refer to pp. 22-33 of the Ratio Report.



- (i) the majority of SA1 areas within the catchment are within the 6th decile on the SEIFA IRSAD index indicating less disadvantage than the average;
- (ii) there is one SA1 area which partly falls within the northern portion of the catchment, which is in the first decile in terms of disadvantage⁴⁴;
- (iii) the catchment area partially incorporates a SA1 to the southeast within the 8th decile, being significantly less disadvantaged than the average;
- (iv) there are a number of SA1 areas within the 4th and 5th deciles, being slightly disadvantaged compared to the average; and
- (v) the catchment includes an area of significant disadvantage towards the south near Werribee, being in the 2nd decile.

129. The VCGLR Report set out the following factors relevant to the vulnerability of the LGA:

- (a) A SEIFA score for the SA1 in which the Premises will be located of 972, ranking the LGA 10th of 31 metropolitan LGAs in terms of disadvantage and 50th of all 79 LGAs in terms of disadvantage;
- (b) of a labour force of 144,312 persons in the LGA, 9,447 were unemployed based upon 2016 census data, representing 6.5% of the labour force. Within Tarneit specifically, 5.0% of the labour force was unemployed, which was 9.7% less than the metropolitan average and 3.7% less than the Victorian average;
- (c) in terms of pensions and allowances in Tarneit, the rate was 72.7 out of 1,000 adults based upon 2016 census data. This ranks the SA2 as having 46.3% fewer pensions than the metropolitan average, ranking it 24th of 31 in terms of the percentage of pensions. The SA2 had 54% fewer than the Victorian average, ranking it as having the 72nd lowest rate out of all 79 LGAs;
- (d) the rate of homelessness in the LGA was 4.5 per 1000 adults based on 2016 data, giving it the 15th highest rate out of 31 LGAs and 23rd highest out of all 79 Victorian LGAs. Within the immediate surrounding area of the Premises, the rate of homelessness was 11% less than the metropolitan average and 3% less than the Victorian average;
- (e) the rate of housing stress in the SA1 of the Premises is 50%, which is 3.7% less than the metropolitan average and 3.3% greater than the Victorian average. This ranks the SA1 as 24th of 31 metropolitan LGAs and 25th of all 79 Victorian LGAs in terms of housing stress;

⁴⁴ *ibid*, Figure 11, p.23.



- (f) In the SA1 of the Premises, the equivalised household income (EHI) is \$800, which is 7.7% less than the metro average and 2.8% less than the Victorian average. This ranks the SA1 as the 21st of 31 metro LGAs in terms of EHI and 24th of 79 Victorian LGAs;
- (g) an EGM density of 4.4 EGMs per 1,000 adults, 5.6% less than the metropolitan average and 11.8% less than the stage average.
- (h) the average equivalised household income (**EHI**) for immediate surrounding area \$999.84, which 7.7% less than the average of \$1,082.94 for metropolitan LGAs and 2.8% less than the Victorian average of \$1,028.24; and
- (i) the rate of unemployment in the LGA is 6.5% and the rate in Tarneit is 5%. This is compared to the State and Metropolitan averages of 5.4% and 5.8% respectively.

The convenience of the Premises

130. Gaming venues located within areas of heavy traffic are considered to be *convenient*, and therefore more likely to attract problem gamblers than *destination* venues. This is because destination venues are more likely to require patrons to make deliberate efforts to attend gaming venues.
131. The SGS Report considered that the Premises was unlikely to be a convenience venue due to the current location and likely lack of pedestrian traffic. However, it was stated that this may change once the area surrounding the Premises is more fully developed. The Ratio Report stated that the Premises was a destination venue but did not indicate whether it would continue to be a destination venue as the area developed.
132. Considering the location of the Premises, the current location of amenities relative to the Premises, the lack of foot traffic and the undeveloped state of the surrounding area, the Commission is satisfied that the Premises will not be a convenience venue once construction is completed. Furthermore, the Commission notes that as the area surrounding the Premises develops, the Premises may develop some aspects of convenience. However, it is the Commission's view that this is unlikely to change the underlying nature of the Premises' as a destination venue. This is due to the major thoroughfare of Leakes Road on the southern edge of the Premises, which acts as a barrier to the flow of foot-traffic between the Tarneit Central Shopping Centre and the Premises.

Responsible Service of Gambling measures

133. In considering the extent to which any new expenditure may give rise to problem gambling, the manner in which gaming is to be conducted at the Premises is also a relevant factor.

134. The Compliance Report shows that the Tigers Clubhouse entered 14 incidents into its RSG register with respect to that premises, which the Applicant has operated for approximately 20 years. One of the Applicant's central submissions with respect to Responsible Service of Gambling (**RSG**) measures at the Premises was that its record of good management should inform the Commission's consideration of the level of RSG measures and management likely to take place at the Premises.
135. The proposed hours for gaming at the Premises are seven days per week, with a closure of the gaming room between 2am and 8am. This represents the minimum six-hour break in play recommended by the Productivity Commission.
136. During the Hearing, the Council noted that the Tigers Clubhouse was managed by Quidco, an externally sourced venue management company. The Council argued that the employment of a management company limited the extent to which the Applicant's positive history of managing the Tigers Clubhouse could inform the Commission regarding the likely standard of management of the Premises.
137. The SGS Report stated that larger venues were more likely to coincide with higher levels of problem gambling, and that the Application would place the Premises in the top 30th percentile in terms of size. The SGS report acknowledged that the design of the Premises was a mitigating factor with respect to the possible incidence of problem gambling.
138. The oral evidence of Mr Barrett together with the Barrett Report was that the possible incidence of problem gaming at the Premises would be minimal. The Barrett Report presented the following opinions:
- (a) that the Premises would be a destination venue rather than a convenience venue;⁴⁵
 - (b) that the Premises would be a *medium-sized* venue;⁴⁶ and
 - (c) that the Premises complied with the Children's Play Area Ministerial Guidelines.⁴⁷
139. The Barrett Report and evidence of Mr Barrett indicated that the Applicant had adopted his recommendations that front of house staff hold a current Victorian RSG Certificate, and adopt the RSG Code and RSG Manual.

⁴⁵ The Barrett Report, p.6.

⁴⁶ *ibid*, p.6.

⁴⁷ *ibid*, p.6.

140. The Barrett Report stated that the layout of the gaming room would allow for the surveillance of patrons by staff from the gaming bar and cashier's station that the gaming room was not visible from outside and the Applicant had accepted a recommendation that CCTV be implemented in order to monitor patrons. At the Hearing, Mr Barrett gave evidence that his recommendations regarding sound attenuation, so EGMs were not audible from outside the EGM area, were also accepted, and would be adopted, by the Applicant.
141. The Council put questions to Mr Barrett suggesting that the possible incidence of problem gambling could be reduced if the smoking lounge was not directly accessible from the gaming room. In turn, Mr Barrett denied the suggestion that a smoking room from which EGMs were not visible would be a protective feature against problem gambling, by removing problem gamblers more definitively from their machines for a time. The Commission accepts that Council's argument has merit, and while evidence is limited, it appears self-evident that breaking a patron's line-of-sight to their EGM during a cigarette break is more likely to be a protective, rather than aggravating factor, against problem gambling. While Mr Barrett did not acknowledge that moving the smoking area would be useful in mitigating against the possible incidence of problem gambling, the Proposed Conditions subsequently submitted by the Applicant incorporated the deletion of the gaming room smoking area as a potential condition such that the only smoking area at the Premises would be outside, and fully removed from the gaming area.

The Commission's view

142. The opinion presented by the Barrett Report that the Premises would be a *medium-sized* venue was without justification. As referred to in paragraph 137, the SGS Report notes that the Premises is within the top 30th percentile in terms of venue size, and the Commission therefore regards the Premises to be a *large* venue, albeit on the lower end of this category. Otherwise, the Commission is satisfied that if the Premises is constructed in a manner which is consistent with the evidence of the Applicant's witnesses, the RSG practices and layout of the venue will be to a high standard and mitigate the possible harm associated with problem gambling at the Premises.
143. The hours proposed for gaming are not proposed to be significantly limited, noting that the six-hour period in which the gaming room will be closed is the minimum recommended by the Productivity Commission. The Proposed Conditions do not offer any condition with respect to further limiting the operating hours at the Premises.
144. While there are some indicia of disadvantage in the catchment area and LGA, the Commission is satisfied with reference to the indicators at paragraph 129, that these areas are not substantially disadvantaged as a whole. While the Commission considers it likely that the population of the

catchment and LGA will develop over time due to the growing nature of the LGA, the Commission cannot place great reliance upon either of the competing predictions submitted by the parties as to how this will be borne out in SEIFA scores for these areas in the future.

145. Having regard to the above, the Commission considers that there may be a disbenefit associated with the economic impacts of the possible incidence of problem gambling, but that these are to be given moderate, rather than high, weight. It is noted that Quidco, an external venue management company, has provided the key management services at the Tigers Clubhouse over the years and that the Applicant does not intend to engage it for Club Tarneit. However, the Commission is satisfied that the Applicant has a strong track-record of hands-on board oversight of management of the Tigers Clubhouse and notes that the directors of the Applicant have undertaken RSG training. The Commission also notes that the Compliance Report shows a strong record of compliance with respect to that premises.
146. The social impacts of problem gambling are considered in paragraphs 185 to 192 below.

Potential diversion of trade from non-gaming venues

147. The SGS Report ascribed the detriment associated with the diversion of trade from retail (non-gaming) businesses a low weight, stating that this was likely to exacerbate the effects of a struggling retail sector, to the detriment of local businesses.
148. The Ratio Report assessed this factor to be of *negligible* detriment, stating that the impact on non-gaming venues was difficult to determine, but not providing further justification for this assessment.
149. Noting that the Application concerns a *greenfields* venue in an area which is substantially undeveloped, yet expected to grow over the coming years, the Commission considers that the impact of this factor on competing businesses is unlikely to be large. There is an absence of food and beverage offerings in the immediate area.
150. Of retail and hospitality venues in the area, it is important to consider whether expenditure would actually be transferred from these venues to the Applicant. It would not appear likely that these would be competing venues given the scale of the Application and the financial investment required to develop the offering which the Application proposes to include.
151. While the Commission accepts that there may be some disbenefit to the LGA associated with this factor, it should only be given marginal weight.

Potential diversion of trade from other gaming venues

152. The potential for diversion of trade from other gaming venues is a potential disbenefit associated with the Application, both in terms of the effects felt by a competing premises, and the possible reduction to community benefits provided by those premises.
153. The Ratio Report assessed the diversion of trade from other gaming venues in the LGA as being of marginal detriment to the LGA. It noted that approximately \$4m was anticipated to be transferred from other gaming venues
154. The SGS Report stated that the diversion of trade from gaming venues may lead to a meaningful loss of net community welfare if the diverted revenue threatened the viability of an organisation. The SGS Report gave marginal weight to this disbenefit, but justification was not provided for this specific weighting.⁴⁸
155. The ShineWing Report set out that the LGA has six clubs operating 441 EGMs and seven hotels operating 462 EGMs, with 13 gaming venues in total.⁴⁹ The ShineWing Report also adopts a notional transfer rate of between 45% and 50% from existing EGM venues within the LGA. Four gaming venues are located within 5km of the Premises and a further 11 venues are located within 10km of the Premises.⁵⁰
156. Of the four competing gaming venues within the 5km Catchment Area, Hotel 520 is the closest gaming venue to the Premises, followed by the Hoppers Crossing Club and Hoppers Crossing Sporting Club. The Werribee Plaza Tavern Hotel located on the edge of the Catchment Area and it is less likely that expenditure would be transferred from this premises.
157. It is expected that the majority of transferred expenditure would come from Hotel 520, as this is the closest venue to the Premises. However the Hoppers Crossing Club and Hoppers Crossing Sporting Club are also clearly within the Catchment Area and there is a possibility that a small portion of expenditure transferred from these venues may reduce the benefits which those clubs are able to provide to the community.
158. On balance, the Commission considers that this factor may be detrimental to the LGA and should be given marginal weight.

⁴⁸ SGS report, p.54.

⁴⁹ ShineWing Report, p.8.

⁵⁰ *Ibid*, p.19.

Conclusion on economic impacts

159. After considering the economic benefits of the proposal against the detriments, the Commission considers that, on balance, the proposal is likely to have a neutral to marginally beneficial economic impact.

Social Impacts

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

Development of a new premises

161. Ancillary to the capital works expenditure that will occur if this Application is granted, the development will result in new facilities being available to the community. Access to such facilities is an outcome which the Commission⁵¹ and VCAT⁵² have regularly determined is a positive social impact associated with applications of this nature.

162. The proposed venue will consist of the following facilities within a total floor space of 2,394 square metres:

- (a) a bistro with an al-fresco terrace which seat 200 patrons;
- (b) a children's play area;
- (c) a café and lounge with seating for 30 patrons;
- (d) a sports bar which can accommodate 76 patrons with an external deck area which seats 16 patrons
- (e) a gaming lounge containing 70 EGMs;
- (f) a community hub resource centre;
- (g) three function rooms on the first floor which together cater to 200 patrons;
- (h) a 'pre-function' and bar area;
- (i) a foyer and reception area; and

⁵¹ See, for example, *Glenroy RSL Sub-branch Inc at Glenroy RSL premises* [2015] VCGLR 40 (22 October 2015).

⁵² See, for example, *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

(j) a staff room.

163. It is proposed that the facility will also include parking for 228 cars.
164. The SGS Report assessed the establishment of a new entertainment option in the City of Wyndham to be of *low* benefit. This was based on an opinion that sufficient demand for an entertainment complex in the area from new residents would likely lead to the development of an entertainment complex (“something similar”) in the future even were the Application refused.⁵³
165. In her oral evidence, Ms Peterson also indicated that she was not aware of any venues of the type proposed by the Application, in a growth area, which did not include EGMs. She also indicated that there was a risk that the land relating to the Application would be developed for another purpose, depriving future residents to the area of the proposed entertainment complex. The Ratio Report attributed a moderate benefit to this factor.
166. In cross-examination, Mr Rantino put to Ms Peterson that revenue from EGMs might not be necessary for the Premises to be developed. To exemplify this, Mr Rantino referred the Commission to the planning decision referred to in paragraph 28(f) above where approval for EGMs in a new development along Leakes Road was sought, and subsequently refused by the Victorian Civil and Administrative Tribunal (**VCAT**).⁵⁴ Mr Rantino provided material indicating that a further planning application was then made by the same applicant for an entertainment complex, without EGMs.
167. The proposed Premises represents a sizeable entertainment venue in an immediate area currently lacking an entertainment and hospitality offering of this type. The Commission can place little, if any, weight on statements whether the future residents to the area might effectively ‘miss out’ on such a venue if the Application is not granted. Similarly, it is not appropriate for the Commission to speculate as to what other entertainment and hospitality options would otherwise exist, were the Application be refused.
168. Ultimately, the Commission must determine the application currently before it and assess the benefit represented by the proposed Premises against the alternative that the Premises would not exist. It would require compelling and specific evidence to indicate that an alternative entertainment venue would be built were the Application refused in order to justify a relevant finding.

⁵³ See SGS Report, page 34 at [125].

⁵⁴ See: *Truganina Metropolitan Pty Ltd v Wyndham CC* [2020] VCAT 1343 (1 December 2020).

169. Noting the relevant factors discussed in paragraphs 162 to 167, the Commission gives this benefit moderate weight.

Increased gaming opportunities for those who enjoy gaming

170. It has been recognised by the Commission and VCAT that a benefit associated with an application of this nature, 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 without causing harm to themselves or others.

171. In its qualitative assessment, the SGS Report assessed the value of increased opportunities for recreational gaming as of moderate benefit. In reaching this view, it assessed the *consumer surplus* associated with EGM expenditure, other than EGM expenditure associated with problem gambling. This assessment included an assessment of the travel time which would have been saved by recreational gamblers, in having a more accessible gambling venue.

172. The Ratio Report assessed increased gaming opportunities as of low benefit to the LGA, but did not provide details justifying this weighting.

173. The Commission notes that EGM density is lower in the LGA than the metropolitan or state average. An addition of 70 EGMs at the Premises, if approved, will be a social benefit for people who enjoy gaming without causing harm to themselves or others.

174. The Commission further notes that there are 13 gaming venues within the municipality and a higher number of adults per venue than the metropolitan Melbourne and State averages. The Commission finds that there are few venues within the Catchment Area, however it also notes the evidence that the Premises is proposed to be located in an area where people travel predominantly by car and therefore may attend the Premises from areas farther afield than the Catchment Area.

175. Overall, the Commission considers the increased opportunity for gaming in the City of Wyndham associated with a new Premises with 70 EGMs to be a social benefit on which it places marginal to low weight.

Social benefit derived from community contributions

176. Related to the economic impact associated with community contributions detailed in paragraphs 100 to 106, such contributions can also have a positive social impact by improving the social fabric of the community in which they are made. In assessing the weight to be placed on such a benefit, it is important that the Commission does not double-count this benefit with the economic



benefit associated with such contributions. To avoid any suggestion of this, the Commission assesses the social benefit of the community contributions together with the economic benefit.

177. The additional \$50,000 of cash contributions to be allocated by the Applicant will clearly be of benefit to the community of the LGA, as will the \$25,000 per annum expansion of the position of Community Development Manager. These contributions will allow the Applicant to maintain and extend its community sporting activities referred to in paragraphs 101 and 102. The social impacts in the form of community contributions relate in part to the ongoing viability of Werribee Football Club as a team in the Victorian Football League competition.
178. The Ratio Report described the Applicant's community-based activities in some detail, including the Wyndham Schools Program, Community Development and Diversity Inclusion Program. This also includes support for a women's team in the Victorian Football League.
179. At the Hearing, it was suggested that the Applicant may not be able to continue to maintain its current economic contributions to the community (over and above its current mandated contributions) were the Application not approved.
180. The Applicant operates the Tigers Clubhouse which consists of a venue similar to what is proposed by the Premises in type and scale, with a gaming component including 85 EGMs. In 2018, the Commission determined to increase the number of EGMs permitted at that premises from 70 to 85, subject to conditions. One such condition was that the Applicant would maintain its current level of contributions assessed at \$75,000 and make further contributions of \$25,000 above this.
181. As the contributions associated with the Tigers Clubhouse are a condition of the operation of the EGMs at that venue, the Commission gives no weight in this application to the continuation of those particular contributions. The Commission is hesitant to, in effect, revisit the benefits and disbenefits associated with past decisions to permit a number of EGMs, and subsequently increase this number of EGMs, at the Tigers Clubhouse. Accordingly the Commission is not satisfied that the ongoing financial viability of the Applicant and its current related activities should be given weight with respect to the Application.
182. However, as a member of the Victorian Football League, the Commission finds that the Applicant would be significantly more likely to establish a VFL women's team in the event the Application was granted. This is seen as a significant social benefit associated with the approval of the Application. The Commission is satisfied that such a team would not be able to be established by the Applicant within a meaningful timeframe if this Application were not approved.

183. Noting the discussion above, there will clearly be a benefit to the LGA as a result of the Application being granted, which is the social and economic benefit of \$75,000 of contributions that the Applicant will be required to make as a condition of granting the Application. This benefit will be realised within the LGA as allowing persons within the community of the LGA to participate in sporting activities.
184. Considering the above together with the economic benefit associated with the community contributions discussed at paragraphs 100 to 108, the Commission gives the combined economic and social benefit associated with the community contributions low to moderate weight.

Possibility of increased incidence and impact of problem gambling on community

185. Wherever accessibility to EGMs is increased there is always a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, relationship breakdowns, emotional harms and other social costs. Accordingly, the Commission accepts there is potential for negative social costs through possible increased problem gambling.
186. The qualitative assessment contained in the SGS Report assessed the detriment associated with the possible increased incidence of problem gambling on the community as representing a high detriment to the LGA. In arriving at this weighting, the SGS referred to its quantitative assessment of the costs associated with problem gambling, which attempted quantify these costs in a numerical sense. It assessed the total cost associated with problem gambling as a result of granting the Application to be \$47,100,000, between 2023 and 2041.
187. In arriving at its assessment of the likely cost of problem gambling, the SGS Report referred to demographic features of the catchment and LGA as indicating vulnerability, as well as its assumption as to the percentage of problem gambling expenditure discussed in paragraphs 116 to 120 above.
188. The Ratio Report stated that the Application would increase the accessibility of EGMs in the LGA, and that there would therefore be some corresponding increase in the incidence of problem gambling within the LGA, though this was mitigated by the protective features associated with the proposed layout of the Premises and the likely RSG practices and management of the Applicant (as discussed above).

The Commission's view

189. The Commission refers to and relies upon, the evidence set out in paragraphs 113 to 144 with respect to the economic impact of problem gambling on the community.

190. The Commission refers to the demographic factors referred to in paragraphs 129(a) to 129(i) as indicating that, as a whole, the catchment area and LGA do not show significant signs of disadvantage compared to the metropolitan or state average. There is also a lower than average EGM density in the LGA compared to the metropolitan and state average.
191. The Commission notes the cost-benefit assessment undertaken by the SGS Report, but does not accept this as a useful indicator of the combined economic and social costs of problem gambling, which it assessed at \$47,100,000. The quantitative assessment within the SGS Report attempts to put a dollar value on each input. However, the Commission does not consider that it is possible to account for all the benefits and disbenefits associated with the Application in terms of a dollar amount, and for this reason prefers a qualitative assessment of the *no net detriment* test. Accordingly, the Commission does not accept the conclusion of the SGS Report, that there will be a net detriment of \$28.31 million associated with the Application, nor does the Commission consider it appropriate to make a finding with respect to the likely emotional and social costs of problem gambling in terms of dollars.
192. The Commission considers the submissions referred to in subparagraphs 27(a) to 27(g) as indicating the harms associated with problem gambling, including the effect on families, correlations with negative mental health outcomes and the correlation between problem gambling and family violence generally. The Commission also considers that these third-party submissions indicate that the effects of COVID-19 have created or exacerbated public health issues and had a negative effect on factors such as unemployment levels.
193. The Commission considers the relationship between problem gambling and family violence to be a serious public health issue, however no information was presented to indicate that the creation of a new venue or the addition of EGMs to an area would result in increased levels of family violence in that area.
194. The Commission notes that it is not proposed that the EGMs will commence operation at the Premises until 2023. While nothing is certain, it is anticipated that by that time the negative economic and social effects resulting from the COVID-19 will have subsided and the LGA will return to a state of normalcy.
195. The Commission is unable to speculate regarding the future characteristics of the demographic of the Catchment Area, and the Commission bases its assessment generally on the current demographic factors referred to in paragraphs 129(a) to 129(i).

196. The Commission considers that the RSG practices at the Premises, including the layout of the Premises, will act, to some degree, as protective features against the incidence of problem gambling, and as such, a protective feature against the social disbenefits associated with this.
197. Without mitigating factors, such as the RSG practices of the premises and the Applicant's good history of responsible gambling, the Commission would otherwise place greater weight on the social disbenefit associated with problem gambling. However, the Commission refers to the mitigating factors discussed with respect to the economic impacts of problem gambling and these factors sufficiently mitigate the possible harms and lead the Commission to attribute moderate weight to this factor.

Community attitude

198. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*⁵⁵, the Commission recognises that while community apprehension is not an overriding factor (in the sense that the Application is not a referendum on gaming), it is certainly a relevant factor in the consideration of particular social impact as part of the '*no net detriment*' test.
199. The composition of the community of the municipal district is a matter to be ascertained by the Commission in each application before it. However, this will generally consist of residents of the LGA unless information is provided to suggest that the views of persons or organisations based outside the LGA should also be taken into consideration. While in some cases, persons from outside the LGA may form part of the relevant community, the definition of community should not be stretched to include the possible attitudes of future members of the community.
200. The Council is the representative body of the LGA and charged with statutory duties under legislation. As the community's representative, the Council has made its submission in opposition to the Application and appeared at the Hearing. The Council's opposition to the Application is given weight as a detriment associated with the Application, though it should be noted that the Council's objection to the Application was not accompanied by a community attitude survey.
201. In addition to this, the Commission received the submissions in opposition to the Application referred to in paragraphs 27(a) to 27(g) above, which (aside from the submission referred to in paragraph 27(d)) contained specific information relating to the vulnerability of the LGA as well as general information with respect to EGM use.

⁵⁵ *Romsey* (2008) 19 VR 422, [44] per Warren CJ, Maxwell P and Osborn AJA. See also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [73] per Dwyer DP.

202. However, the Commission considers that these organisations have a limited view of EGM use as they are focussed on providing support services to those EGM users most likely to experience problem-gambling or be vulnerable to associated harms. These organisations may view all EGM use as harmful because all the EGM use disclosed by their patrons causes harm to those patrons, however this does not mean that EGMs cause harm to recreational and non-problem gamblers.
203. The SGS Report indicated that it was unable to draw a clear conclusion on how much weight it should give to the detriment associated with its assessment of community attitude, noting that it had not received material such as submissions or surveys, indicating the attitude of the community with respect to the Application.
204. The Ratio Report ascribed a negligible detriment to this factor citing “reduced weight given existing level of access to gaming machines within the patron catchment and the municipality generally” as its reason for arriving at this view.

The Commission’s view

205. Many of the submissions referred to in paragraphs 27(a) to 27(g) above contained information specific to the LGA and the Application, as opposed to objecting to the existence of EGMs generally.
206. The Commission notes that while the Council also opposes the Application, it did not conduct a community survey. The Commission notes that the *greenfield* location of the Premises and the growing nature of the municipal area reflect a level of opposition to the Application which is relatively low compared to previous applications made for the approval of premises in established areas.
207. The Commission also notes that there is a substantial level of EGM accessibility in the catchment area as well as the municipality generally. This is not an application which fundamentally alters the accessibility or visibility of EGMs in the LGA in a manner which would warrant an increased weight to be placed on a negative community attitude towards the presence of EGMs.
208. Based upon its consideration of the matters discussed in paragraphs 198 to 207, the Commission’s view is that this is a detrimental impact which should be given marginal weight.

Conclusion on social impacts

209. After considering the social benefits of the proposal and balanced against the detriments, the Commission considers that, on balance, there is likely to be a marginally positive net social impact associated with the Application.

NET ECONOMIC AND SOCIAL IMPACT

210. The ‘*no net detriment*’ test in section 3.3.7(1)(c) of the Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive⁵⁶.
211. After consideration of the material before it, including the evidence provided at the Hearing, and weighted as outlined above and summarised in tabular form at Appendix B of these Reasons for Decision, the Commission has concluded that there is likely to be a net combined positive social and economic impact to the well-being of the community in the municipal district in which the Premises are located if the Application is approved.

CONCLUSION

212. On the material that has been put before it, the Commission has determined that the ‘*no net detriment*’ test has been satisfied and, pursuant to section 3.3.7(1), the Commission may grant the Application. While the Commission retains a discretion as to whether or not to grant the approval, there is nothing in this case to justify an exercise its discretion to refuse the Application.
213. The Application is therefore granted subject to the conditions at Appendix A.

The preceding 213 paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey, Deputy Chair and Mr Andrew Scott, Commissioner.

⁵⁶ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.



Appendix A

Conditions of the Decision of the Commission dated 1 April 2021 for the approval of the premises, Club Tarneit, located at 115 Woods Road, Truganina (**the Premises**), with 70 electronic gaming machines (**EGMs**).

Conditions imposed under section 3.3.9(3)(a), (b) and (d) of the *Gambling Regulation Act 2003* respectively

1. The Works

(a) The Premises Approval does not take effect until the Commission has notified the Venue Operator in writing, that the Premises have been inspected for the purpose of section 3.3.7(1)(b) of the *Gambling Regulation Act 2003* and the Commission is satisfied at that time that the Premises are suitable for the management and operation of EGMs.

(b) The approval does not take effect until the Venue Operator satisfies the Commission that:

- i. the Venue Operator has obtained planning approval for the Premises, including permitting the Premises to be used for gaming on gaming machines; or
- ii. the use of the Premises for gaming on gaming machines does not contravene the Wyndham Planning Scheme.

(c) The approval does not take effect until the plans at Annexure B to the statement of Mr Ponti are amended to show the deletion of the outdoor smoking terrace adjacent to the gaming room, and the construction of the Premises has been completed substantially in accordance with these amended plans. The construction of the Premises must be completed by 31 March 2023 (**the Completion Date**). The Commission may, upon the request of the Venue Operator, agree to extend the Completion Date. The request must be made not less than sixty (60) days before the Completion Date. Without limiting the matters that may be taken into consideration by the Commission in determining any extension to the Completion Date, any request for an extension of time must include an explanation as to why the Premises have not been completed by the Completion Date.

Conditions imposed under section 3.3.9(3)(c) of the *Gambling Regulation Act 2003*

2. Community Contributions

(a) The Venue Operator will establish the Werribee Football Club – Club Tarneit Foundation (**Fund**) and undertake to make the following contributions with a total cash value of \$75,000 per annum:

- i. Make cash contributions in the sum of \$50,000 per annum (**Contribution**) indexed to CPI; and
- ii. Apply the sum of \$25,000 per annum indexed to CPI to the salary of the Venue Operator's Community Development Manager's role, such that the role increases from part-time to full-time (**Employment Contribution**).



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(b) The Contribution will be allocated each year to not-for-profit community groups and sporting organisations providing services and facilities to residents within the City of Wyndham, with a focus on the growth areas on Wyndham including Tarneit and Truganina.

(c) The Contribution will be distributed as determined by a Committee (**Committee**) established by the Venue Operator comprising:

- i. Two representatives of the Venue Operator; and
- ii. One representative of Council, or in the event that Council is unwilling to provide a representative, a community representative nominated by the Venue Operator.

(d) The Committee will advertise annually in a newspaper circulating in the City of Wyndham area for submissions from not-for-profit community and sporting organisations, providing services and facilities to residents within the City of Wyndham, 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.

(e) If for any reason the Employment Contribution is not made, or the Community Development Officer's role ceases, the sum of \$25,000 must be distributed in accordance with conditions 2(b), (c) and (d).

Appendix B

Summary of social and economic impacts

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

Economic impacts

	Impact	Paragraph Reference	Comments relevant to weight
Benefits	Gaming expenditure not associated with problem gambling	59 to 70	The evidence indicates that there will be some new expenditure to the LGA which is not associated with problem gambling. However, the Commission also notes that a significant portion of this expenditure is likely to be transferred from other venues in the LGA. Therefore, the Commission's view is that the benefit associated with the expenditure at the Premises not associated with problem gambling should be given low weight
	Expenditure on capital works	71 to 80	The Commission accepts that it is anticipated that the construction of the Premises will cost approximately \$12 million, however notes that evidence has not been given to suggest that contractors or suppliers within the LGA will be engaged to carry out this work. Consequently, while it is likely that some benefit will accrue to the LGA the Commission determines that this should be given marginal weight .



	Employment creation	81 to 89	<p>The Commission considers the additional employment arising from the Application as of positive impact, taking in account the anticipated numbers of employees, the anticipated population growth in the Catchment Area and the possibility that employees may travel from outside the LGA. Noting the high transferred expenditure estimate of 45 to 50% presented by the ShineWing Report, the Commission also considers it likely that some employment will be transferred from other venues in the LGA. As such, the Commission gives this benefit low to moderate weight.</p>
	Complementary expenditure and Supply contracts	90 to 99	<p>The Commission accepts that, in light of the non-gaming facilities proposed at the Premises, there will be complementary expenditure generated. As the quantum of such expenditure estimated by the Applicant was not contested, the Commission is satisfied that this will be in the vicinity of \$3m over the initial 12 months of EGM operation.</p> <p>The written evidence of Mr Penaluna contained an estimate that the value of supply contracts for the initial 12 months of EGM operation at the Premises would be \$3.161 million dollars.</p> <p>Noting the limited evidence that the Applicant will award supply contracts to local suppliers together with the estimated value of the supply contracts, the Commission gives this benefit together with the \$3m benefit associated with complementary expenditure a low weight.</p>
	Community contributions	100 to 108	<p>The main benefit associated with the contributions of \$75,000 is social rather than economic. While a portion of this amount will likely be recirculated within the LGA, and be of benefit, this is a small amount in the context of the economy of the LGA.</p> <p>Noting this, the economic benefit associated with these contributions is considered in combination with the social benefit of community contributions below.</p>
	Increased gaming competition in the City of Wyndham	109 to 112	<p>Transferred expenditure estimates indicate a high level of gaming competition, and there are four existing gaming venues within 5km of the Premises and a further 11 located within 10km. Noting this, the Commission considers that there is a substantial potential for the Premises to increase gaming competition in the area and considers that, in light of the statutory purposes of the Act, this should be given marginal weight.</p>



Disbenefits	Gambling expenditure associated with problem gambling.	113 to 146	<p>The Premises would be a large gaming venue, operating 7 days per week with only 6 hours of closure every 24 hours.</p> <p>The Commission is satisfied that there will be strong RSG practices at the Premises, and notes that the Catchment Area and LGA are not significantly disadvantaged compared to the metropolitan and Victorian indicators of disadvantage.</p> <p>Moderate weight.</p>
	Potential diversion of trade from non-gaming (ie. retail) venues.	147 to 151	<p>The Application relates to a greenfield with few retail and non-gaming venues, and fewer still which could be expected to compete with the Applicant's offering.</p> <p>Marginal weight.</p>
	Diversion of trade from other gaming venues	152 to 158	<p>The ShineWing Report predicted that 45 to 50% of expenditure in the first year of the Premises' operation would be transferred. This would impact clubs with EGMs in the catchment and may reduce the community benefits provided by those venues.</p> <p>Marginal weight.</p>



Social impacts

	Impact	Paragraph Reference	Comment relevant to weight
Benefits	Development of a new premises	161 to 169	<p>The proposed Premises represents a sizeable entertainment venue in an area currently lacking an entertainment and hospitality offering of this type, and this is certain to be of benefit to some residents within the LGA. The Commission must determine the application before it and assess the benefit represented by the Premises against the alternative that the Premises would not exist.</p> <p>Moderate weight.</p>
	Increased gaming opportunities for those who enjoy gaming	170 to 175	<p>The Application will better serve the needs of gaming patrons by providing an additional venue at which EGM accessibility is increased. It is relevant that there is a lower density of gaming venues within the LGA compared to the metropolitan and state average.</p> <p>Marginal to low weight.</p>
	Social benefit derived from the increased community contributions (including the provision of a women's VFL team)	176 to 184	<p>There will clearly be a social benefit to the LGA as a result of the Application being granted which is the social benefit of \$75,000 of contributions that the Applicant will be required to make as a condition of granting the Application.</p> <p>Being mindful not to double-count the economic benefit associated with this factor; this is a social benefit which the Commission gives low to moderate weight.</p>



Disbenefits	Possibility of increased incidence and impact of problem gambling on community	185 to 197	<p>A proportion of total gaming expenditure at the Premises will be associated with problem gambling at the Premises.</p> <p>The socio-economic profile of the Catchment Area indicates a lack of disadvantage. 197. The Commission would ordinarily attach a high detriment to the social disbenefit associated with the possible incidence of problem gambling, noting that the six hour period of closure and proximity of the gaming room to the smoking area do not appear to encourage breaks from play and may be risk factors for problem gambling at the Premises.</p> <p>The Commission is satisfied that if a condition were imposed to require a nine hour period of non-operation of the gaming room and to require the relocation of the smoking area (as proposed by the Applicant), this could mitigate the risk associated with problem gambling such that the possible social disbenefit is given a moderate weight.</p>
	Community attitude	198 to 208	<p>While a greenfields venue, there is very limited evidence of opposition by the community other than the Council's opposition to the Application.</p> <p>Marginal weight.</p>