



DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by Lynbrook Tavern Pty Ltd to amend its venue operator's licence to vary the number of electronic gaming machines at the approved premises located at Lynbrook Hotel, 1-3 Commercial Drive, Lynbrook from fifty-five (55) to seventy-five (75).

Commission:

Ms Helen Versey, Deputy Chair
Mr Des Powell AM, Commissioner

Appearances:

Ms Louise Hicks of Counsel for the Applicant (instructed by Williams Winter Solicitors)

Mr John Rantino for the Council (instructed by Maddocks)

Mr Cameron Warfe, Counsel Assisting the Commission

Date of Hearing:

12 and 13 July 2018

Date of Decision:

31 July 2018

Date of Reasons:

28 August 2018

Decision:

The Application is refused.

Signed:

A handwritten signature in blue ink, reading "Helen K. Versey".

Helen Versey
Deputy Chair

REASONS FOR DECISION

INTRODUCTION

1. This is an application by Lynbrook Tavern Pty Ltd (the **Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) to amend its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the approved premises located at Lynbrook Hotel, 1-3 Commercial Drive, Lynbrook (the **Hotel**), from 55 to 75 (the **Application**).
2. The relevant municipal authority is the City of Casey (the **Council**). By letter to the Commission dated 1 June 2018, the Council provided the Commission with a written submission (together with supporting documents)¹ in opposition to the Application.
3. The Commission considered the Application at a public inquiry conducted on 12-13 July 2018 (the **Hearing**). The Applicant was represented by Ms Louise Hicks of Counsel, instructed by Williams Winter Solicitors. The Council was represented by Mr John Rantino, of Maddocks.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Gaming on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (**GR Act**). The GR Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities, and some members of some communities. For this reason the GR Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some, and a potentially harmful activity for others.
5. The objectives of the GR Act are set out at section 1.1, which provides:
 - ...
 - (2) *The main objectives of this Act are—*
 - (a) *to foster responsible gambling in order to-*
 - (i) *minimise harm caused by problem gambling; and*
 - (ii) *accommodate those who gamble without harming themselves or others;*

¹ See paragraph 23 below.



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

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

- (1) *The purpose of this Chapter is to establish a system for the regulation, supervision and control of gaming equipment and monitoring equipment with the aims of—*
 - (a) *ensuring that gaming on gaming machines is conducted honestly; and*
 - (b) *ensuring that the management of gaming equipment and monitoring equipment is free from criminal influence or exploitation; and*
 - (c) *regulating the use of gaming machines in casinos and other approved venues where liquor is sold; and*
 - (d) *regulating the activities of persons in the gaming machine industry; and*
 - (e) *promoting tourism, employment and economic development generally in the State; and*



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- (f) *fostering responsible gambling in order to—*
 - (i) *minimise harm caused by problem gambling;*
 - (ii) *accommodate those who gamble without harming themselves or others.*

(2) *The purpose of this Chapter is also to—*

- (a) *provide for the allocation of gaming machine entitlements in order to maximise the financial and social benefits to the Victorian community within the regulatory framework applying to the allocation of entitlements;*
- (b) *promote a competitive gaming industry with the aim of providing financial and social benefits to the Victorian community.*

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

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

8. The relevant provision concerning the Application is section 3.4.17(1)(b) of the GR Act, which states that variation of the number of EGMs permitted in an approved venue may be amended in accordance with Division 2, Part 4 of Chapter 3 of the GR Act.
9. Sections 3.4.18 to 3.4.19 of the GR Act provide for the manner in which requests for amendments under section 3.4.17(1)(b) are to be made. Relevantly for the Application, section 3.4.18 provides, inter alia, that:

(1) *A request by a venue operator for an amendment of licence conditions—*

...

- (c) *in the case of ... an amendment to increase the number of gaming machines permitted in an approved venue, must be accompanied by a submission—*
 - (i) *on the net economic and social benefit that will accrue to the community of the municipal district in which the approved venue is located as a result of the proposed amendment; and*
 - (ii) *taking into account the impact of the proposed amendment on surrounding municipal districts—*



in the form approved by the Commission and including the information specified in the form.

10. Further, section 3.4.19(1) of the GR Act provides:

- (1) *Subject to this section, after receiving a copy of a request for an amendment referred to in section 3.4.18(2), a municipal council may make a submission to the Commission—*
- (a) *addressing the economic and social impact of the proposed amendment on the well-being of the community of the municipal district in which the approved venue is located; and*
 - (b) *taking into account the impact of the proposed amendment on surrounding municipal districts.*

11. Section 3.4.20 sets out matters that are required to be considered by the Commission with respect to such a proposed amendment, as follows:

- (1) *Without limiting the matters which the Commission may consider in deciding whether to make a proposed amendment the Commission must not amend a venue operator's licence unless—*
- (a) *the Commission is satisfied that the amendment of the licence does not conflict with a direction, if any, given under section 3.2.3; and*
 - (b) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the regional limit or municipal limit for gaming machines for the region or municipal district in which the approved venue is located will not be exceeded by the making of the amendment; and*
 - (c) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the net economic and social impact of the amendment will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located;*
 - (d) *if premises are proposed to be added to the licence as an approved venue and the premises are situated within 100 metres of an approved venue of which the applicant for the amendment, or an associate of the applicant, is the venue operator, the Commission is satisfied that the management*



and operation of the approved venue and the proposed approved venue are genuinely independent of each other.

12. Pursuant to section 3.4.20(1)(a) of the GR Act the Commission must be satisfied that the proposed amendment does not conflict with a Ministerial direction, if any, given under section 3.2.3 of the GR Act. There is no relevant direction issued pursuant to section 3.2.3 of the GR Act that relates specifically to this Application.
13. Section 3.4.20(1)(c) provides for what is now commonly described as the ‘*no net detriment*’ test. It requires the Commission to be satisfied that there is no net detriment arising from the approval through positively and objectively establishing that the net economic and social impact will not be detrimental to the well-being of the community.²
14. The GR Act does not specify the matters which the Commission must consider in deciding whether the ‘*no net detriment*’ test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:
 - (a) the likely economic impacts of approval;
 - (b) the likely social impacts of approval; and
 - (c) the net effect of those impacts on the well-being of the relevant community.³
15. As such, the ‘*no net detriment*’ test is a composite test requiring consideration of a single net impact in economic and social terms on the well-being of the community.⁴ The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.
16. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.⁵ On review, decisions in the Victorian Civil and Administrative Tribunal (**VCAT**) have held that for impacts that may be both economic and social – for example

² *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.

³ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [42]-[43] per Warren CJ, Maxwell P and Osborn AJA.

⁴ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275, [332], [348] per Bell J cited in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [58] per Dwyer DP.

⁵ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [57] per Dwyer DP.



the benefits of gaming consumption – it does not matter whether the impact is considered on the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.⁶

17. The Commission also notes the position taken by VCAT that:

*A table of likely economic and social benefits and disbenefits, and with some comments relevant to the relative weight to be given to particular factors ... is a useful way of transparently dealing with the 'no net detriment' test, and might perhaps be considered for wider application.*⁷

The Commission has utilised this approach for the purpose of considering the 'no net detriment' test in this matter.

18. If the Commission is not satisfied that the 'no net detriment' test is met, that is clearly fatal to the application before it, as given the opening words of section 3.4.20(1) of the GR Act, satisfaction of the test is a mandatory pre-condition to approval. However, although section 3.4.20(1) sets out certain mandatory considerations for the Commission, the provision is not exhaustive. If the Commission is satisfied that the 'no net detriment' test is met, it still has an ultimate discretion as to whether or not to grant the approval.⁸ The Commission must decide whether to make the proposed amendment, with or without any changes from that proposed by the applicant, even where the applicant has satisfied the minimum threshold of the 'no net detriment' test.⁹

19. In considering the exercise of this discretion:

- (a) it must be exercised having regard to the purposes of the GR Act and, in particular, the specific purposes of Chapter 3 of the GR Act dealing with the regulation, supervision and control of gaming machines;¹⁰ and
- (b) it may also be influenced by other factors such as broad policy considerations drawn from

⁶ See *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (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.

⁷ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [60] per Dwyer DP.

⁸ See *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M; see also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [97] and following per Dwyer DP (with respect to section 3.3.7 GR Act).

⁹ GR Act, section 3.4.20(2).

¹⁰ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [98] per Dwyer DP.

the content and objectives of the GR Act as a whole.¹¹

20. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*¹² that, if all of the mandatory considerations under the GR Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval - other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.
21. Finally, pursuant to section 9(4) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)*, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation. On 16 October 2013, a Ministerial guideline was published in the Victorian Government Gazette pursuant to section 5 of the VCGLR Act concerning applications for approvals of venues for EGMs and children's play areas incorporated in the venue. This guideline concerned the assessment of the suitability of a premises for gaming. As such, it appears primarily to apply to a premises applying to be a new gaming venue, rather than an increase in the number of EGMs at an existing gaming venue. While this guideline is therefore not directly applicable to this Application, the Commission's view is that it is proper for the Commission to have regard to the underlying policy intent of such a guideline (which in this instance appears to relate to the legislative objective under section 1.1(2)(ab) of the GR Act that minors are neither encouraged to gamble nor allowed to do so) when considering the Application.

MATERIAL BEFORE THE COMMISSION

22. The Applicant provided the Commission with the following material in support of the Application:
- (a) Application form – Amendment to venue operator's licence – vary gaming machines, dated 8 February 2018;
 - (b) Social and Economic Impact Statement, prepared by Mr Nick Anderson, Managing Director of NBA Group, dated February 2018 (the **NBA Group Report**);

¹¹ *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 the *Romsey* case (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

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



- (c) Addendum Report to the NBA Group Report, prepared by Mr Anderson, dated 22 June 2018 (the **NBA Group Addendum Report**);
- (d) Expenditure Report, prepared by ShineWing Australia, dated 19 February 2018 (the **ShineWing Report**);
- (e) Witness Statement of Mr Mazen Tabet, Director of the Applicant, dated 7 February 2018; and
- (f) Witness Statement of Ms Olenka Mann, Manager of the Premises, dated 7 February 2018, attaching a Regulatory Compliance Report prepared by Mr Leigh Barrett, Director and Principal Consultant of Leigh Barrett and Associates Pty Ltd, dated 25 May 2017.

23. In opposition to the Application, the Council provided:

- (a) A written submission, dated 1 June 2018, referred to in paragraph 2 above;
- (b) A document titled 'Submission form for local authorities', dated 30 May 2018;
- (c) Council Officer's Report – Application for additional electronic gaming machines at the Lynbrook Hotel, dated 15 May 2018;
- (d) Minutes of the Council Meeting held on 15 May 2018; and
- (e) Social and Economic Impact Assessment, prepared by SGS Economics & Planning (**SGS**), dated 28 May 2018 (the **SGS Report**), attaching copies of community objections from:
 - (i) nine individual residents,
 - (ii) one community association (Casey Residents and Ratepayers Association Inc); and
 - (iii) two neighbouring city councils (Yarra Ranges Council and Greater Dandenong Council);
- (f) Expert Witness Statement of Mr James Atkinson, urban economist with SGS, attaching copies of Mr Atkinson's curriculum vitae and the SGS Report.

24. The following material, prepared by Commission officers, was considered by the Commission:

- (a) Report titled *Pre-Hearing Inspection and Compliance Report*, dated 15 June 2018 (the **Inspection Report**);
- (b) Report titled *Economic and Social Impact Report*, dated July 2018 (the **VCGLR Report**); and
- (c) Report titled *Update to Homelessness Data*, dated July 2018 (the **VCGLR Updated**

Report).

25. In addition to those community objections attached to the SGS Report, the Commission received correspondence in opposition to the Application from five individuals and from the following community organisations and associations operating in the City of Casey (including by providing services to the LGA), including:
- (a) Salvation Army Berwick, dated 29 June 2018;
 - (b) Enliven Victoria (**Enliven**), dated 8 June 2018;
 - (c) Cranbourne Information & Support Services Inc (**CISS**), dated 29 June 2018, and a revised submission received on 4 July 2018 (**CISS Submission**).
26. Prior to the Hearing, both Deputy Chair Versey and Commissioner Powell visited the Hotel.
27. Prior to the Hearing, Mr Brendon Browne, on behalf of the Casey Residents and Ratepayers Association Inc, requested an opportunity to provide oral submissions at the Hearing. The Commission granted the request and provided Mr Browne with an opportunity to make further submissions. The Applicant, the Council and the Commission were provided with the opportunity to ask questions of clarification to Mr Browne.
28. During the Hearing, the following further material was provided to the Commission in relation to the Application by the Applicant:
- (a) amended plans for the Premises relating to the proposed installation of a screen between the Hotel's foyer and gaming room;
 - (b) table outlining community contributions made by the Applicant in 2018 in accordance with the conditions imposed on the Applicant's venue operator's licence by the Commission in February 2018;
 - (c) Responsible Gambling Code of Conduct, dated February 2012, purported to apply at the Hotel; and
 - (d) the Applicant's suggested amendments of the conditions of its venue operator's licence (if the Application is granted) (**Proposed Conditions**).
29. The following witnesses gave oral evidence at the Hearing:
- (a) Mr Anderson;



- (b) Mr Tim Stillwell, Director of ShineWing;
- (c) Mr Tabet;
- (d) Mr Mann;
- (e) Mr Atkinson; and
- (f) Ms Leanne Petrides, Executive Officer of CISS.

30. At the conclusion of the oral evidence at the Hearing, written submissions were provided to the Commission for:

- (a) the Applicant, prepared by Ms Hicks; and
- (b) the Council, prepared by Mr Rantino.

31. After the Hearing, the Commission was provided with:

- (a) a letter by email from the Applicant, dated 19 July 2018, enclosing amended suggested conditions to its venue operator's licence (if the Application is granted) (**2nd Proposed Conditions**); and
- (b) an email from the Applicant, dated 30 July 2018, attaching photographs of:
 - (i) a screen installed by the Applicant between the Hotel's foyer and the gaming room; and
 - (ii) the application of an opaque film on the windows of the gaming room facing the Hotel's car park.

DECISION AND REASONS FOR DECISION

Location

32. The Hotel is in the City of Casey (**Casey**) on the south-west corner of Commercial Drive and South Gippsland Highway in Lynbrook. The Hotel is in the commercial area in the northern part of the suburb of Lynbrook, with residential areas to the north-east, east and south and the industrial area of South Dandenong to the west.

33. Casey is a metropolitan local government area (**LGA**) located approximately 35 kilometres south-east of Melbourne and covers an area of 409 square kilometres. Major centres in Casey include Narre Warren, Cranbourne and Berwick. According to the VCGLR Report, Casey has an

estimated adult population of 229,025 which ranks it as the most populous of the 31 metropolitan municipalities. The annual rate of population growth consistently exceeds the State average, with a projected average annual change of 3.4% between 2011 and 2041.

34. Casey has an EGM density of 4 EGMs per 1,000 adults, which is 23.1% lower than the metropolitan average (5.2) and 27.5% lower than the State average (5.5). This gives Casey the 24th lowest EGM density per 1000 adults of the 31 metropolitan municipalities.
35. The VCGLR Report indicates that in 2016-17 Casey had an average gaming expenditure of \$555 per adult (based on projections from the 2011 census data for population), which is 1.1% lower than the metropolitan LGA average (\$561) and 2.4% higher than the State average (\$542). Applying the estimate of increased gaming expenditure, as received from the Applicant, the Application (if granted) would result in an increase in average gaming expenditure per adult of 0.9% without allowance for population changes. Gaming expenditure within Casey has decreased 9.09% in real terms (indexed to CPI) over the past 5 years to June 2017, which is a smaller decrease than the metropolitan LGA average decline of 12.74%.
36. Casey is characterised by a mixed socio-economic profile with indices both above and below metropolitan averages and is ranked 48th out of 79 LGAs in Victoria on the Socio-Economic Indexes for Areas (**SEIFA**) scale of disadvantage,¹³ indicating some disadvantage within the LGA (1st being the LGA with the greatest disadvantage).
37. In relation to the immediate surrounding area of the Hotel (i.e. within 2.5 kilometres), 36.8% of SA1s are in the 1st quintile¹⁴ of SEIFA scores, with a further 41.2% of SA1s being in the 2nd quintile. This suggests that the area immediately surrounding the Hotel (in particular the residential areas to the north and the industrial areas to the west) experiences a significant level of disadvantage.
38. The VCGLR Report also indicates that:
 - (a) the rate of housing stress experienced within the immediate surrounding area of the Hotel (calculated as the percentage of households in the lowest two equivalised household income quintiles paying more than 30% of income on rent or mortgage) is 57.8%, which is lower than the rate of housing stress for Casey (58.3%), for metropolitan LGAs (64.5%) and for Victoria (60.2%); and

¹³ SEIFA is a product developed by the ABS to assist in the assessment of the welfare of Australian communities. The SEIFA Index allows the ranking of regions/areas, providing a method of determining the level of social and economic well-being in each region.

¹⁴ SEIFA index of relative disadvantage is divided into five quintiles each comprising 20% of areas (Statistical Areas Level 1 (SA1s)) ranked by socioeconomic status from the most disadvantaged (lowest / 1st quintile) to least disadvantaged (highest / 5th quintile). High disadvantage is indicated by a low SEIFA score (and low disadvantage by a high score).



- (b) the unemployment rate in Casey is 6.9%, which is higher than the metropolitan unemployment rate of 6.1%. Unemployment in Casey decreased by 0.5% over the period April 2017 to March 2018.

39. Finally, the VCGLR Updated Report indicates that the rate of homelessness in Casey has increased between the 2011 and 2016 census periods. In 2016, Casey was ranked 9th out of 31 metropolitan LGAs and 15th out of 79 LGAs in Victoria, compared with rankings of 16th out of 31 and 27th out of 79 respectively in 2011.

Nature of the Hotel

40. The Hotel opened in 2009 and currently comprises:

- (a) a 360-seat bistro with international buffet, open daily between 11:30 am to 3pm and 5:30pm to 10pm;
- (b) children's play area;
- (c) a sports bar and TAB facilities with outdoor area (recently renovated), open daily until approximately 11pm each night, with food service between approximately 12pm to 2:30pm and 5:30pm and 8:30pm each day (with snacks also available on Friday to Sunday between 2:30pm and 5:30pm);
- (d) a gaming room with 55 EGMs, open daily from 9am to 5am the following morning;
- (e) hotel accommodation with 24 suites, and
- (f) a drive-through bottle shop.

41. The Applicant intends to conduct further renovations to the Hotel at an estimated cost of \$2.85 to \$3.5 million. However, the Applicant conceded that these works are not conditional on the approval of the Application, although it was submitted that they could be completed more quickly in the event of the Application's approval. The Commission has determined that the proposed renovations will occur regardless of the outcome of this Application, and therefore are not considered to form a benefit of the Application. As such, this issue has not been taken into account in the Commission's assessment of the no-net detriment test.

Catchment of the Hotel

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 are generally referred to as the 'catchment areas'.¹⁵ The determination of the likely catchment area in this instance is important in the Commission's consideration of the identity of those residents which will be most affected by the Application in terms of gambling-related benefits and harms.

43. In the NBA Report and oral evidence, Mr Anderson described the primary catchment area as a 2.5 kilometre radius around the Hotel (consisting of the suburbs of Lynbrook, Lyndhurst and Hampton Park), with the secondary catchment area as suburbs typically 2.5 - 5 kilometres from the Hotel.¹⁶ While proposing these likely catchment areas for the Hotel, this was contrasted by an analysis of the Hotel's membership count and bistro patron surveys, which indicated a more dispersed patron catchment and suggested that between 40-50% of the Hotel's patrons reside outside Casey.¹⁷
44. In the SGS Report, Mr Atkinson proposed a primary catchment area consisting of four SA2 areas: Lynbrook – Lyndhurst, Hampton Park – Lynbrook, Cranbourne North and Narre Warren South (West). Mr Atkinson excluded areas to the west of the Hotel on the basis that it was predominately industrial and rural in nature. However, he noted that around 30% of the 75,000 workers employed in this area resided in Casey, and the Hotel would therefore capture a large amount of trade associated with this group.¹⁸
45. Mr Atkinson accepted that the primary catchment area proposed by the Applicant broadly conformed to the boundary of the Lynbrook – Lyndhurst and Hampton Park – Lynbrook SA2s. However, Mr Atkinson noted that although the bistro patron count indicated the Hotel attracted patrons from a wide area, the geographic range of the bistro was unlikely to match that of the Hotel's gaming room.¹⁹
46. Having regard to the above material, the Commission agrees with the analysis of Mr Atkinson that the catchment of the gaming room is likely to more concentrated than the catchment of the bistro. As such, the Commission considers the appropriate catchment area of the Premises consisting of the primary catchment of the Lynbrook – Lyndhurst and Hampton Park – Lynbrook SA2s (consisting of the suburbs of Lynbrook, Lyndhurst and Hampton Park), and the secondary

¹⁵ See for example, *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation & Anor (Occupational and Business Regulation)* [2009] VCAT 2275 (12 November 2009); *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 (7 April 2011).

¹⁶ Transcript, Day 1, page 11.

¹⁷ See NBA Report paragraphs 103 to 104 and Appendix 7 Summary of Gaming Patron Survey; see also Transcript, Day 1, page 11.

¹⁸ SGS Report, paragraph 77.

¹⁹ SGS Report, paragraph 78.



catchment area towards the east and south-east of the Hotel out to a radius of up to 5 kilometres.

47. Finally, while the Commission agrees that the areas to the west of the Hotel should be excluded from the catchment area for the purpose of socio-economic analysis of its residents, the Commission accepts the evidence of Mr Atkinson that those employed within that area are likely to patronage the Hotel due to its geographic proximity. As such, the Commission considers that the most likely patrons for the Hotel (and therefore most likely to be affected by this Application) includes the residents within the catchment area (identified in the above paragraph), together with those people employed and working within the industrial area to the immediate west of the Hotel.

Nature of the Application

48. The Applicant acknowledges that the number of EGMs attached to approved venues within the capped region is at capacity. As such, the Application is made in anticipation of one of the following events occurring before the Applicant could operate additional EGMs at the Hotel:
- (a) Additional entitlements are sourced from an existing venue within the capped area;
 - (b) An increase is made to the cap that permits more EGMs into the capped area; or
 - (c) The Applicant may be able to source additional entitlements as at the beginning of the next licence term.
49. As a result of this, the Commission notes that there is an element of considerable uncertainty as to the timing of when any additional EGMs could operate at the Hotel following any approval of the Application. The relevance of this temporal dislocation between the time of the Commission's consideration of the Application and the operational effect of any approval is significant, as the Applicant bears the persuasive burden of satisfying the Commission that the mandatory conditions under section 3.4.20(1) (including the no net detriment test) are met.²⁰
50. In particular, the Commission considers that there are two key areas of evidence that are affected by the uncertainty arising in these circumstances:
- (a) the assessment of the socio-economic circumstances and financial vulnerability of the Hotel's patrons, primarily residing within the Hotel's catchment area, particularly in an area exhibiting above average population growth and associated urban development; and
 - (b) the quantum and source of increased gaming expenditure, given the number of variables that might exist as at the time of commencing operation of the additional EGMs at the Hotel.

²⁰ *ALH Group Property Holdings Pty Ltd v Whittlesea CC* [2017] VCAT 2164 at [25].

51. For the purpose of clarity and consistency in its approach in determining the Application, the Commission has proceeded in its task in the following manner:
- (a) The Commission has assessed the current socio-economic circumstances and financial vulnerability of the Hotel's patrons based on current and available data, together with an analysis of how this assessment is likely to change over the current census period (2016-2021): see discussion at paragraphs 99 to 108 below; and
 - (b) The Commission has assessed the likely impact of the Application on gaming statistics and expenditure consistent with Mr Stillwell's 'in isolation' basis (i.e. based on a 'worst case scenario' of the additional 20 EGMs being installed at the Hotel following an increase in the capped amount, and without requiring any transfer of EGM entitlements from within Casey): see discussion at paragraphs 67 to 73 below.

Issues for determination

52. Pursuant to section 3.4.20 of the GR Act, the Commission cannot grant the Application unless it is satisfied of the following matters:
- (a) that the amendment of the venue operator's licence does not conflict with a direction given under section 3.2.3 of the GR Act;
 - (b) that the relevant regional or municipal limit for EGMs applicable to Casey will not be exceeded by the making of the amendment the subject of the Application;
 - (c) that the net social and economic impact of the increase in EGMs permitted in the Hotel will not be detrimental to the well-being of the community of Casey (the '*no net detriment*' test); and
 - (d) if premises are proposed to be added to the Applicant's licence as an approved venue and the Applicant (or an associate of the Applicant) operates an approved venue within 100 metres of the Hotel, that the management and operation of the Hotel and other approved venue are genuinely independent of each other.

If, having determined that these matters have been satisfied, the Commission is then required to exercise its discretion under section 3.4.20 to determine whether or not the Application should be granted; that is, whether or not the proposed amendment to the venue operator's licence should be made.²¹

²¹ See paragraph 20 above. An amendment may be made subject to any conditions the Commission thinks fit: GR Act, section 3.4.20(3).

A. Directions given under section 3.2.3

53. As outlined in paragraph 12 above, the Commission is satisfied that there are no relevant directions given under section 3.2.3 that are applicable to this Application.
54. On this basis, the Commission is satisfied that granting the Application would not conflict with a direction given under section 3.2.3 of the GR Act, and therefore considers that mandatory pre-condition set out in section 3.4.20(1)(a) of the GR Act is satisfied.

B. Municipal limits and regional caps

55. Casey is divided into two geographically distinct areas in terms of limits placed on the number of EGM entitlements in the municipality. The first area is subject to a regional cap of 867 EGMs, while the second area is subject to a municipal limit of 458 EGMs.²² At the time of the Application, there are:
- (a) 12 gaming venues within the regional cap area with approvals to operate a total of 898 EGMs, with 867 EGMs presently in operation; and
 - (b) one gaming venue within the municipal limit area with approvals to operate a total of 46 EGMs, with 46 EGMs presently in operation.
56. The Hotel is located within the regional cap area, subject to a regional cap of 867 EGM entitlements. As outlined in paragraph 48 above, the Applicant acknowledges this situation and accepts that it would not be permitted to operate any additional EGMs at the Hotel unless certain events unfolded. On this basis, the Applicant submitted that this situation did not preclude the Commission from granting the Application as the regional cap would not be exceeded as a result of any approval of the Application.
57. The Council conceded by way of submission that it was open to the Commission to approve the Application (despite the regional cap having been reached), by reference to the exemption provided for in section 3.4.20(3A), which states:

(3A) Despite subsection (1)(a) and (b), the Commission may make an amendment before being satisfied of the matters referred to in those paragraphs on condition that the amendment does not take effect until the Commission is satisfied as required by those paragraphs.

²² Under a determination made by the Minister for Consumer Affairs, Gaming and Liquor pursuant to section 3.4A.5(3A) of the GR Act with effect from 3 November 2017: see https://www.vcglr.vic.gov.au/sites/default/files/Ministerial_Order_-_new%20regional_caps_and_municipal_limits.pdf



58. The Council's position was that while the number of EGMs operating within a particular region or municipality is capped, the operation of section 3.4.20(3A) means that there is nothing to preclude the aggregate number of EGMs for which approved venues may be licensed from exceeding the cap.
59. It is the position of the Commission that an approval to increase the maximum permissible EGMs at a venue will not result in a regional cap or municipal limit being exceeded. This is due to the difference between 'Licensed EGM' numbers and 'Attached EGM' numbers:
- (a) 'Licensed EGMs' are the maximum permissible EGM within an approved venue (i.e. the premises has been considered suitable and approved to install up to this number); and
 - (b) 'Attached EGMs' are the number of EGMs (together with a corresponding entitlement) attached and operating at an approved venue.
60. While the total number of 'Licensed EGM' number may exceed the cap, this means that not all approved venues can 'attach' the maximum EGMs at the same time, as this would result in more than the capped number of EGMs operating within the relevant area. As outlined on page 8 of the VCGLR Report, there are already 888 licensed EGMs within the capped region, but only 867 attached EGMs.²³ As such, while any approval of this Application would result in the licensed EGM number increasing to 908, the attached EGM number would remain at 867.
61. Since the introduction of the entitlements regime, the enforcement of capped numbers is managed through applications made under that regime (i.e. where a venue operator applies to the Commission to attach relevant EGM entitlements to an approved venue). At this time, the Commission (via a delegate) determines whether that attachment of EGM entitlements is permissible, taking into account the total current attached EGMs in a particular capped region of municipality and assessed against the relevant cap number.
62. In summary, it is the Commission's position that no application pursuant to section 3.4.17 to increase the permitted EGMs at a venue will result in a cap being exceeded. As such, the Commission does not need to rely on the exemption provided for under section 3.4.20(3A) of the GR Act.
63. Overall, the Commission is satisfied that granting the Application would not cause the relevant regional cap for gaming machines for Casey to be exceeded, and therefore considers that mandatory pre-condition set out in section 3.4.20(1)(b) of the GR Act is satisfied.

²³ This represents the total number of 'Licensed EGMs' and 'Attached Entitlements', less the 46 EGMs operating at the Tooradin & District Sports Club, which is within Casey but outside the relevant capped region.

C. 'No net detriment' test

64. The Commission is required to be satisfied that if the Application is granted the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the Hotel is located. Set out below (and summarised in tabular form at Appendix One) is the Commission's assessment of the economic and social benefits and disbenefits associated with the Application, including the weighting given to each of these impacts.
65. Before undertaking an assessment of the impact relevant to this Application, the Commission makes the following preliminary comments:
- (a) A common benefit relied upon by applicants in similar matters is capital works linked to the approval of an application. It was acknowledged by the Applicant that the proposed capital works (including an expansion to the buffet facilities and new children's play area) would occur regardless of the outcome of the Application, and therefore could not form part of the benefits arising from any approval of the Application. In these circumstances, the Commission has not considered the proposed capital works (or any associated economic or social consequences of such works) as a benefit of this Application in its consideration of the no-net detriment test.
 - (b) In previous applications, the Commission has considered the associated yet distinct economic and social benefits of community contributions separately. As noted in paragraph 16 above, it does not matter whether impacts are considered on the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test. In this Application, the Commission has determined to consider the impacts associated with the proposed community contributions as a single impact under the 'Social impacts' section of its consideration. As noted in its discussion of this impact below, the Commission has taken into account both the economic and social benefits generally associated with community contributions forming part of EGM increase applications, and given appropriate weight to that impact in its cumulative form.
 - (c) Table 8 of the NBA Report sets out factors that were considered by Mr Anderson in his assessment of the Application. Following clarification by the Commissioners and Counsel Assisting at the Hearing, Mr Anderson confirmed that all the factors listed in Table 8 were not necessarily separate and distinct benefits or detriments of the Application to be assessed as part of the no-net detriment test. Some factors (including those identified as 'Current Venue', 'Management Expertise', 'Hotel Membership', 'Destination Venue', and



'Council Policy') were supporting factors and provided further information to be considered as part of identified impacts of the Application.²⁴ On this basis, the Commission does not consider these factors to be distinct impacts of the Application, and as such has not separately considered them below. However, the Commission has taken those factors into account, where relevant, in its assessment of the impacts identified in the following section of its reasons.

Economic impacts

Gaming expenditure not associated with problem gambling

66. As the economic category includes consumption, then to the extent that gaming expenditure is not associated with problem gambling, it has been recognised (by, for example, the Productivity Commission in its 1999 report) that such expenditure can be treated as an economic positive.²⁵ As Bell J further notes, this approach also brings to account the benefit obtained from pure consumption by the lone gambler who does not use machines for social reasons.²⁶
67. Mr Stillwell, in the ShineWing Report and at the Hearing, gave evidence regarding the likely increase in gaming expenditure should the Application be granted. Specifically, he gave evidence of the likely increased gaming expenditure in the first 12 months of operation of the additional 20 EGMs at the Hotel. The ShineWing Report sets out the different methodologies used to estimate EGM expenditure, and determined that the empirical evidence method was the most appropriate in the circumstances of the Application.²⁷ On this basis and compared with an analysis of historical and recent trends in gaming expenditure, Mr Stillwell estimated that:
- (a) the level of additional gross gaming expenditure generated from the Application would be between \$1,765,360 and \$1,990,043 in the first 12 months of trade;
 - (b) 40% of this would be transferred expenditure from a number of existing gaming venues within Casey; and
 - (c) adopting the estimated level of 40% transferred expenditure, new gaming expenditure is estimated to be between \$1,059,216 and \$1,194,026 in the first 12 months of trade.

²⁴ Transcript, Day 1, pages 76-77 and 92-93.

²⁵ See *Romsey #2* at [351] per Bell J.

²⁶ See *Romsey #2* 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.

²⁷ The empirical evidence method is based on a group of sample venues which have recently introduced additional gaming machines into comparable venues as the result of a successful top-up application: ShineWing Report, paragraph 8.1.



68. Mr Stillwell also submitted that the above estimates were “not predicated by the need for a contemporaneous reduction of entitlements within [Casey] and the estimates demonstrate the upper limit of increased gaming expenditure”.²⁸ As such, Mr Stillwell considered that the actual new gaming expenditure to Casey as a result of the Application was likely to be “significantly lower than [the above estimates], and potentially negligible, depending on which venue, or venues, were to reduce the number of gaming machines in operation”.²⁹ At the Hearing, Mr Stillwell confirmed that the reduction in his estimated gaming expenditure would only result in the case that the additional 20 EGMs were relocated from venues within Casey.³⁰
69. Under cross-examination, Mr Stillwell accepted that his estimates are based on current data and would need to reconsider his estimates if new data became available in future years.³¹
70. In the SGS Report, Mr Atkinson accepts the above estimates as reasonable (noting it was largely consistent with the principle of diminishing marginal returns), however submitted that this estimate was likely only reasonable in the immediate term. Mr Atkinson also noted that the ShineWing Report estimates did not take into account the netting effect of the relocation of EGMs from within Casey (a requirement given the regional cap). On the assumption that “the EGMs to be replaced by the new machines at the Lynbrook Hotel will be approximately 20 per cent less productive than those at the venue from which the entitlements are expected to be transferred”, Mr Atkinson estimated the increase in EGM expenditure in Casey in the amount of \$375,540 per annum.³²
71. In considering the likely impact of an additional 20 EGMs at the Hotel, the Commission notes that there has been an increase in expenditure on EGMs at this Hotel between 2011/12 and 2015/16, with a slight decrease for the 2016/17 year. Overall, the average five-year growth at the Hotel of 12.06% is the highest of any venue in Casey, and significantly higher than that experienced across Casey as a whole (0.20%).³³
72. The Commission accepts the evidence of Mr Stillwell as to the estimated gaming expenditure as calculated above. In the circumstances of the Application, the Commission notes that any additional EGMs could be operated at the Hotel following a transfer from another venue within Casey, or following a future increase to the regional cap. The Commission accepts the evidence of both Mr Stillwell and Mr Atkinson that the amount of new gaming expenditure would be less in the circumstances of transferred entitlements from another venue. However, in the absence of

²⁸ ShineWing Report, paragraph 1.7.

²⁹ ShineWing Report, paragraph 1.8.

³⁰ Transcript, Day 1, page 121.

³¹ Transcript, Day 1, page 111.

³² SGS Report, paragraphs 64 to 73.

³³ ShineWing Report, Appendices 1 and 2.

certainty in this regard, the Commission has determined to assess the impact of the 'worst case scenario' as outlined by Mr Stillwell, being an increase in gaming expenditure at the Hotel (and therefore in Casey) of between \$1,059,216 and \$1,194,026 per annum.

73. Despite this, the Commission remains concerned that the timing of the likely commencement of operation of the additional EGMs at the Hotel is unknown and ultimately dependent on the occurrence of either a relocation of EGM entitlements within Casey, or an increase in the regional cap in which the Hotel is located. As noted by the Commission above, there is significant uncertainty as to the likely timing and circumstances of either of these events, and the impact that changing expenditure trends in the interim might interfere with the accuracy of the estimated expenditure calculated by Mr Stillwell. For example, the specific characteristics of the venue from which entitlements may be transferred is likely to have impact on factors as such the level and location of likely transferred expenditure, the change in gaming competition within Casey (particularly if entitlements become available following the closure of another gaming venue), or the net effect on overall new gaming expenditure within Casey. Equally, if the additional EGMs are attached and operated as a result of an increase to the regional cap, this could result in other competing venues also seeking to increase EGM numbers at those venues. In light of this, the temporal dislocation between expenditure analysis and the ultimate operation of any additional EGMs at the Hotel necessarily limits the confidence that the Commission can place on the accuracy of these estimates.
74. In assessing the extent of this benefit, the Commission has had regard to the evidence outlined in paragraphs 97 to 118 below with respect to the incidence of problem gambling. Various factors suggest that the extent of problem gambling at the Hotel is likely to be low to moderate, including the levels of socio-economic disadvantage of the catchment area around the Hotel, anticipated level of new gaming expenditure in Casey and the RSG practices of the Applicant.
75. Overall, having necessary regard to the extent of gambling expenditure associated with problem gambling as outlined in paragraphs 97 to 118 below, the Commission considers that this benefit should only be given a marginal weight.

Increased gaming competition in Casey

76. Increasing competition in gaming in Casey is a factor in light of the statutory purposes of the GR Act and the consumer benefits that derive from competition.
77. In this regard, the Commission refers to and has reliance to the evidence set out in paragraphs 67 to 73 in relation to the anticipated transfer of gaming expenditure within Casey.

78. On the basis of an estimated adult population in Casey of 299,025 for 2017, the Commission considers that this Application would (if approved):
- (a) increase the overall number of approvals for EGMs within the municipality by 20 (2.12% increase) from 944 to 964, including an increase in the number of approvals for EGMs within the municipal limit of 867 entitlements from 898 to 918 (2.23% increase);
 - (b) increase the EGM density of the municipality in which the Hotel is situated from 4 EGMs per 1,000 adults to 4.1 EGMs per 1,000 adults (compared with the metropolitan average of 5.2 EGMs per 1,000 adults and State average of 5.5 EGMs per 1,000 adults); and
 - (c) increase the gaming expenditure per adult in Casey from \$555 to \$560, an increase of 0.9% of total gaming expenditure in Casey.
79. The Commission finds that granting approval of the Application will provide 20 additional EGMs at which patrons may choose to play. However, the Application represents a relatively small proportional increase in the number of EGMs in Casey and within the area subject to the municipal limit.³⁴ Further, the utilisation rates at the Hotel do not indicate that demand for gaming is outstripping supply for significant periods of time during the survey, nor does the anticipated additional expenditure at the Hotel suggest a substantive increase in gaming competition in the municipal district.
80. As such, for the purposes of this Application the Commission considers that, at its highest, there is negligible benefit associated with an increase in gaming competition in Casey as a result of the addition of 20 EGMs at the Hotel, and hence gives this impact no to marginal weight.

Additional employment

81. Employment benefits associated with the Application may result from the increased number of operational EGMs and increased patronage of existing facilities at the Hotel.
82. In the NBA Report, Mr Anderson stated that the Applicant estimated that the additional EGMs would require “160 extra hours of staffing or 5 FTE staff at 32 hours each”.³⁵ Mr Anderson considered that this additional employment was a marginally positive factor in support of the Application.³⁶
83. According to Ms Mann, if the Application is granted, it is expected that an additional 160 hours in

³⁵ NBA Report, paragraph 41.

³⁶ NBA Report, Table 8, page 59.

staffing would be required, equating to approximately five new staff members with 32 hours each.³⁷ Under cross-examination, Ms Mann stated that this figure was calculated on the basis that an extra employee would be required in the gaming room to accommodate the increased workload associated with the additional 20 EGMs.³⁸ Ms Mann also confirmed that a large proportion of the Hotel's staff were local residents of Casey, and anticipated that the additional staff would most likely reside within the local area.³⁹

84. In the SGS Report, Mr Atkinson submitted that 160 hours was equivalent to 4.2 FTE jobs (based on 38 hours per week) rather than the 5 FTE claimed by the Applicant, and otherwise did not agree that the Application would generate that level of additional employment.⁴⁰ Overall, Mr Atkinson considered that, taking into account the likely transfer effect of employment, the addition of 20 EGMs at the venue was likely to have a net neutral impact on employment within Casey.⁴¹
85. At the Hearing, the Applicant, through Mr Tabet, confirmed its willingness for a condition to be imposed on its venue operator's licence to require that the Applicant employ an additional five FTE employees for as long as the additional EGMs are in operation.⁴²
86. The Commission agrees with Mr Atkinson that the proposed 160 hours of additional work equates to 4.2 FTE jobs (based on 38 hours per week). However, the Commission notes the evidence of Mr Tabet that the Applicant would employ an additional five FTE employees as a condition of any approval of this Application, which the Commission would expect to be calculated on a 38 hours per week basis (equating to an additional 190 hours of employment). As such, the Commission accepts the evidence given on behalf of the Applicant that if the Application is granted, this would result in the creation of the equivalent of five FTE positions at the Hotel in respect of its gaming operations. While it considers that some employment may be transferred from within the municipality (i.e. from competitive gaming venues), the Commission is not satisfied that this would be sufficient to offset the creation of the five FTE positions at the Hotel so as to result in a net neutral outcome within Casey. In such circumstances, the Commission considers the additional employment arising from the Application as positive and, taking in account the anticipated numbers of employees and the potential for some transfer of local employment, gives this benefit marginal weight.

³⁷ Statement of Ms Mann, paragraph 26.

³⁸ Transcript, Day 1, page 166.

³⁹ Transcript, Day 1, pages 165-6.

⁴⁰ SGS Report, paragraphs 58-9.

⁴¹ SGS Report, paragraphs 146-52.

⁴² Transcript, Day 1, page 177; see also 2nd Proposed Conditions.

Supply contracts

87. In the SGS Report, Mr Atkinson considered that it would be reasonable to anticipate the expansion in the number of EGMs would generate a small increase in supply contracts (such as cleaning, EGM servicing and maintenance). However, Mr Atkinson considered that the value of any increase would be negligible, and would largely be serviced by businesses outside Casey. Overall, he submitted that no weight should be placed on this impact.⁴³
88. The Applicant did not provide any evidence in this regard, and did not directly rely on this impact as a benefit of this Application.
89. On the information available, the Commission considers there is no direct evidence on this impact, and even if increased supply contracts are anticipated at the Hotel following any approval of the Application, there exists significant uncertainty as to the extent that any such increase would generate increased economic activity within Casey.
90. For these reasons, the Commission finds that any benefit associated with increased supply contracts for the municipality would be negligible and as such places no weight on this impact.

Complementary expenditure

91. Complementary expenditure is a potential benefit where it results in increased economic activity in the municipal district in which the premises that are the subject of an application are located. However, the extent of this benefit will depend upon a range of factors, including:
- (a) the extent to which the expenditure is a consequence of new spending (i.e. as a result of additional people coming to the municipal district as tourists as compared to transferred expenditure from other venues within the municipality); and
 - (b) the extent to which that complementary expenditure results in additional spending on local goods and services.
92. In the SGS Report, Mr Atkinson considered that it would be reasonable to anticipate the expansion in the number of EGMs would generate a small increase in complementary expenditure (mainly food and drink sales). However, Mr Atkinson submitted that as any proposed capital works did not form any part of the Application, there was no associated expansion of facilities at the Hotel other than the increased numbers of EGMs within the gaming room. In these circumstances, Mr Atkinson considered that any benefit associated with complementary expenditure would be

⁴³ SGS Report, paragraphs 157-8.

marginal.⁴⁴

93. The Applicant did not provide any evidence in this regard, and did not directly rely on this impact as a benefit of this Application.
94. On the information available, the Commission considers there is no direct evidence on this impact, and even if increased patronage at the Hotel is anticipated following any approval of the Application, there exists significant uncertainty as to the extent that any such increase would generate increased economic activity within the local area (as opposed to transferred activity within Casey). For these reasons, the Commission finds that any benefit associated with complementary expenditure for the municipality would be negligible and as such places no weight on this impact.

Increased State Government revenue

95. Ms Hicks did not record as a separate factor the increase in State Government revenue from the taxation generated by increased expenditure on the additional 20 EGMs. However, the Applicant in its closing submissions noted that benefits from the approval of the Application include the taxation benefit derived from gaming in Victoria.⁴⁵
96. Any increase in government revenue will very likely be split across all Victorian municipalities. This is amplified by the lack of evidence presented as part of this Application as to the specific impact on Casey. While agreeing with the Senior Members in VCAT in *Commercial Hotel* that such Government revenue is the primary basis upon which the community of the municipality derives benefit from gaming, the Commission does not consider that such revenue can be directly linked to this Application and as such places no weight on this impact.⁴⁶

Gaming expenditure associated with problem gambling

97. To the extent that a portion of the new gaming expenditure is attributable to problem gambling, this represents an economic disbenefit.⁴⁷ In assessing this impact (and other effects of problem

⁴⁴ SGS Report, paragraphs 159-62.

⁴⁵ The Applicant's Closing Submissions, [19], page 3, citing *ALH Group Property Holdings Pty Ltd v Whittlesea CC (Corrected)* [2017] VCAT 2164 (*'Commercial Hotel'*), [108]; see also Transcript, Day 2, page 274.

⁴⁶ The Commission notes the reference to State Government revenue was made in *Commercial Hotel* in the context of considering the effect of community contributions, where the Senior Members set out that the primary basis on which the community derives financial benefit from gaming is through the State Government's taxation system, and that the impact was not considered as a separate factor: see *Commercial Hotel* [2017] VCAT 2164, [189].

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

gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gaming undertaken by each of the problem gambling severity index (**PGSI**) risk categories, in particular those who may be defined as 'problem gamblers', as well as those who may be otherwise regarded as 'low-risk' or 'moderate-risk' gamblers.

98. The extent to which new gaming expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with the Application, will be influenced by the socio-economic status and vulnerability of the community of Casey, and in particular those living in the primary catchment area of the Hotel: see paragraphs 42 to 46 above. This is because communities characterised by socio-economic disadvantage and greater vulnerability are considered to be more susceptible to the harms arising from problem gambling.
99. Relevantly, the Commission notes the evidence of Mr Anderson at the Hearing that the primary catchment area of the Hotel shows a mixed level of socio-economic disadvantage. The NBA Report states that various factors suggest that there is lower risk of increased incidence and economic impact of problem gambling in the relevant catchment area of the Hotel should this Application be granted on the basis that:
- (a) the SA2 in which the Hotel is located (Lynbrook-Lyndhurst) showed few signs of disadvantage, having:
 - (i) a SEIFA score of 1054 and sitting in the 8th decile, while Casey has a SEIFA score of 997 and sitting in the 7th decile in Victoria;
 - (ii) an unemployment rate of 5.0%, compared with 5.9% in Casey and 5.5% for the metro average;
 - (iii) a median weekly household income of \$1,704, which is 27% higher than the Casey median of \$1,342 and 28% higher than the metro median of \$1,333;
 - (iv) a greater proportion of households facing mortgage stress (30.2%) compared with Casey (17.4%) and metropolitan (11%) averages;
 - (b) with reference to surrounding LGAs, the majority of the wider area (excluding the LGA of Greater Dandenong) exhibits an above average socio-economic disposition;
 - (c) between 2011 and 2017, the EGM expenditure per adult for Casey has been trending downwards, decreasing from \$642.81 to \$554, following a similar trend across metropolitan Melbourne (\$637.97 to \$561).

100. In the NBA Update Report, Mr Anderson noted that:

- (a) between the 2011 and 2016 Census data, the SEIFA results for the catchment area has seen a slight decline in socio-economic performance:
 - (i) Lynbrook – Lyndhurst SA2 ranked 292nd (7th decile) in 2016, from 304th (8th decile) in 2011;
 - (ii) Hampton Park – Lynbrook SA2 ranked 48th (2nd decile) in 2016, from 63rd (2nd decile) in 2011;
 - (iii) Casey ranked 50th (7th decile) in 2016, from 52nd (7th decile) in 2011;
- (b) the residential areas within Hampton Park are predominantly disadvantaged and the residential areas within Lynbrook and Lyndhurst are predominantly advantaged.

101. At the Hearing, Mr Anderson accepted that the suburb of Hampton Park formed part of the catchment area of the Hotel, and referred to his analysis of Hampton Park in the NBA Update Report.⁴⁸ Mr Anderson also referred to the Council’s Pound Road Residential Development Plan and concluded that “whilst all the attention is on the negatives of Hampton Park, ... [it] does have the ability to improve over the next couple of census periods”.⁴⁹

102. In the SGS Report, Mr Atkinson provided a demographic analysis of the four SA2s he identified as within the catchment area of the Hotel.⁵⁰ Mr Atkinson concluded that the catchment area indicated high vulnerability indicators and significant socio-economic disadvantage on the basis that:

- (a) the 2016 SEIFA results indicate that:
 - (i) although the Lynbrook-Lyndhurst SA2 demonstrates a relative lack of socio-economic disadvantage, the Hampton Park-Lynbrook SA2 is one of the most disadvantaged SA2 in Australia (2nd decile); and
 - (ii) at an SA1 level, there exist pockets of disadvantage in the northern areas of the Lynbrook – Lyndhurst SA2, which are most proximate to the Hotel;
- (b) catchment households are twice as likely to be experiencing mortgage stress compared with the average Victorian household (Lynbrook – Lyndhurst SA2 at 18.4%, Hampton Park

⁴⁸ Transcript, Day 1, page 14.

⁴⁹ Transcript, Day 1, page 17.

⁵⁰ In light of the Commission’s finding as to the identification of the catchment area, the Commission’s analysis has focused on those SA2s that fall within that catchment area, being the Lynbrook-Lyndhurst SA2 and the Hampton Park – Lynbrook SA2.



– Lynbrook at 13.9%, Casey at 12.7%, and Victoria at 7.5%), indicating an increased financial vulnerability to the incidence of problem gambling;

- (c) the low-skilled nature of the local workforce (blue collar workforce proportion of 33.9% in Lynbrook – Lyndhurst SA2, 49.1% in Hampton Park – Lynbrook SA2, compared with 26.8% for Greater Melbourne) indicates an increased vulnerability to economic downturn;
- (d) an above average proportion of family households (90.7% in Lynbrook – Lyndhurst SA2, 81.5% in Hampton Park – Lynbrook SA2, compared with 72.0% for Greater Melbourne) could heighten the impact of problem gambling, as more people would be directly affected by the consequences of problem gambling; and
- (e) although the proportion of the local population presently within the most ‘at risk’ age groups (generally, young adults) are in line with Greater Melbourne averages, this is likely to change in coming years as the catchment’s population stabilises.

103. At the Hearing, Ms Petrides of CISS gave evidence that CISS is the major provider of free emergency relief, counselling and financial counselling services in the Casey South area and that the demand for CISS’ services in the past five years has “increased dramatically”, particularly in the area of financial counselling. Ms Petrides noted that CISS often refers serious problem gambling cases to Gamblers Help Southern as it does not hold the relevant expertise or resources to adequately assist those people seeking help in that regard.⁵¹
104. In the CISS Submission, Ms Petrides stated that, in addition to the above average rates of mortgage stress within the catchment area, there are a number of rooming houses in the suburbs of Lynbrook and Hampton Park, accommodating “extremely vulnerable residents who are on the precipice of homelessness”. Such residents are particularly vulnerable to harm from problem gambling due to limited disposable income and being attracted to gaming venues due to the warmth, free food and hot beverages and companionship that such venues offer.⁵²
105. In the submission from the Casey Residents and Ratepayers Association, Mr Browne highlighted the socio-economic disadvantage within the suburb of Hampton Park, and noted that data from the 2016 census indicates a declining situation when compared with the 2011 census data (for example, a higher proportion of households in Hampton Park were in the lowest two quintiles for household income in 2016 than in 2011).⁵³

⁵¹ Transcript, Day 1, pages 96 and 103.

⁵² CISS Submission.

⁵³ Casey Residents and Ratepayers Association submission, paragraphs 26-9.



106. At the Hearing, Mr Browne gave evidence, on behalf of the Casey Residents and Ratepayers' Association, regarding the poor economic activity within Hampton Park and the lack of alternative entertainment opportunities for its residents. He stated that many of the shops in the shopping precinct along Hallam Road are unoccupied and in poor repair.⁵⁴
107. For completeness, it is noted that the VCGLR Report, read together with the VCGLR Updated Report, indicates that in relation to the area immediately surrounding the Hotel (i.e. within 2.5 kilometres):
- (a) 36.8% of SA1s⁵⁵ are in the 1st quintile of SEIFA scores, with a further 41.2% of SA1s being in the 2nd quintile, indicating a significant level of disadvantage. The remaining SA1s in the area immediately surrounding the Hotel are in the 3rd (10.3%) and 4th (11.8%) quintiles, with no SA1s in the 5th quintile;
 - (b) the rate of housing stress experienced (calculated as the percentage of households in the lowest two equivalised household income quintiles paying more than 30% of income on rent or mortgage) is 57.8%, which is lower than the rate of housing stress for Casey (58.3%), for metropolitan LGAs (64.5%) and for Victoria (60.2%); and
 - (c) there are significant higher levels of unemployment and homelessness, compared with both Casey and the State averages.
108. As noted above, the Commission also considers that people employed and working within the industrial areas to the west of the Hotel will patronage the venue due to its geographic proximity. The nature of this workforce (primarily blue-collar workers and operating on shift work arrangements) indicates an increased propensity and vulnerability to gambling-related harms, particular with regard to those workers attending the Hotel after 11pm when alternate forms of entertainment and services are no longer available.
109. Taking into account all of the material before it, the Commission finds that the catchment area of the Hotel currently exhibits a mixed yet overall moderate level of socio-economic disadvantage and generally higher vulnerability to the risks of problem gambling. While Mr Anderson's evidence suggested that the socio-economic circumstances of the relevant area (in particular, Hampton Park) were likely to improve, the Commission notes that this suggestion is not supported by the declining trend in socio-economic disadvantage evidenced between the 2011 and 2016 census results. As such, the Commission finds, on the evidence presented, that the socio-economic

⁵⁴ Transcript, Day 1, page 192.

⁵⁵ SA1s have been designed by the ABS as the smallest unit for the release of Census data, and generally have a population of 200 to 800 persons, with an average of 400 persons.

circumstances of the Hotel's patrons within the catchment area is more likely to continue in decline prior to the installation of additional EGMs at the Hotel arising from any approval of this Application.

110. In considering the extent to which new gaming expenditure may give rise to an increased risk of problem gambling, the manner in which gaming is to be conducted at the Hotel is also a relevant consideration. Specifically, in relation to the Hotel's Responsible Service of Gaming (**RSG**) practices, the Commission notes the evidence of Mr Tabet and Ms Mann that:
- (a) all staff have completed Responsible Service of Gaming training and regularly updated with new information, such as pre-commitment;⁵⁶
 - (b) there is a minimum of two staff members in the gaming room at all times, with additional staff allocated at any given time as needed, which will be extended to three staff members if the Application is successful;⁵⁷
 - (c) the Hotel adopts and enforces the AHA responsible Gambling Code of Conduct together with AHA Self-Exclusion Program;⁵⁸
 - (d) external regulatory compliance audits will be conducted annually, with Leigh Barrett & Associates conducting the first of these audits on 6 June 2017;⁵⁹
 - (e) Ms Mann and the gaming manager work closely with Gamblers Help and venue support worker for staff training at the Hotel, with meetings occurring up to four times each year;
 - (f) a reception is manned in the foyer of the Hotel from approximately 8am to 8pm each day, extending to 8.30pm on Friday and Saturday nights;⁶⁰ and
 - (g) the Hotel maintains an incident register, which is reviewed daily by Ms Mann and the gaming manager, and raised with Mr Tabet on an ad hoc basis for significant incidents only.
111. Under cross-examination, Ms Mann conceded that after approximately 11pm on most nights until the Hotel closes at 5am the following morning, the only recreational activity and services available to patrons at the Hotel is the gaming room. Ms Mann clarified that the Hotel did cater for shift-workers in the area, who would sometimes attend the venue late at night for a drink and not necessarily play the EGMs.

⁵⁶ Statement of Mr Tabet, para 5; Statement of Ms Mann, paras 4 and 27; Transcript, Day 1, p 130.

⁵⁷ Statement of Ms Mann, para 30; Transcript, Day 1, p 131.

⁵⁸ Statement of Ms Mann, para 28.

⁵⁹ Statement of Ms Mann, paragraph 29; Transcript, Day 1, pages 131 and 139.

⁶⁰ Transcript, Day 1, pages 127-8.

112. In response to questions from the Commissioners, Ms Mann confirmed that the Hotel does not have any dedicated management plan or training manual for the gaming room or its staff.⁶¹ She also noted that staff were at times concerned about approaching patrons exhibiting signs of problem gambling for fear of being abused, however this was intended to be addressed with continued training sessions organised through Gamblers Help.⁶²
113. At the Hearing, Mr Tabet gave evidence that in addition to monthly meetings with managers, he receives “daily reports on the performance of the Hotel” and “daily reports on incidents”.⁶³ He confirmed that while he does not read all the incidents recorded in the incident register, he receives either phone calls or written reports from his managers in relation to significant incidents.⁶⁴
114. Under cross-examination, Mr Tabet stated that he shares the overall responsibility for RSG with his gaming managers and coordinators. However, following further questioning by the Commissioners, Mr Tabet gave evidence that he plays no active role in relation to the provision of RSG at the Hotel, which is left to Ms Mann. Further, Mr Tabet stated that he “has trust in my management” and relied on his management team when it came to ensuring overall compliance with relevant regulatory obligations at the Hotel.⁶⁵
115. The venue is a medium sized one, and operating at maximum permissible operating hours. Importantly, for significant periods that the gaming room is open, there are no other facilities which are available for patron engagement. While a larger gaming room would be more attractive for problem gamblers, any increase in anonymity is likely to be off-set by the provision of one additional staff member within the gaming room. While the Commission accepts the facilities at the Hotel have been improved by the installation of the screen and opaque window coverings, it notes that this appears to be a reactive response to criticism raised by community objectors to this Application.
116. In relation to the proposed additional staff member in the gaming room, the Commission accepts that this will provide an increase presence in the gaming room to identify incidents of problem gambling or other concerning behaviour. However, the Commission notes the evidence of Ms Mann of the general reluctance of staff to intervene in such circumstances, and therefore queries the extent of the effectiveness that an additional staff member will have on addressing any potential increased risk of problem gambling following the installation of an additional 20

⁶¹ Transcript, Day 1, page 153.

⁶² Transcript, Day 1, pages 160-1.

⁶³ Transcript, Day 1, pages 172-3.

⁶⁴ Transcript, Day 1, pages 180-1.

⁶⁵ Transcript, Day 1, pages 181, 187 and 189-90.

EGMs at the Hotel.

117. Further, the Commission considers that, on the basis of the evidence provided, the overall RSG practices of the Applicant do not demonstrate a robust commitment to RSG best practice. Specifically, the Commission is concerned that there is no site-specific manual for gaming staff with respect to RSG practices, the lack of routine engagement with external compliance auditors with regard to RSG obligations, the Hotel operates at the maximum 20-hours per day, and the extent of reliance placed by Mr Tabet on his gaming managers and coordinators to meet RSG and regulatory compliance obligations.
118. Overall, the Commission considers with respect to the Application that the potential expenditure associated with problem gambling is a negative economic impact upon which it should place low weight. Issues relating to the negative social impacts associated with problem gambling are considered further in paragraphs 141 to 143 below.

Diversion of trade from retail facilities

119. Mr Atkinson sets out in the SGS Report that the diversion of trade from retail facilities due to an increase in gaming expenditure is a potential economic disbenefit flowing from the grant of this Application. This is on the basis that the majority of EGM expenditure in Victoria displaces consumption elsewhere in the economy, rather than being drawn from savings, and particularly so in this case in light of the above average mortgage stress and financial vulnerability indicators of the Hotel's catchment area.⁶⁶
120. The Commission accepts that the maximum impact that could be imposed on local retailers would be the value of new gaming expenditure arising from this Application. The Commission notes that the extent of any revenue lost by retail facilities in the local area would be difficult to determine. The Commission finds that the dispersed nature of any diverted trade is unlikely to have more than a marginal impact on retail facilities within Casey. Overall, the Commission finds that there is a small economic disbenefit associated with the diversion of trade from retail facilities within Casey as a result of this Application, and as such places no to marginal weight on this factor.

Diversion of trade from other gaming venues

121. In the ShineWing Report, Mr Stillwell estimated that 40% of gaming expenditure would be transferred from other gaming venues within Casey. With reference to the impact on surrounding venues at the time of the Hotel's opening in 2010, Mr Stillwell stated that the empirical evidence

⁶⁶ SGS Report, paragraphs 167-8.

indicated that there was a material impact on the gaming expenditure of the Hampton Park Tavern, and only a marginal impact on gaming expenditure of the Hallam Taverner and Prince Mark Hotel (located within the City of Dandenong).⁶⁷

122. In the SGS Report, Mr Atkinson stated that the introduction of EGMs at the Hotel would cause a diversion of trade from other gaming venues within the municipality.⁶⁸ He concluded that there would be a marginal detriment felt by nearby gaming venues as a result of the Application.
123. The Commission accepts the Applicant's evidence that at least 40% of anticipated transferred expenditure would be derived from other venues, with the majority of that transfer from venues within Casey. The Commission again notes the high degree of uncertainty in this regard, in particular that the source of any entitlements introduced into the Hotel would have a significant impact on the calculation of transferred expenditure, together with the impact expected to be experienced by competing venues. Overall, the Commission considers that there is the potential that the diversion of trade will have a detrimental economic impact on other venue operators (in particular, the operator of the Hampton Park Tavern). Having regard to these factors, the Commission assigns no to marginal weight to this impact.

Conclusion on Economic Impacts

124. After considering the economic benefits of the Application and balanced against the detriments, the Commission considers that, on balance, there is likely to be a marginal negative economic impact of the Application.

Social Impacts

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

Increased gaming opportunities for those who enjoy gaming

126. This is a positive impact if the Application will better serve the needs of gaming patrons through providing additional opportunities and choice for those who choose to play EGMs. The Applicant submits that the proposed addition of 20 EGMs would improve game choice of current patrons in machines during peak periods.
127. In the ShineWing Report, Mr Stillwell stated that, in line with accepted industry benchmarks, "utilisation of gaming machines within a gaming room of above 70% is indicative of periods when

⁶⁷ ShineWing Report, paragraphs 9.3 to 9.9.

⁶⁸ SGS Report, paragraphs 169-70.

additional gaming expenditure is potentially foregone by a venue due to limited capacity and access to an appropriate choice of EGMs. However, in the case of venues with comparatively smaller gaming rooms, whilst there may be more than 30% of EGMs available, the condensed nature of the room and reduced range of differentiated products limits access to desired machines and therefore lowers the utilisation rate relevant to assessing foregone expenditure. In these instances, peak utilisation can occur at levels of 50% and 60%⁶⁹. On this basis, the Applicant submitted the results of an EGM utilisation survey conducted between 16 April to 21 May 2017, indicating that utilisation rates were:

- (a) above 50% for 107 out of 741 trading hours, or 14%;
- (b) above 60% for 40 out of 741 trading hours, or 5%; and
- (c) above 70% for 15 out of 741 trading hours, or 2%.⁷⁰

128. Mr Anderson concluded that it was a “very marginal social improvement to offer a new variety of gaming machines for those patrons that like to gamble responsibly in a social environment”.⁷¹ Mr Atkinson accepted that the “user benefits associated with non-problem gamblers ... are likely to be marginal” in light of the relatively low new expenditure anticipated by the Application.⁷²
129. The Commission acknowledges that there is a benefit in increasing machine choice for recreational players and catering for (non-problem gambling) demand. In relation to the appropriate utilisation rate, the Commission accepts that a rate lower than 70% is justified on the basis of reduced range of differential products, however considers that the gaming room (which is large enough to accommodate up to 80 EGMs as originally requested by the Applicant) is not “condensed” in the sense alleged by Mr Stillwell. In the specific circumstances of the Hotel’s gaming room, the Commission accepts that a utilisation rate above 60% may indicate periods when additional gaming expenditure is foregone by the Applicant.
130. Overall, given there are already 55 EGMs at the Hotel, the EGM utilisation survey provided by the Applicant showed that utilisation rates above 60% were only reached for limited periods and there are 12 other venues in Casey where EGMs operate, with 913 EGMs currently being in operation in the municipality, the Commission considers there is already an ease of access and high levels of consumer choice for anyone choosing to play EGMs. Therefore, the Commission considers

⁶⁹ ShineWing Report, paragraph 8.2.

⁷⁰ NBA Report, paragraphs 96-7 and Appendix 7; ShineWing Report, paragraph 8.3 and Appendix 5. However, the Commission notes the evidence of Ms Mann that there were occasions within the survey period where numbers of gaming patrons were not recorded by staff: for example, the evenings of 17, 18 and 19 May 2017.

⁷¹ NBA Report, Table 8, page 61.

⁷² SGS Report, paragraphs 119-21.

this to be a negligible social benefit to the community in Casey itself, and hence one on which it places no to marginal weight.

Increased community contributions

131. In determining the net economic and social impact of applications of this nature, both the Commission⁷³ and VCAT⁷⁴ have regularly treated community contributions as a positive benefit. However, for such contributions to be regarded as a benefit associated with the Application, it is necessary that they are properly regarded as community contributions and that they will result as a consequence of the Application.
132. As noted in paragraph 65(b) above, the Commission has taken into account both the economic (financial benefit enjoyed by recipients) and social (improvement to the social fabric of the community) benefits associated with the proposed community contributions forming part of the Application in this section, and given appropriate weight to that impact in its cumulative form.
133. According to Mr Anderson, the Applicant has distributed \$904,834.44 to local community organisations within Casey between 2011 and April 2017.⁷⁵ Under cross-examination, Mr Anderson conceded that a portion of that amount claimed by the Applicant consisted of in-kind contributions more akin to marketing incentives or operating expenses, rather than direct donations to community organisations.⁷⁶ The Commission agrees with Mr Anderson's concession and, in any event, considers that any past amounts donated (or otherwise distributed) by the Applicant to organisations is not evidence towards the impacts of the Application. The relevant aspect of this issue is in relation to any community contributions proposed by the Applicant which are direct or indirect benefits of the Application.
134. On 28 February 2018, the conditions of the Applicant's venue operator's licence were amended to include conditions relating to the payment of community contributions associated with its original approval of premises application (determined by a differently constituted predecessor of the Commission on 8 February 2007). The conditions provided that the Applicant would provide an annual cash contribution in the amount of \$68,000 per annum until the end of the gaming machine licence period on 15 August 2022. The cash contributions were to be "used for the provision of services and facilities to residents of Lynbrook or donated to individuals, not-for-profit community groups and sporting organisations providing services and facilities to residents in the City of

⁷³ See, for example, *Application by Richmond Football Club* [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

⁷⁴ 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.

⁷⁵ NBA Report, paragraph 47.

⁷⁶ Transcript, Day 1, pages 68-71.

Casey". On the basis of the oral and documentary evidence provided by Ms Mann at the Hearing, the Commission is satisfied that the Applicant has complied with this obligation to date in 2018.

135. At the Hearing, the Applicant proposed an additional annual cash contribution of \$25,000 (bringing the Applicant's overall community contributions to \$93,000) to be secured by way of conditions on its venue operator's licence and donated as outlined above, subject to the following amendments:
- (a) donations would no longer be made to individuals; and
 - (b) donations would only be provided to "not-for-profit community groups, sporting organisations and organisations who provide support services and facilities to the Lynbrook community, including for problem gambling" (**Proposed Community Contributions**).
136. Following queries by Council as to the nature of community contributions, the Applicant confirmed that the community contributions would be cash contributions, rather than in-kind contributions.⁷⁷
137. The Council submitted that the Proposed Community Contributions constituted a very small portion of the additional gaming revenue expected to be received by the Applicant per annum from the 20 additional EGMs at the Hotel. While Mr Atkinson's assessment was that the Proposed Community Contributions would provide a marginal benefit to the surrounding community,⁷⁸ the Council submitted that the Proposed Community Contributions provided a negligible benefit for the community of Casey.⁷⁹
138. After the Hearing, the Applicant amended the Proposed Community Contributions to separate the proposed \$25,000 community contributions from the original \$68,000, and provide that the \$25,000 community contributions would be provided for so long as any of the additional 20 EGMs operate at the Hotel (**2nd Proposed Community Contributions**). The Applicant acknowledged its continuing obligations to pay the \$68,000 community contribution in accordance with the relevant conditions on its venue operator's licence.
139. While aware of the need to treat community contributions carefully in the assessment of gaming applications under the GR Act, the Commission does not consider it of assistance to assess the level of such contributions against the expected gaming revenue at the Hotel in determining whether the community contributions provides a benefit to the community. The significance of any

⁷⁷ Transcript, Day 1, page 22; Applicant Closing Submissions, paragraph 12.

⁷⁸ SGS Report, paragraphs 122-5.

⁷⁹ Council Closing Submissions, paragraphs 98 to 112.

such contributions is assessed on the effect had on the community, rather than the proportion of revenues or profits realised by a venue operator that they represent.

140. The Commission accepts that the 2nd Proposed Community Contributions will have a positive economic and social impact. The Commission is further satisfied that the contributions will only occur if the Application is granted. Having regard to the increase in the community contributions that will occur, and that these contributions will be made to a range of community, sporting and support groups for the benefit of the Lynbrook community (in accordance with conditions of any approval of this Application), the Commission considers these contributions to be a positive benefit to which it accords a marginal weight.

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

141. Wherever accessibility to EGMs is increased there is always a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, relationship breakdowns, emotional harms and other social costs. Accordingly, the Commission accepts there is potential for negative social costs through possible increased problem gambling expenditure. The Commission also accepts that to the extent that approval of this Application would result in an increase to gambling-related crime and other social disturbances (including family violence) it would constitute a social disbenefit of this Application.
142. The Commission refers to and relies upon the evidence set out in paragraphs 97 to 118 above with respect to the economic impact of problem gambling on the community, which equally apply to the social impact of problem gambling. As indicated above at paragraph 97, the Commission accepts that harms associated with the incidence of problem gambling are wide-ranging and attributable to all PGSI categories of gamblers ('low-risk', 'moderate-risk' and 'problem gamblers') and across the community more broadly.
143. Overall, the Commission finds that this Application, to vary the number of EGMs at an existing approved premises from 55 to 75, is estimated to be associated with new expenditure of approximately \$1,059,216 and \$1,194,026 in the first 12 months. It accepts that a proportion of this new expenditure will be associated with problem gambling. Further, the Commission finds that the area surrounding the Hotel is generally an area of moderate relative socio-economic disadvantage, and the patronage of the Hotel (particularly those attending the Hotel after 11pm) exhibits an above average propensity for problem gambling. The Commission is therefore of the view that granting this Application has the potential to increase the incidence and impact of problem gambling in Casey to a moderate extent, taking into account the expected increase in new gambling expenditure, the existing level of gaming available at the Hotel, socio-economic

vulnerability of gaming patrons, and the current RSG practices of the Hotel management. As such, the Commission accepts that the disbenefit associated with problem gambling is a negative social impact upon which it places low to moderate weight.

Community attitude

144. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,⁸⁰ the Commission recognises that while community apprehension is not an over-riding factor (in the sense that the Application is not a referendum on gaming), it is certainly a relevant factor in the consideration of particular social impact of an application as part of the ‘no net detriment’ test.
145. The evidence before the Commission indicates that the general community attitude towards this Application has been negative. In summary:
- (a) the Council, as the representative body of the relevant community and charged with statutory duties under various pieces of legislation, has made a submission in opposition to the Application and appeared at the public hearing of the Application;⁸¹
 - (b) a total of four community organisations indicating concerns at the addition of further EGMs at the Hotel, its impact on gambling-related harms and an increase in demand for their services;
 - (c) two neighbouring municipal councils regarding concerns at the high number of EGMs in the municipality and impacts on gambling-related harms on vulnerable communities neighbouring Casey; and
 - (d) a total of 14 individual submissions raising concern with the likely impacts of the Application (such as the existing number of EGMs in the community, gambling problems faced by the community, and financial vulnerability of the surrounding community).
146. Mr Anderson in the NBA Report stated that the “large number of local patrons indicates a substantial acceptance of the recreation and entertainment facilities provided by the Hotel” and that the community “is accustomed to the presence of gaming establishments.”⁸² At the Hearing, Mr Anderson gave evidence that his position outlined in the NBA Report was made prior to the receipt of the objections referred to in paragraph 145 above, and noted that there had only been a total of 12 submissions received by Council. However, Mr Anderson conceded that there had

⁸⁰ (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.

⁸¹ See also *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [42]; *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275 at [249] and [288]-[321].

⁸² NBA Report, paragraphs 63-8.

been no evidence of positive community attitude towards the Application, and accepted that his assessment of this impact should be reduced from marginally positive to neutral.⁸³

147. In the SGS Report, Mr Atkinson stated that the submissions received as part of Council's community consultation indicated that the community was "(on balance) opposed to an expanded EGM offer" at the Hotel. While he accepted that there could be some netting of community attitude in the event that the additional EGMs were relocated from within Casey, Mr Atkinson concluded that the "loss of wellbeing associated with the proposal is likely to outweigh the gain in wellbeing associated with the reduction of EGMs elsewhere". Overall, Mr Atkinson estimated that there would be a low detriment on the community.⁸⁴

148. The Commission notes that:

- (a) other than the submission received from the Yarra Ranges Council (which was generally neutral), all of the responses to the community consultation undertaken by the Council were in opposition to the Application or to gaming in general;
- (b) there were no submissions received that were positive or in support of the Application; and
- (c) the evidence of Ms Petrides and submissions by Mr Browne indicated a genuine level of concern by members of the community regarding the potential impact of the Application on the local community.

149. In conclusion, the Commission does not consider the potential impact on community well-being, in this instance, to be in the same sense as was discussed in the *Romsey* case. This is because the Application relates to an increase in the number of EGMs, rather than the establishment of a new venue or circumstances where there were no existing gaming venues in the local community. However, as outlined in paragraph 148 above, the Commission notes that there is a general negative attitude towards the Application from within the community of Casey. Therefore, the Commission considers it appropriate to attribute marginal weight to this negative social impact of the Application.

Conclusion on social impacts

150. After considering the social benefits of the Application and balanced against the disbenefits, the Commission considers that, on balance, there is likely to be a low to moderate negative social impact of the Application.

⁸³ Transcript, Day 1, page 93.

⁸⁴ SGS Report, paragraphs 130-4.

Comments on SGS's quantitative assessment

151. In the SGS Report, Mr Atkinson had also prepared a quantitative assessment, to supplement the traditional qualitative approach. The assessment concluded that, apart from one result in the sensitivity testing, that there would be a net negative social and economic impact, as the quantified benefits were offset by the negative impacts of problem gambling.
152. A number of assumptions underpinned the quantitative assessment, including a 20-year evaluation period and a seven per cent discount rate, operational commencement of the additional EGMs occurring in 2020, and that 40% of expenditure at the Hotel would be attributable to problem gambling.
153. Mr Atkinson acknowledged a lot of complexities in assessing such applications, and also accepted that the assumptions that form the basis of the quantitative assessment were subject to similar criticism of the traditional qualitative approach (for example, the issue of subjective bias).⁸⁵
154. The Commission notes that there were some minor errors in certain assumptions or figures relied on (for example, the minimum return to player percentage within Victoria is 85%, rather than 87%) and some assumptions require further testing to confirm accuracy and reliability (for example, average visit times, average bet size per spin, estimated spins per minute). Further, the Commission is concerned with the significance placed on 'problem gamblers' when calculating the cost of problem gambling, given the Commission's acknowledgement that incidents and harms arising from problem gambling is not isolated in those participants identified as 'problem gamblers', but also those within the 'low-risk' and 'moderate-risk' categories of gamblers. Improvements in these areas would, in the Commission's opinion, result in a more reliable outcome from a quantitative assessment of social and economic impacts for applications under the GR Act.
155. While encouraging more work in this emerging area, the Commission did not rely on Mr Atkinson's quantitative assessment in forming its views.

Net economic and social impact

156. The '*no net detriment*' test in section 3.4.20(1)(c) of the GR Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. This test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impact of approval on the well-being

⁸⁵ Transcript, Day 2, pages 211-2.

of a relevant community will be either neutral or positive.⁸⁶

157. 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 1 of these Reasons for Decision), the Commission has concluded that there is likely to be a net moderate negative 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.

158. Overall, the Commission is satisfied that the net economic and social impact of approving the Application would be detrimental to the well-being of the community in the municipal district in which the Premises are located, and therefore considers that mandatory pre-condition set out in section 3.4.20(1)(c) of the GR Act is not satisfied.

D. Independence from other gaming venues

159. Section 3.4.20(1)(d) requires the Commission to be satisfied that, if premises are proposed to be added to the Applicant's licence as an approved venue and the Applicant (or an associate of the Applicant) operates an approved venue within 100 metres of the Hotel, that the management and operation of the Hotel and other approved venue are genuinely independent of each other.

160. The Commission finds that the Application is not proposing to add the Hotel to the Applicant's venue operator's licence (as it already exists on the licence), nor does the Applicant (or an associate) operate an approved venue within 100 metres of the Hotel.

161. On this basis, the Commission considers that the mandatory pre-condition set out in section 3.4.20(1)(d) is not applicable to this Application.

CONCLUSION

162. On the material that has been put before it, the Commission has determined that a mandatory pre-condition for approval has not been satisfied (i.e. the '*no net detriment*' test under section 3.4.20(1)(c)), and pursuant to section 3.4.20(1), the Commission must not grant the Application.

163. The Application is therefore refused.

The preceding paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey, Deputy Chair, and Mr Des Powell AM, Commissioner

⁸⁶ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 at [52] per Dwyer DP.

Appendix One

Summary of economic and social impacts

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

Economic impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
Benefits	Gaming expenditure not associated with problem gambling	66 to 75	<p>The portion of new expenditure not attributable to problem gambling is an economic benefit.</p> <p>Expenditure expert prediction of 40% anticipated transfer rate is uncertain, given the unknown source of EGM entitlements required to operationalise any approval of the Application. Despite uncertainty, 40% transfer rate is considered reasonable in the circumstances.</p> <p>The Hotel is located in an area of current mixed yet overall above average relative socio-economic disadvantage than other areas of the municipality, and is anticipated to experience ongoing population growth and maturing.</p> <p>Uncertainty regarding the socio-economic conditions of the catchment area at the time that additional EGMs are made operational at the Hotel. Recent trends indicate that the socio-economic conditions of the local area are declining.</p> <p>On the basis of an anticipated transfer rate of 40%, the extent of new expenditure at the Hotel is expected to be moderate, although uncertain.</p>	Marginal



Economic impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
	Increased gaming competition in Casey	76 to 80	<p>Similar applications would increase gaming competition by providing additional EGMs at which patrons may choose to play.</p> <p>In this case, there would likely be marginal benefit in light of the relatively small proportional increase in the number of EGMs in Casey and the low utilisation rates currently experienced at the Hotel.</p>	No to marginal
	Additional employment	81 to 86	<p>The Application will result in the creation of five EFT positions at the Hotel, all of which would be in respect of its gaming operations. The Applicant was willing to accept the imposition of a condition of any approval of the Application to ensure this impact would be realised.</p> <p>There is likely to be a level of transferred employment from nearby gaming venues within the municipality, however not sufficient to completely offset the creation of the five FTE positions.</p> <p>While accepting that most of the current staff at the Hotel are locals, there remains a level of uncertainty that any new staff would be residents of Casey and therefore result in an economic benefit to the municipality.</p> <p>The additional employment is positive, but the extent of the benefit is uncertain.</p>	Marginal
	Supply contracts	87 to 90	<p>No evidence presented that increased supply contracts would be a benefit of this Application, particularly in relation to the extent to which any such impact would result in an increase in the number of supply contracts for food and beverage from suppliers in Casey.</p>	No weight



Economic impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
	Complementary expenditure	91 to 94	<p>No direct evidence presented that additional EGMs would increase the appeal of the Hotel so as to attract more local patrons and visitors.</p> <p>Even if increased patronage is anticipated, there exists significant uncertainty as to the extent that any such increase would generate increased economic activity within the local area (as opposed to transferred activity within Casey).</p>	No weight
	Increased State Government revenue	95 to 96	<p>The economic benefit of increased State Government revenue from the taxation generated by increased expenditure on the additional 20 EGMs.</p> <p>Likely to be split across all Victorian municipalities and lack of evidence presented as to the direct impact on Casey.</p>	No weight
Disbenefit	Gaming expenditure associated with problem gambling	97 to 118	<p>The portion of new gaming expenditure attributable to problem gambling is an economic disbenefit.</p> <p>The catchment area of the Hotel exhibits above average levels of socio-economic disadvantage as compared with the municipality as a whole, indicating that the residents in the catchment area have a level of financial vulnerability which would make them more vulnerable to gambling-related harms.</p> <p>While the facilities at the Hotel have been improved by the installation of the screen and opaque window coverings, the overall RSG practices of the Applicant do not demonstrate a robust commitment to RSG best practice to prevent or effectively mitigate the potential increase in risks and therefore increased harm associated with problem gambling.</p>	Low



Economic impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
	Diversion of trade from retail facilities	119 to 120	<p>Maximum impact equal to new expenditure in municipality which is estimated to be between \$1,059,216 to \$1,194,026 per annum.</p> <p>No evidence presented that any diversion of trade is likely to significantly impact any one retailer. Dispersed nature of any diverted trade is unlikely to have more than a marginal impact on Casey retail facilities.</p>	No to marginal
	Diversion of trade from other gaming venues	121 to 123	<p>The anticipated transfer rate of 40% is expected to be spread across a number of existing gaming venues within Casey.</p> <p>Uncertainty around the source of EGM entitlements for any increase at the Hotel results in commensurate uncertainty as to the impact of any diversion of trade from other gaming venues.</p> <p>Regardless of source, any diversion of trade is likely to be dispersed to such an extent that it is unlikely to significantly impact any one gaming venue.</p>	No to marginal



Social impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
Benefits	Increased gaming opportunities for those who enjoy gaming	126 to 130	<p>The Application will increase gaming opportunities by providing an additional 20 EGMs at which patrons may choose to play.</p> <p>Negligible benefit in light of the current number of EGMs in the Hotel (55) and within municipality (913), the 12 other gaming venues in Casey, and the current utilisation rates of the existing EGMs at the Hotel.</p>	No to marginal
	Increased community contributions	131 to 140	<p>The Applicant proposed additional donation to a range of community, sporting and support services groups in the Lynbrook community of \$25,000 per annum as additional community contributions.</p> <p>These contributions (distributed in accordance with conditions of any approval of this Application) will have a positive economic and social impact on community groups operating in Lynbrook and across the municipality.</p>	Marginal
Disbenefits	Possibility of increased incidence and the potential impact of problem gambling on the community (including family violence)	141 to 143	<p>A proportion of total gaming expenditure at the Hotel will be associated with problem gambling contributed by a small proportion of total gaming patrons at the Hotel. Adverse impacts include health, jobs, finances, emotional states and relationships.</p> <p>The area surrounding the Hotel is generally an area of moderate relative socio-economic disadvantage, and the patronage of the Hotel (particularly those attending the Hotel after 11pm) exhibits an above average propensity for problem gambling. Granting the Application has the potential to increase the incidence and impact of problem gambling in Casey to a moderate extent, taking into account the expected increase in new gambling expenditure, the existing level of gaming available at the Hotel, socio-economic vulnerability of gaming patrons, and the current RSG practices of the Hotel management.</p>	Low to moderate



Social impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
	Community attitude	144 to 149	<p>The Commission has taken into account:</p> <ol style="list-style-type: none"> 1. the Council's intended role in which it represents the community interest; 2. submissions from two neighbouring municipal councils; and 3. submissions from individuals and community organisations from Casey. <p>The potential impact on community well-being is not in the same sense as was discussed in the <i>Romsey</i> case.</p> <p>Overall general negative attitude towards the Application from within the community of Casey.</p>	Marginal