



Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by Leopold Sportsman's Club Inc to amend its venue operator's licence to vary the number of electronic gaming machines at the approved premises located at 135 Kensington Road, Leopold from thirty-five (35) to forty-two (42).

Commission: Mr Ross Kennedy, Chairperson

Appearances: Ms Sarah Porritt of Counsel for the Applicant (instructed by BSP Lawyers)

Ms Lilli Owens-Walton, Counsel Assisting the Commission

Date of Hearing: 4 September 2018

Date of Decision: 21 September 2018

Date of Reasons: 8 October 2018

Decision: The Application is granted subject to the conditions specified at Appendix A.

Signed:

Ross Kennedy
Chairperson



REASONS FOR DECISION

INTRODUCTION

1. This is an application by Leopold Sportsman's Club Inc (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, the Leopold Sportsman's Club, located at 135 Kensington Road, Leopold (the **Club**) from 35 to 42 (the **Application**).
2. The relevant municipal authority is the City of Greater Geelong (the **Council**). By correspondence to the Commission dated 23 July 2018, the Council provided the Commission with a written submission in opposition to the Application (**Council Submission**).
3. The Commission considered the Application at a public inquiry¹ conducted on 4 September 2018 (the **Hearing**). The Applicant was represented by Ms Sarah Porritt of Counsel, instructed by BSP Solicitors. The Council did not attend the Hearing.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

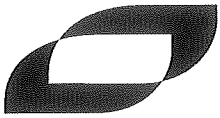
4. Gaming on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (**GR Act**). The GR Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities,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

...

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

 - (a) *to foster responsible gambling in order to-*
 - (i) *minimise harm caused by problem gambling; and*
 - (ii) *accommodate those who gamble without harming themselves or others;*

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

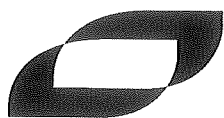


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- (ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*
- (b) *to ensure that gaming on gaming machines is conducted honestly;*
- (c) *to ensure that the management of gaming equipment and monitoring equipment is free 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.

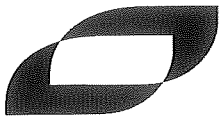
8. The relevant provision concerning the Application is section 3.4.17(1)(b) of the GR Act, which states that variation of the number of EGMs permitted in an approved venue may be amended in accordance with Division 2, Part 4 of Chapter 3 of the GR Act.

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—*



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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;*

...

12. 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

13. 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
14. As such, the 'no net detriment' test is a composite test requiring consideration of a single net impact in economic and social terms on the well-being of the community.⁴ The test will be satisfied if, after weighing any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.
15. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice 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 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
16. 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

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.

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.



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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.

17. 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
18. 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 the content and objectives of the GR Act as a whole.¹¹
19. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*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

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

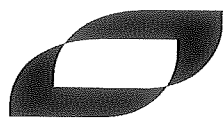
⁸ See *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M; see also *Mount Alexander Shire Council 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.

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].



exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.

20. Finally, it is noted that pursuant to section 3.4.20(1)(a) of the GR Act the Commission must be satisfied that the proposed amendment of the licence does not conflict with a direction, if any, given under section 3.2.3 of the GR Act. Additionally, pursuant to section 9(4) of the VCGLR Act, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation.
21. There is no relevant direction issued pursuant to section 3.2.3 of the GR Act that relates specifically to this Application. However, on 14 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 (**Guidelines**). The Guidelines 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 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. To that end, the Commission has had regard to the Guidelines in making its decision.

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 4 May 2018;
 - (b) Social and Economic Impact Statement, prepared by Urbis Pty Ltd, dated 30 April 2018 (**Urbis Report**);
 - (c) a submission advising that additional visibility screening had been installed at the Club between the bistro and the gaming room and attaching photographic evidence, dated 24 August 2018 (**Second Applicant Submission**);
 - (d) a submission correcting errors in the Application form and attaching an addendum report prepared by Urbis Pty Ltd addressing matters raised in the VCGLR Report in relation to housing stress, dated 31 August 2018 (**Third Applicant Submission**);



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- (e) Leopold Sportsman's Club Expert's Report, prepared by ShineWing Australia, dated 27 April 2018 (**ShineWing Report**);
 - (f) Witness Statement of Mr David Richard Falkingham (**Mr Falkingham**), President of the Applicant, dated March 2018;
 - (g) Witness Statement of Mr Raymond John McPhee (**Mr McPhee**), Manager of the Club, dated March 2018 with an annexure entitled 'Plans for Stage One and Stage Two Works';
 - (h) Witness Statement of Robert Andrew Dawson (**Mr Dawson**), Assistant Manager of the Club, dated March 2018;
23. In opposition to the Application, the Council provided a written submission entitled 'Social/Planning Policy Assessment,' dated July 2018, referred to in paragraph 2 above.
24. The following material, prepared by Commission officers, was considered by the Commission:
- (a) report titled *Pre-Hearing Inspection and Compliance Report*, dated 8 August 2018 (the **Inspection Report**);
 - (b) report titled *Economic and Social Impact Report*, dated August 2018 (**VCGLR Report**); and
 - (c) report titled *Economic and Social Impact Report – Update to Homelessness Data*, dated August 2018 (**VCGLR Homelessness Data Report**).
25. The Commission received correspondence in opposition to the Application from six individuals residing in the City of Greater Geelong.
26. Prior to the Hearing, Chairperson Kennedy visited the Club.
27. The following witnesses gave oral evidence at the Hearing:
- (a) Mr Rhys Quick, Director of Urbis Pty Ltd;
 - (b) Mr Tim Stillwell, Director of ShineWing;
 - (c) Mr Falkingham;
 - (d) Mr McPhee; and
 - (e) Mr Dawson.
28. At the conclusion of the oral evidence at the Hearing, written submissions were provided to the Commission for the Applicant by Ms Porritt.



DECISION AND REASONS FOR DECISION

Location

29. The Club is located in the City of Greater Geelong (**Greater Geelong**) on Kensington Road, which runs off Portarlington Road, in the township of Leopold. The Club is surrounded by residential housing and vacant land to the north and south.
30. Greater Geelong is a regional local government area (**LGA**) located approximately 75 kilometres south-east of Melbourne and covers an area of 1248 square kilometres. Major centres in Greater Geelong include Geelong, Ocean Grove and Leopold. According to the VCGLR Report, Greater Geelong has an estimated adult population of 188,824 which ranks it as the most populous of the 13 regional municipalities in Victoria.
31. According to the VCGLR Report, the immediate surrounding area for the purpose of the VCGLR Report is a 5km radius around the Club. This is because the Club is in a regional area located outside the urban area in the major centre of Geelong.¹³
32. The cap placed on the number of EGM entitlements in the combined region of Greater Geelong and the Borough of Queenscliffe is 1,421.¹⁴ The number of EGMs attached to approved venues within the capped region is not yet at capacity. According to the VCGLR Report, there are currently 1,292 EGMs with attached entitlements operating within Greater Geelong. This is below the regional cap for the combined region of Greater Geelong and the Borough of Queenscliffe.
33. When compared with other regional municipalities, Greater Geelong has a lower EGM density and a higher venue density. Greater Geelong has an EGM density of 6.8 EGMs per 1,000 adults, which is 7.6% less than the regional average (7.4) and 26.4% more than the State average (5.4). This places Greater Geelong at 9th for EGM density per 1000 adults of the 13 regional municipalities where 1st indicates the highest number of EGMs per 1,000 adults. Further, Greater Geelong is ranked 3rd of 13¹⁵ regional municipalities for gaming venue density with an adult population of 7,262 per gaming venue, where 1st is the highest number of adults per gaming venue. This is 22.2% more adults per gaming venue than the regional average (5,945) and 26.3% less than the state average (9,859).

¹³ When considering the immediate surrounding area of a premises within the major centre of Geelong (as distinct from the City of Greater Geelong), the Commission would ordinarily consider an area of only 2.5km.

¹⁴ 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

¹⁵ Due to an error, the VCGLR Report only lists 12 LGAs for gaming venue density – the City of Warrnambool is missing. Greater Geelong's position of 3rd remains the same regardless of the inclusion of the City of Warrnambool in the data.



34. The VCGLR Report indicates that in the 2017-18 financial year, Greater Geelong had an average gaming expenditure of \$622 per adult (based on 2016 *Victoria in Future* data), which is 0.8% higher than the regional LGA average (\$617) and 13.1% higher than the State average (\$550). Applying the higher estimate of increased gaming expenditure received from the Applicant as discussed in further detail below at paragraph 68, the Application (if granted) would result in an increase in average gaming expenditure per adult of 0.1% in the first year of operation without allowance for population changes. Gaming expenditure within Greater Geelong has decreased by 12.23% in real terms (indexed to CPI) over the past 6 years to June 2018, which is a higher decrease than the regional LGA average decline of 10.57%. Greater Geelong is ranked 11th of 13 regional municipalities for indexed real adult gaming expenditure per adult (where 13th is the lowest).
35. The VCGLR Report indicates that in terms of crime rate, Greater Geelong is ranked 10th of 13 regional municipalities but 23rd of 79 across all LGAs (with 1st being the highest) which indicates a lower rate of crime relative to its position when compared with its regional LGA counterparts and slightly higher when compared across the entire state. The VCGLR Report provides data that during the 2016/17 financial year, 12,256 crimes were committed per 10,000 adults which is 15.6% lower than the regional crime rate (14,528 crimes per 10,000) but 11.1% higher than the State crime rate (11,029 crimes per 10,000).
36. Greater Geelong is characterised by a socio-economic profile with indices that are primarily positive when compared to regional averages, with a small number of indices falling below regional averages. According to the VCGLR Report, Greater Geelong is ranked 38th out of 79 LGAs in Victoria on the Socio-Economic Indexes for Areas (SEIFA) scale of disadvantage,¹⁶ indicating some disadvantage within the LGA (1st being the LGA with the greatest disadvantage). When compared with regional LGAs, Greater Geelong is ranked 13 of 13, making it the least disadvantaged of the regional municipalities.
37. According to the VCGLR Report, in relation to the immediate surrounding area of the Club (within 5 kilometres, as discussed in paragraph 31), 6.1% of SA1s¹⁷ are in the 1st quintile¹⁸ of SEIFA scores, compared with a regional average of 33.2%. There is also 6.1% of SA1s in the 5th quintile,

¹⁶ 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.

¹⁷ According to the ABS, SA1s (Statistical Areas Level 1) are geographical areas. Whole SA1s aggregate to form Statistical Areas Level 2 (SA2) in the Australian Statistical Geography Standard (ASGS) Main Structure. The SA1s have generally been designed as the smallest unit for the release of census data. SA1s have a population of between 200 and 800 people with an average population size of approximately 400 people.

¹⁸ SEIFA index of relative disadvantage is divided into five quintiles each comprising 20% of areas (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).



which indicates the least disadvantage. Therefore, 87.2% of the SA1s in the area immediately surrounding the Club fall within the 2nd – 4th quintiles for disadvantage which suggests that the majority of the area immediately surrounding the Club is characterised by a moderately low level of disadvantage.

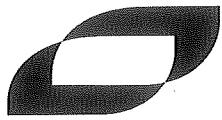
38. The VCGLR Report shows that the unemployment rate in Greater Geelong is 6.4%, which is slightly higher than the regional and State unemployment rates which are both 6%. The unemployment rate for the immediate surrounding area is lower than those rates, at 5.4%, and the rate for the SA2¹⁹ in which the Club is located (Leopold) is 4.3%. The VCGLR Report provides that an estimated 1,121 jobs were created for residents in Greater Geelong over the past year and unemployment decreased from 6.5% to 6.4% over the same period.
39. The equivalised household income (EHI)²⁰ for Greater Geelong is \$938.36 per week, which is higher than the regional average (\$893.07) but lower than the state average (\$1,028.24). EHI for the immediate surrounding area at \$935.50 is slightly lower than the average for Greater Geelong. Of the SA1s within the immediate surrounding area, it is notable that 6.1% fall within the 1st quintile for EHI while 3% fall within the 5th quintile (with the 1st quintile indicating the lowest relative EHI) and that this leaves 90.9% within the middle three quintiles.
40. The VCGLR Report sets out the rate of housing stress as the percentage of households in the lowest two EHI quintiles in an area paying more than 30% of income on rent or mortgage. Applying this method, in the immediate surrounding area of the Club, the rate of housing stress is 55.2%. This is lower than the rate of housing stress for Greater Geelong (58.6%) and for Victoria (60.2%), however it is higher than the rate of housing stress for regional LGAs (51.9%). Compared with other regional municipalities, Greater Geelong is ranked 1st for most housing stress on these calculations.

Nature of the Club

41. The Club was officially opened on 1 May 1975 as a sporting club for the local community of Leopold. It currently comprises:
 - (a) Sporties Bistro, open for lunch and dinner 7 days a week offering a full a la carte menu of traditional pub fare and local beer and wine;

¹⁹ According to the VCGLR Report, Statistical Areas Level 2 (SA2)s are the second smallest unit of the 2011 and 2016 ABS census data, are based on gazette State suburbs and localities and usually have a population from 3,000 to 25,000, with an average of 10,000.

²⁰ EHI is total household income adjusted by the application of an equivalence scale to facilitate the comparison of income levels between households of differing size and composition.



- (b) a children's playroom extending over two levels;
 - (c) TAB and sports betting facilities and TV screens for sports viewing;
 - (d) Lounge Bar serving bar meals at a lower price point to the bistro and drinks;
 - (e) gaming room operating 35 EGMS;
 - (f) two bowling greens, one with natural grass and the other with a synthetic surface;
 - (g) two racquet ball/squash courts for public hire and which play host to a small competitive squash tournament on Tuesday nights;
 - (h) barbeque function facility catering for 80 people in a fully enclosed outdoor area featuring 3 hot plates, a salad fridge, ice box, hot water, sinks and an outdoor children's play area; and
 - (i) golf clubhouse catering for the 80 golf club members at the Club.
42. The Applicant recently completed the first stage of renovation works at the Club including cosmetic upgrades, replacement of the car park and full renovation of the squash/racquet ball courts at a total cost of \$2.7 million (**Stage 1 Works**). The Applicant intends to conduct further renovations to the Club at an estimated cost of \$2 million which will include installation of an additional kitchen, bar, function, storage facility, parking and an additional outdoor/al fresco dining area (**Stage 2 Works**).
43. The Applicant intends to complete *some* of the Stage 2 Works regardless of the outcome of the Application however it will have to wait for approximately five years to do so. Due to the delay to the completion and the likely reduction in scope of the Stage 2 Works if the Application is not granted, meaning that they are partly conditional on the Application being granted, the Commission considers that the Stage 2 Works should therefore still be taken into account as a relevant factor relating to the Application. These matters will be discussed later in these Reasons.

Catchment of the Club

44. The '*no net detriment*' test refers to the net economic and social impact on the 'the community of the municipal district in which the approved venue is located.'²¹ 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

²¹ See GR Act, section 3.4.20(1)(c).



to as the 'catchment areas.'²² 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.

45. As discussed in paragraph 31 above, the VCGLR Report considers the immediate surrounding area for the purpose of the Application to be a 5 kilometre radius around the Club which is the catchment size generally used for regional venues. The Urbis Report contained the following information regarding the residential location of gaming room patrons:
- (a) information regarding the Club's membership indicates 74% of registered members are from the suburb of Leopold.²³
 - (b) a survey conducted by the Club of gaming room patrons between 20 October 2017 and 26 October 2017 indicated that 93% of gaming room patrons reside in Greater Geelong, with 57% residing in the suburb of Leopold; and
 - (c) a survey conducted by the Club of bistro patrons between 20 October 2017 and 26 October 2017 indicated that 92% of bistro patrons resided in Greater Geelong. On a more detailed view, 49% reside in the SA2 of Leopold and 12% reside in neighbouring Drysdale/Clifton Springs.
46. There was no evidence presented to indicate that the immediate surrounding area adopted by the VCGLR Report was not a suitable catchment area through which to assess the most immediate impact of the Application. At the Hearing, Mr Quick gave evidence that the 'core catchment' referred to in the Executive Summary of the Urbis Report was the 5 kilometre radius around the Club.
47. Having regard to the above material, the Commission considers the appropriate catchment area of the Club is a radius of up to 5 kilometres around the Club (**Catchment Area**). The Commission considers that the most likely patrons for the Club (and therefore most likely to be affected by this Application) includes the residents within the Catchment Area.

Issues for determination

48. Pursuant to section 3.4.20 of the GR Act, the Commission cannot grant the Application unless it is satisfied of the following matters:

²² 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).

²³ The suburb of Leopold is also the SA2 for the purpose of discussions elsewhere in these reasons.



- (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 Greater Geelong will not be exceeded by the making of the amendment the subject of the Application; and
- (c) that the net social and economic impact of the increase in EGMs permitted in the Club will not be detrimental to the well-being of the community of Greater Geelong (the '*no net detriment*' test).

Having determined that these matters are satisfied, the Commission is then required to exercise its discretion under section 3.4.20 to determine whether or not the Application should be granted. That is, whether or not the proposed amendment to the venue operator's licence should be made.²⁴

A. Directions given under section 3.2.3

- 49. As outlined in paragraph 21 above, the Commission is satisfied that there are no relevant directions given under section 3.2.3 that are applicable to this Application.
- 50. 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

- 51. As discussed in paragraph 32, the cap placed on the number of EGM entitlements in the combined region of Greater Geelong and the Borough of Queenscliffe is 1,421²⁵ and there are currently 1,292 EGMs with attached entitlements operating within Greater Geelong. This is below the cap for the combined region of Greater Geelong and the Borough of Queenscliffe.
- 52. The Applicant gave evidence that, should the Application be approved, it intends to obtain the additional 7 EGMs from the Geelong Football Club, which ceased operating EGMs in 2016.
- 53. The Commission is satisfied that granting the Application would not cause the relevant regional cap for gaming machines for Greater Geelong and the Borough of Queenscliffe to be exceeded, and therefore considers that mandatory pre-condition set out in section 3.4.20(1)(b) of the GR Act

²⁴ See paragraph 19. An amendment may be made subject to any conditions the Commission sees fit: GR Act, section 3.4.20(3).

²⁵ 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



is satisfied.

C. 'No net detriment' test

54. 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 Club 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.

Economic impacts

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

Expenditure from capital works

56. A potential economic benefit associated with the Application is the economic stimulus arising from the expenditure on the proposed capital works at the Club. It was acknowledged by the Applicant that some elements of the proposed capital works (the Stage 2 Works) would occur regardless of the outcome of the Application, however they could not be undertaken for five years and the scope of the works would be reduced. Accordingly, the Stage 2 Works are somewhat contingent on the outcome of the Application and therefore, the Commission has considered the proposed capital works and any associated economic consequences of such works as a benefit of this Application in its consideration of the no-net detriment test.
57. The Applicant has proposed to undertake to complete, within two years, the following Stage 2 Works at an estimated cost of \$2 million if the Application is approved:
- (a) construction of an indoor/outdoor alfresco area;
 - (b) additional kitchen, bar and storage facilities servicing the new areas;
 - (c) new equipment;
 - (d) new side entry to the Club and further external upgrade;
 - (e) upgrade to toilet facilities;
 - (f) second storey viewing area overlooking the squash courts;
 - (g) new function area to accommodate smaller groups; and

(h) additional car parking at the rear of the Club.

58. The Applicant gave evidence that the plan for the Stage 1 Works, which were completed in February 2018, and Stage 2 Works was conceived in 2013 as part of a 10 year plan for the Club when it became owner-operator of its 35 existing EGM entitlements. Mr McPhee gave evidence that the Club paid more for its entitlements under the pre-auction scheme that was in place at the time, which meant that fees for ownership of the EGM entitlements were particularly high for the Club.
59. The Club originally set a target date of February 2017 for commencement of a two-phased development in anticipation of making its final EGM repayment in August 2017. According to Mr McPhee's statement, at that stage, the carpark was afflicted by sinking and potholes due to a substandard renovation in 1996 and the façade of the Club had become tired and unappealing.
60. Mr McPhee's written statement provides that, while the 10 year plan anticipated that the Club would enjoy 5 years of healthy cash flow after August 2017, subsequent changes to the gaming landscape has meant that the Club is now liable to pay almost \$1,624,408.00 in fees²⁶ to the state government for its EGM entitlements to continue beyond 2022. Consequently, evidence at the Hearing and in the written statements indicated the Club's financial position is such that it cannot immediately fund the Stage 2 Works without approval of the Application.
61. The Commission therefore accepts that the Stage 2 Works at an anticipated cost of \$2 million is a benefit of this Application which shall vest in Greater Geelong within two years if the Application is granted. However, due to the fact that the Stage 2 Works would have been carried out – but reduced in scope – in five years' time, regardless of the success of this Application, this is a benefit for which the Commission can only afford a marginal weight.

Community contributions

62. A potential economic benefit associated with the Application is the community contributions promised by the Applicant. 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.
63. The Applicant gave evidence of having provided approximately \$53,000 cash and \$17,000 in in-kind contributions to the community totalling \$70,000, each year for the past three financial years. The Club also sponsors major tournaments and offers prize pools such as, for example, \$8,000

²⁶ According to Mr McPhee's Statement, this is comprised of \$40,610.00 is payable for 35 machines plus 7 expressions of interest now and in February 2016 as well as a balance of \$1,543,188.00 for the same by August 2022.



for the winner of the major bowls tournament. The Applicant submitted that, should the Application be approved, it will increase its existing community contributions of approximately \$53,000 in cash per year (**Existing Contribution**) to a total of \$70,000 in cash contributions per year (**Additional Contribution**). Mr Quick also gave evidence at the Hearing that the Applicant intends to continue its in-kind community contributions.

64. The Commission is satisfied that the Additional Contributions are community contributions and finds that an additional \$17,000 in cash contributions to the community in a year is an economic benefit of this Application. In consideration of the relatively modest expenditure on EGM's at the Club, the Additional Contributions are a benefit of this Application to which it affords a marginal weight.

Gaming expenditure not associated with problem gambling

65. 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.²⁷ 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.²⁸
66. 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 regarding the likely increased gaming expenditure in the first 12 months of operation of the additional 7 EGMs at the Club and another figure for increased gaming expenditure in the second 12 months of operation of the additional EGMs, once the Stage 2 Works would be completed if the Application is granted.
67. The ShineWing Report sets out the different methodologies commonly used to estimate EGM expenditure. Mr Stillwell noted that he considered that the 'utilisation survey' method²⁹ is most appropriate in the circumstances of the Application for estimating expenditure in the first 12 months of operating the additional 7 EGMs. Mr Stillwell considered the estimated expenditure in the second 12 months of gaming expenditure is most appropriately measured using the 'empirical

²⁷ See *Romsey #2* at [351] per Bell J.

²⁸ 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.

²⁹ The utilisation survey method is an analysis of utilisation statistics of the current gaming machines at the venue in order to determine assumed incremental gaming expenditure for the additional gaming machines based on periods of peak utilisation (i.e. where ostensible demand exceeds supply), see ShineWing Report at 8.1.



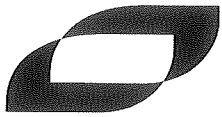
evidence' method.³⁰

68. On the basis of the above 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 in the first 12 months of trade would be between \$101,983 and \$124,646;
 - (b) the level of additional gross gaming expenditure generated from the Application in the second 12 months of trade factoring in the impact of the Stage 2 Works would be \$249,572;
 - (c) 35% of gross gaming expenditure would be transferred expenditure from a number of existing gaming venues within Greater Geelong; and
 - (d) adopting the estimated level of 35% transferred expenditure, new gaming expenditure is estimated to be between \$66,289 and \$81,020 in the first 12 months of trade and \$162,222 and \$236,790 in the second 12 months of trade post renovation.
69. Regarding the impact of the Stage 2 Works on estimated EGM expenditure at the Club, Mr Stillwell gave evidence at the Hearing that he had compared gaming expenditure before and after the Stage 1 Works and observed an increase in gaming following the Stage 1 Works. Upon this, Mr Stillwell deduced that completion of the Stage 2 Works would further increase EGM expenditure.
70. Mr Stillwell gave evidence in the ShineWing Report and at the Hearing that there is evidence to suggest that higher rates of transferred expenditure occur when there is a greater concentration of competitors in an area. In the present Application, a low anticipated transfer rate of 35% is considered reasonable due to the lack of competitors in the area. According to the ShineWing Report, there is one competitor venue within approximately 5 kilometres of the Club (5 kilometres is considered by research cited to be the general limit that a patron will travel to a gaming venue³¹). Relevantly for a non-metropolitan area, there are seven competitor venues within a 10 kilometre radius of the Club.
71. In considering the likely impact of an additional 7 EGMs at the Club, the Commission notes that there has been an average increase of 2.29% per year in expenditure on EGMs at the Club over the past six years compared with an average decrease of 0.41% in Greater Geelong.³² At the

³⁰ 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.

³¹ 2003 Victorian Longitudinal Community Attitudes Survey, prepared for the Gambling Research Panel, page 19.

³² ShineWing Report, Appendices 1 and 2.



Hearing, Mr Stillwell explained that the decrease in expenditure across Greater Geelong is attributable to, among other things, a few key venues ceasing gaming on EGMs (e.g. the Geelong Football Club).

72. The Commission accepts the evidence of Mr Stillwell as to the estimated gaming expenditure as calculated above. The Commission accepts Mr Stillwell's evidence regarding the relatively low transfer rate of 35% due to the Club being situated in an area with relatively few competitor gaming venues. The Commission has determined to assess the impact of between \$66,289 and \$81,020 in the first 12 months of trade and \$162,222 and \$236,790 in the second 12 months of trade post Stage 2 Works.
73. In assessing the extent of this benefit, the Commission has had regard to the evidence outlined in paragraphs 90 to 100 below with respect to the incidence of problem gambling. The Commission accepts that, while some portion of the new expenditure resulting from this Application will be attributable to problem gambling, the portion of new expenditure not attributable to problem gaming is an economic benefit. The Commission notes that the portion of the anticipated additional expenditure which is estimated to be transferred from other venues is quite low. Further, the Commission considers that the estimate for new expenditure in the short term is not significant, noting however that it is reasonable to expect that this will increase for the second 12 months at the Club as set out in paragraph 69, after Stage 2 Works are completed. Overall, having necessary regard to the extent of gambling expenditure associated with problem gambling as outlined in paragraphs 90 to 100 below, the Commission considers that the majority of new expenditure is not likely to be associated with problem gambling and accordingly, the Commission considers that this benefit should be given marginal weight.

Increased gaming competition in Greater Geelong

74. Increasing competition in gaming in Greater Geelong is a factor to be considered by the Commission in light of the statutory purposes of the GR Act³³ and the consumer benefits that derive from competition.
75. In this regard, the Commission refers to and relies on the evidence set out in paragraph 70 in relation to the anticipated transfer of gaming expenditure within Greater Geelong.
76. According to the VCGLR Report, on the basis of an estimated adult population in Greater Geelong of 188,824 in 2016 with a predicted population growth of 1.6% between 2017 – 2022, the Commission considers that this Application would (if approved):

³³ See GR Act, section 3.1.1(2).



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- (a) increase the number of EGMs operating within Greater Geelong by 7 from 1,292 to 1,299;
- (b) increase the EGM density of the municipality in which the Club is situated from 6.8 EGMs per 1,000 adults to 6.9 EGMs per 1,000 adults (compared with the regional average of 7.4 EGMs per 1,000 adults and state average of 5.4 EGMs per 1,000 adults); and
- (c) based on the upper range of its estimations, increase the gaming expenditure per adult in Greater Geelong from \$622 to \$623 in the first year of operation following approval of this Application. This is an increase of 0.1% of total gaming expenditure in Greater Geelong.

77. The Commission finds that granting approval of the Application will provide 7 additional EGMs at which patrons may choose to play. However, the Application represents a relatively small proportional increase in the number of EGMs in Greater Geelong. Further, while the Commission accepts the evidence of Mr Stillwell that a 60% peak utilisation rate is a suitable measure of maximum usage in a gaming room for a mid-performing venue such as the Club (as discussed in further detail at paragraph 121), the utilisation rates at the Club during the week surveyed do not indicate that demand for gaming is outstripping supply for significant periods of time. Finally, the anticipated additional expenditure at the Club does not suggest a substantive increase in gaming competition in the municipal district.

78. 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 Greater Geelong as a result of the addition of 7 EGMs at the Club, and hence gives this impact nil to marginal weight.

Additional employment

79. Employment benefits associated with the Application may result from the increased number of operational EGMs and increased patronage of existing facilities at the Club. This could include short term employment benefits associated with the proposed Stage 2 Works as well as long term employment benefits. The Commission considers that short term employment benefits have already been considered in relation to expenditure on capital works as it is included in those costings of \$2 million. Accordingly, the Commission gives no further weight to this aspect.

80. In the Application it was noted that eight full-time equivalent (FTE) positions would be created at the Club should the Application be approved. In the Third Applicant Submission dated 31 August 2018, the Applicant revised this figure to be 11.5 FTE and provided a proposed roster in support. It is noted that there will be no increase to gaming machine staff. At the Hearing, Mr McPhee gave evidence that, of the Club's current staff, 100% reside within Greater Geelong. On this basis, he concluded that the majority of the new FTE roles created would be filled by people residing within

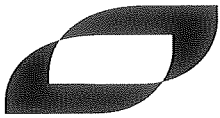


Greater Geelong with the exception of the chef positions (of which the Third Applicant Submission states there will be two positions) due to the specialised nature of those roles.

81. The Commission accepts the Applicant's revised estimate that 11.5 FTE positions will be created as a result of the Application, however it notes that only eight FTE positions will be created initially with the installation of the 7 new EGMs, and the further 3.5 FTE positions will be created following Stage 2 Works at the Club. As discussed in paragraph 38, the Commission notes the unemployment rate in Greater Geelong is slightly higher than other regional municipalities and therefore further jobs is a benefit. However, it also notes that the unemployment rate in the SA2 of Leopold is perceptibly lower than both the state and municipal average.
82. The Commission considers that it is always possible that some of the additional employment may actually be transferred from within the municipality, however the Commission notes that there is the expectation of low transferred expenditure anticipated as a result of this Application which would tend to support that the employment may be more likely to be new than transferred. Therefore, the Commission is not satisfied that transferred employment this would offset the creation of the 11.5 FTE positions at the Club so as to result in a net neutral outcome within Greater Geelong. The Commission regards the additional employment arising from the Application as positive and, taking in account the anticipated numbers of employees which is moderately high considering the relatively low anticipated additional EGM expenditure at the Club, gives this benefit marginal weight.

Supply contracts

83. Increases to supply contracts is a factor commonly accepted by the Commission as a potential economic benefit that could vest in the municipality in which a venue is situated due to an increase in EGMs. In the Urbis Report, Mr Quick remarked that, typically, increases to supply contracts can occur from a venue's redevelopment when significant upgrades are undertaken, due to an increase in demand for food and beverage products. With reference to the Application, Mr Quick apportioned a low weight to the likely increase in supply contracts due to the changes to the Club that will result in increased demand.
84. The Applicant stated that it was not able to determine the value of supply contracts in the 12 months following approval of the Application. However, it estimated that 60% of supply contracts would be filled from within Greater Geelong. The Applicant did not go into specific detail about the nature of the supply contracts or the basis of its estimation regarding 60% of supply coming from Greater Geelong.

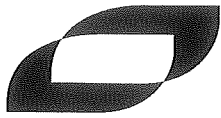


85. On the information available, the Commission considers there is negligible direct evidence on this impact and there is uncertainty as to the extent that any increase would generate increased economic activity within Greater Geelong.
86. For these reasons, the Commission finds that any benefit associated with increased supply contracts for the municipality would be negligible and as such places no weight on this impact.

Complementary expenditure

87. 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 (separate to any anticipated additional expenditure on EGMs). 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.
88. In the Third Applicant Submission, the Applicant states that the value of complementary expenditure for the first 12 months following approval of the Application would be \$810,000 (correcting an error in the Application form which estimated complementary expenditure to be \$3 million). At the Hearing and in the written materials, the Applicant provided details of the anticipated expenditure at the Club in the bistro from new patrons it sought to attract through the Stage 2 Works, such as younger people and families. The Applicant included evidence regarding an increase in meal sales following the Stage 1 Works as illustrative of the impact that renovations have had on the Club's appeal already. Relevantly, the Urbis Report stated that the total number of meals served increased to around 56,740 for the period between October 2017 and February 2018 from 55,140 meals for the same period a year earlier.³⁴
89. The Commission finds that, on the basis that the Stage 1 Works resulted in an increase in complementary expenditure, it can reasonably deduce that an increase in complementary expenditure would therefore follow the completion of the Stage 2 Works. However, the Applicant provided little specific evidence regarding complementary expenditure and how it arrived at the estimation of \$810,000 and no evidence of complementary expenditure expected as a result of

³⁴ Urbis Report, paragraph 24.



the additional EGMs was provided, 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.

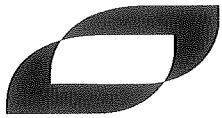
Gaming expenditure associated with problem gambling

90. To the extent that a portion of the new gaming expenditure is attributable to problem gambling, this represents an economic disbenefit.³⁵ In assessing this impact (and other effects of problem gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gaming undertaken by those who may be defined as ‘problem gamblers’, as well as those who may be otherwise regarded as ‘low-risk’ or ‘moderate-risk’ gamblers.
91. In assessing the extent of this disbenefit, the Commission has regard to the expenditure evidence set out in paragraphs 65 to 73 above. In doing so, the Commission recognises that in considering this aspect of the ‘*no net detriment*’ test it does not include consideration of transferred expenditure because such expenditure cannot be said to exacerbate problem gambling.³⁶
92. 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 Greater Geelong, and in particular those living in the primary catchment area of the Club: see paragraphs 44 to 47 above. This is because communities characterised by socio-economic disadvantage and greater vulnerability are considered more susceptible to the harms arising from problem gambling.
93. Mr Quick gave evidence at the Hearing that the Club is not in a disadvantaged area. He stated that the Urbis Report supports this assertion by detailing factors that suggest there is lower risk of increased incidence and economic impact of problem gambling in the relevant catchment area of the Club should this Application be granted, including, that:³⁷

³⁵ 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.

³⁶ See *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192 at [11] per Code PM and Nelthorpe M; *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J.

³⁷ Urbis Report, paragraph 2.3.



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- (a) within the immediate 2.5 kilometre and 5 kilometre radius catchments around the Club the average household incomes were 8.6% and 12.4% higher than the non-metropolitan Victorian average;
- (b) within the immediate 2.5 kilometre and 5 kilometre radius catchments around the Club, 44% and 46% of households were under mortgage (home ownership being a positive indicator) which is 8% to 10% higher than the Greater Geelong and non-metropolitan Victorian averages;
- (c) within the immediate 2.5 kilometre and 5 kilometre radius catchments around the Club is a lower proportion of renter occupied households with only 17% of households renting compared to 29% in Greater Geelong and 26% across non-metropolitan Victoria;
- (d) the SA2 in which the Club is located (Leopold) has:
 - (i) a low unemployment rate of 4.5% compared with an average of 6.3% in Greater Geelong; and
 - (ii) a SEIFA score of 1019, slightly above the national median of 1000, which indicates that residents of the area are considered on average to demonstrate lower levels of disadvantage than Australians in general;
- (e) there is a higher level of mortgage stress, but a lower level of rental stress. Specifically, the level of mortgage stress in the 2.5 kilometre radius around the Club is 6.5% compared with an average of 2.7% in Greater Geelong and non-metropolitan Victoria. Considering the rates of higher mortgage stress against lower rental stress, housing stress in the Catchment Area is average;
- (f) the SEIFA index score for Greater Geelong is 994, ranking it at 41 out of 80 (where 10 is the most disadvantaged) of all LGAs in Victoria for disadvantage³⁸ which is a modest level of disadvantage, particularly amongst non-metropolitan LGAs where disadvantage is higher;
- (g) within the immediate 2.5 kilometre and 5 kilometre radius catchments around the Club, only 8% of residents were recorded in the top 2 most disadvantaged SEIFA deciles and approximately two thirds of residents were in the higher decile ranges of 5 to 10; and

³⁸ There is a discrepancy between the Urbis Report and the VCGLR Report with respect to Greater Geelong's ranking among LGAs for disadvantage. Both reports cite 994 as the 2016 SEIFA index score for Greater Geelong, however the Urbis Report ranks Greater Geelong as 41 where the VCGLR Report ranks it at 38. The explanation for this discrepancy could be the fact that the VCGLR Report excludes the 'unincorporated areas' which are ranked at 21 therefore all LGAs below 21 are raised by 1 rank and because the VCGLR Report rankings have been calculated by using a ranking formula which determined the ranking of 38 along with the Shire of Melton and the Shire of Alpine, with equal SEIFA scores of 994.



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- (h) the relatively disadvantaged SA1 within the 5 kilometre radius of the Club is largely farmland outside the established urban area of Leopold with a small resident population of 460, most of which is concentrated in the Pelican Shores Estate and Sands Caravan Park. Residents in this area are predominantly retirees which impacts on measures used to determine the SEIFA disadvantage level. Mr Quick also submitted that the older population are considered less likely to engage in problem gambling.
94. At the Hearing, Mr Quick remarked that the positive demographic profile of the Catchment Area is reflected in the VCGLR Report where the summary of indicators displayed in a traffic light system from positive, mid-range to negative, does not display any factors in the negative range.
95. In response to the VCGLR Report figure that Greater Geelong is ranked first for housing stress compared to regional municipalities (see paragraph 40), at the Hearing Mr Quick submitted that the VCGLR Report's method of confining its calculation of housing stress to the lowest two EHI deciles means the figures:
- (a) not considered what share of the population are low income earners;
 - (b) excluded those who own their homes outright; and
 - (c) not divided the number of households in housing stress by the total number of households as would typically be the right approach.³⁹
96. The Urbis Report stated that the impact on problem gambling in Greater Geelong caused by the Application would be minimal, relying on the following factors which Mr Quick submitted are normally required to reach a conclusion on this disbenefit, in summary:
- (a) the Club already successfully conducts gaming at the site and the Application does not involve a new use in the community;
 - (b) the Club is positioned away from other uses which means that it is not in a location that would encourage convenience gambling, which is commonly linked to problematic gambling behavior;
 - (c) the resident demographic profile of the Catchment Area does not reflect significant disadvantage as characterized by the average household incomes;
 - (d) gaming expenditure per EGM in Greater Geelong is typical of regional municipalities recording an average expenditure of \$89,519 per EGM in 2016/17, whereas expenditure at

³⁹ See Third Applicant Submission, housing stress calculation page 1.



the Club for the same period, was \$84,000 which reflects the nature of the EGMs at the Club forming part of the broader entertainment offering, as opposed from being the focus of the venue;

- (e) the Club is unlikely to shift the focus or visitation patterns of patrons at the Club and it will remain at the lower end in terms of the size of its gaming offer within Greater Geelong;
- (f) the Club has a broad range of facilities and other activities available which enables EGM players to be diverted to other areas at the Club for a break in gaming play. The Application will not change the balance of gaming to other activities offered at the Club meaning that this protective measure against problem gambling will be maintained;
- (g) the nature of the Club as a club venue as opposed to a hotel is thought to be a protective measure against problem gambling:
 - (i) because of the responsibility a Club takes for members of the community;
 - (ii) its patronage being of the older demographic who are recognised as being lower risk gamblers; and
 - (iii) the electronic sign-in system at the entry to the gaming room makes the Club less attractive to problem gamblers.
- (h) the gaming room closing at 1 am is considered to be a protective factor as the risk of problem gambling behavior is thought to be heightened in the hours after 2 am;
- (i) the ability of staff in the gaming room to identify problem gambling behavior is a defence against it, and staff at the Club are equipped to do this, they know regular patrons and they are required to undertake regular training; and
- (j) the relatively low level of anticipated additional expenditure highlights the limited impact the new EGMs will have on problem gambling.

97. As noted in the Urbis Report, 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 Club is also a relevant consideration. At the Hearing, witnesses called for the Applicant gave further evidence about measures taken by the Club to address the risk of problem gambling, including (but not limited to):

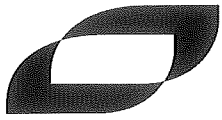
- (a) Mr McPhee gave evidence that all members of the Club's board have completed Responsible Service of Gaming (**RSG**) training;



- (b) Mr Falkingham stated that the Club maintains an incident register which is reviewed by the board;
- (c) in his statement, Mr Dawson stated that all Club staff undertake annual training with Bethany Support and that the Club promotes the Your Play facility through which a patron can restrict time or money spent. Mr McPhee stated that the Club actively promoted Your Play and run a promotion every three months, however the patron take-up at the Club is low; and
- (d) in response to the Council Submission which raised concerns regarding visibility of the gaming room from the bistro, the Club also installed visibility screening between these areas.

The Commission considers that, on the basis of the evidence provided and extracted above, the overall RSG practices of the Club demonstrate a robust commitment to RSG best practice.

98. As noted above in paragraph 97(d), the Commission also considered the Council Submission in which it stated that the Club complies with all but a few criteria in the Council Electronic Gaming Policy. The Council Submission summarised many protective factors in relation to problem gaming relevant to the Application. For example, Council noted that the Club is not located in an area of relative high disadvantaged and that Leopold has a SEIFA index of 1019 making it less disadvantaged than Greater Geelong. The Council Submission also stated that the EGM density is acceptable, the EGMs are not located within 400 meters of an ABS collection district that is in the bottom of the most disadvantaged collection districts, the Club is a destination as opposed to convenience venue, the population growth supports provision of EGMs for entertainment, the Club provides non-gaming activities that increase the net community benefit and offers social, entertainment and recreational opportunities other than gaming. In relation to the physical design of the gaming room, the Club's gaming floor area does not exceed 25% of the total floor area and it does not have 24 hour operation.
99. The Commission accepts the findings in the Urbis Report which indicate the Catchment Area exhibits numerous indicators that show it is better placed to deal with the harms associated with problem gambling, despite also finding that the Catchment Area falls in an area with a relatively low to moderate level of socio-economic disadvantage and therefore moderate vulnerability to the risks of problem gambling. The Commission finds that the level of new anticipated expenditure is moderate and the Club's RSG practices provide further protection against the harms associated with problem gambling
100. 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



marginal weight. Issues relating to the negative social impacts associated with problem gambling are considered further in paragraphs 133 to 135 below.

Diversion of trade from other gaming venues

101. In the ShineWing Report, Mr Stillwell estimated that an estimated 35% of gaming expenditure would be transferred from other gaming venues within Greater Geelong, as discussed above at paragraphs 68 to 73. Mr Stillwell arrived at this transfer rate in consideration of the fact that, while there are multiple gaming venues within a 10 kilometre radius of the Club, there is only one other gaming venue within 5 kilometres. Mr Stillwell referred to research which showed that, in non-metropolitan areas, 42.7% of patrons travel less than 5 kilometres to a gaming venue, with 14.4% travelling less than 2km. The Commission notes that the gaming room survey conducted at the Club between 20 and 26 October 2017 showed that 57% of respondents surveyed lived in the suburb of Leopold which is almost entirely contained within the 5 kilometre radius of the Club.
102. In the Urbis Report, Mr Quick states that the Application would cause a diversion of trade from other gaming venues within the municipality. He concluded that, in consideration of the relatively small increase in EGMs and the nature of the venue, there would be a marginal detriment felt by nearby gaming venues as a result of the Application, who would still be able to maintain their operations despite the Application.
103. The Commission accepts the Applicant's evidence that an estimated 35% of anticipated additional expenditure would be transferred from other venues within Greater Geelong. The Commission considers that there is potential that the diversion of trade will have a detrimental economic impact on other venue operators, however notes the rate is very low. Having regard to these factors, the Commission assigns nil to marginal weight to this impact.

Diversion of trade from retail facilities

104. Mr Quick sets out in the Urbis 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 new gaming expenditure generated at the Club (that is not transferred from other gaming venues) displaces consumption elsewhere in the economy.
105. 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. According to the ShineWing Report, having subtracted the anticipated 35% transferred expenditure, anticipated new expenditure at the Club would be between \$66,289 and \$81,020 in the first 12 months of trade post installation of the new EGMs and between \$162,222 and \$236,790 in the second 12 months



after the completion of the Stage 2 Works. Therefore, this is the maximum amount that could be diverted from other retail facilities in the local area in the 24 months following the installation of the new EGMs if approved.

106. The Commission notes that the extent of any revenue lost by retail facilities in the local area would be difficult to determine as it is unknown whether that expenditure would necessarily have been spent elsewhere. As such, and given the relatively low amount of new expenditure at the Club, the Commission finds that there is a negligible economic disbenefit associated with the diversion of trade from retail facilities within Greater Geelong as a result of this Application, and as such places nil to marginal weight on this factor.

Alteration to tax payable

107. In the Urbis Report, Mr Quick submitted a final economic disbenefit to arise from the Application would be the reduction in tax the venue is likely to pay. This will be due to the fact that, as a club, tax is calculated on a revenue per machine basis.⁴⁰ Therefore, tax that would have been payable to the government when there were fewer EGMs, would now be paid to the Club. Mr Quick nevertheless submitted that the change would be minor.
108. There was no evidence presented to the Commission at the Hearing in support of this submission. Further, the Commission considers that any difference to tax paid to the government and correlating change in government revenue as a result of the Application will very likely be split across all Victorian municipalities. Accordingly, the Commission places no weight on this factor.

Conclusion on Economic Impacts

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

Social Impacts

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

Improved facilities enabling a greater range of services

111. Ancillary to the economic benefit from capital works expenditure that will occur if this Application

⁴⁰ GR Act, section 3.6.6B, paraphrased, states that where the EGM venue operator holds a club licence, the tax payable is calculated by dividing the revenue by the number of gaming machine entitlements in the venue.



is granted, the Stage 2 Works will result in improved facilities being available to the community. Access to such improved and additional facilities is an outcome which the Commission⁴¹ and VCAT⁴² have regularly determined is a positive social impact associated with applications of this nature. The physical nature of these improved facilities has been described in detail in paragraphs 56 to 61 above.

112. At the Hearing and by way of written submissions, witnesses for the Applicant argued that the Club is a community-based club, and always will be. Indeed, Mr Falkingham gave evidence at the Hearing that the Club was partly built by volunteer labour because there was not enough money to pay for those services at that time. Volunteers have always provided a range of the services available at the Club and they continue to do so. He further stated that, in order to service existing members and to attract new ones, it is necessary to upgrade and expand the facilities available at the Club.
113. Mr McPhee gave evidence that the market within Leopold is growing, as can be seen by the Council statistics on population growth and the opening of the shopping complex and businesses such as Bunnings and McDonald's. Further, the addition of establishments such as the Leura Park Estate winery and the Flying Brick Cider House offer an alternative form of entertainment in the area and the Club would like to fill that gap in Leopold through, in summary, the addition of those facilities and services through the Stage 2 Works.
114. The Applicant submitted that the Stage 2 Works will result in new non-gaming services and facilities that are not currently on offer at the Club. Of the full list of Stage 2 Works extracted at paragraph 57, the Applicant submitted that the following constitute additional services that will vest in the municipality as a result of the Application and serve as a positive social impact:
- (a) an indoor/outdoor dining area;
 - (b) the new kitchen producing different types of food such as tapas and pizza to cater for a younger, family market; and
 - (c) a new bar offering alternative wine and craft beer.
115. At the Hearing, Mr McPhee submitted that the Club intends to put its recently renovated squash courts to alternative uses such as a function space for wine and pizza, tapas type food and music events. There was also evidence submitted regarding installation of large screens so that the

⁴¹ See, for example, *Glenroy RSL Sub-branch Inc at Glenroy RSL Premises* [2015] VCGLR 40 (22 October 2015).

⁴² See, for example, *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

squash courts can act as a pop-up movie theatre four nights a week.

116. The Commission notes that the Club already has a function room, a kitchen, a bar, toilet facilities and parking. To the extent that the Stage 2 Works simply add or improve the existing services, they cannot be said to be part of a 'greater range' of services. The Commission finds that offering different types of food and drink would constitute a greater range of services, as would an outdoor dining area when there is not one already, and the alternative functions and services to be provided in the squash courts.
117. The Commission refers to its remarks in paragraph 61 above, that the Stage 2 Works would proceed despite the Application, albeit at a reduced scope and not for five years, which reduces the weight that the Commission can place on this benefit. It is therefore appropriate to consider the social benefits arising out of the community's access to and use of the new and improved facilities at the Club in the next five years, as a benefit of this Application as this would be the period not provided for otherwise. In consideration of the fact that some portion of the benefits would have vested in the municipality in five years regardless of the outcome of this Application, the Commission gives these benefits a marginal weight.

Increased gaming opportunities for those who enjoy gaming

118. Increasing competition in gaming in the City of Greater Geelong is a factor to be considered by the Commission in light of the statutory purposes of the GR Act⁴³ and the consumer benefits that derive from competition.
119. The Commission acknowledges that there would be 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 7 EGMs would improve game choice of current patrons in machines during peak periods.
120. At the Hearing and via written evidence, the Applicant submitted that Friday to Sunday are the busiest days in the gaming room, with peaks in gaming room usage also occurring on Wednesdays and Thursdays. The Applicant submitted that peaks in gaming room usage coincide with other events at the Club such as meals, promotions and sporting events.
121. In the ShineWing Report, Mr Stillwell submitted that according to accepted industry benchmarks, utilisation of gaming machines within a gaming room of above 70% is indicative of periods when additional gaming expenditure is potentially foregone by a venue due to limited capacity and

⁴³ See GR Act, s 3.1.1(2)



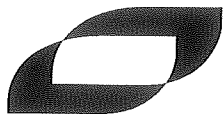
access to an appropriate choice of EGMs. However, in the case of venues with comparatively smaller gaming rooms, such as the Club, peak utilisation can occur at levels of 50% and 60%. This is because, whilst there may be more than 30% of EGMs available, the condensed nature of the room and reduced range of differentiated products limits access to desired machines and therefore lowers the utilisation rate relevant to assessing foregone expenditure.

122. On the basis of the above, due to the Club only having 35 EGMs, Mr Stillwell assumed 60% as the rate of peak utilisation. The ShineWing Report contained the results of an EGM utilisation survey conducted between 20 October 2017 and 2 November 2017 (after the completion of the Stage 1 Works) indicating that utilisation was at 60% for 16.8% of the surveyed period.⁴⁴ The Applicant also submitted results of an EGM utilisation survey conducted between 20 October 2017 and 26 October 2017 in the Urbis Report, indicating that utilisation rates exceeded 70% for 21 hours during the survey period, compared with 12 hours during a similar period surveyed prior to the Stage 1 Works.
123. Mr Quick submitted that the additional EGMs are sought to assist in meeting the increased demand for gaming, which is evident from the utilisation surveys conducted before and after the Stage 1 Works. The additional EGMs would also respond to any further increase in demand should the Stage 2 Works proceed.
124. 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 peak utilisation rate of 60% is justified on the basis of reduced range of differential products and a small gaming room compared to the size of the Club overall. Therefore, the Commission accepts that a utilisation rate above 60% may indicate periods when additional gaming expenditure is foregone by the Applicant.
125. The Commission notes the evidence in the Urbis Report that there are 26 EGM venues in Greater Geelong and 1,275 EGMs. The EGM density in the Catchment Area is 3.07 per 1000 adults, compared to 6.82 per 1000 in Greater Geelong.⁴⁵ However, the Commission also notes the evidence in the Urbis Report that an increase of 7 EGMs from 35 to 42 will not result in an increase in EGM density in Greater Geelong, and that it may actually decrease further in light of population growth projection figures.⁴⁶ The Commission further notes the fact that the EGM utilisation surveys provided by the Applicant showed that utilisation rates above 60% were only reached for limited periods, may indicate that demand for gaming is being met most of the time. The

⁴⁴ ShineWing Report, paragraph 8.12.

⁴⁵ Urbis Report, page 31, table 3.3.

⁴⁶ Urbis Report, paragraphs 76 – 18.



Commission is therefore not satisfied that granting the Application will greatly improve consumer choice for anyone choosing to play EGMs, and hence places nil to marginal weight on this.

Social benefit derived from increased community contributions

126. In determining the net economic and social impact of applications of this nature, both the Commission⁴⁷ and VCAT⁴⁸ 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.
127. As noted in paragraph 64 above, the Commission has taken into account the economic benefit (financial benefit enjoyed by recipients) associated with the Additional Contribution of \$17,000 in cash per year forming part of the Application and given appropriate weight to that impact in paragraph 64 above. Ancillary to the economic benefit of \$17,000, will be the social benefit derived from that Additional Contribution.
128. In assessing the social impact of the Additional Contribution, it is noted that such contributions must be properly regarded as community contributions and that they will result as a consequence of the Application if they are to be regarded as a benefit associated with the Application. The Applicant provided information in relation to the types of community organisations receiving the Existing Contributions and confirmed that groups such as these will benefit from the Additional Contributions. Recipients of the past contributions include:
- (a) charities and community organisations including the Allanvale Pre-School, Cancer Council, Leopold Country Fire Association, Gateway Probus, Impaired Vision, Knitted Knockers, Lego Club for autistic children, Leopold Scouts, Rotary Club Drysdale, Relay for Life; and
 - (b) sporting clubs including Bellarine Basketball Association, Bellarine Cricket Association, Bellarine Hockey Club, Bellarine Lakers Leopold Cricket Club, Geelong Bowls Association, Leopold Football Club, Leopold Football Club, Leopold Little Athletics, Leopold Tennis Club, Newcomb & District Cricket Club, Newcomb Football Club, Wallington Football Club and Wallington Cricket Club.

The Commission has had regard to the nature of the recipients of the Existing Contribution and therefore the proposed Additional Contribution and considers that these contributions are properly

⁴⁷ See, for example, *Application by Richmond Football Club* [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).
⁴⁸ 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.

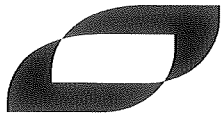


regarded as community contributions. On the basis of the above, the Commission is satisfied that groups supporting the social fabric of the community will benefit from the Additional Contribution.

129. Further, the Commission finds that the nature of the in-kind contributions currently made by the Club is such that they will have a positive social impact on Greater Geelong. In-kind contributions such as waived or discounted room hire and food; vouchers and door prizes for community group events; a courtesy bus service; time spent by volunteers providing services for the community and activities at the Club and provision of tables and chairs for sporting club functions are community contributions that will have a positive social impact on Leopold and Greater Geelong.
130. The nature of the Applicant being a not-for-profit club venue, is that it is a community organisation that exists for the benefit of the local community of Leopold. Mr McPhee gave evidence at the Hearing that the Applicant's contribution to the local community goes above and beyond what is accounted for in the mandatory community benefit statements required by the Commission for club venue operators.⁴⁹ For example, Mr McPhee gave evidence regarding the impact of increased sponsorship on the Newcomb Football Club which was in financial stress and losing sponsorship. The Club increased sponsorship and subsequently, the Newcomb Football Club have won two games, reappointed their coach for another year and initiated junior football and junior netball programs. This is an outcome that the Commission considers has improved the social fabric of the Catchment Area.
131. The Commission notes that the Additional Contribution constitutes a not-insignificant portion of the additional gaming revenue expected to be received by the Applicant from the 7 additional EGMs at the Club, particularly in the first year. However, the Commission notes this fact only because it illustrates the Club's commitment to its role in the community and because the significance of any 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.⁵⁰
132. The Commission is satisfied, based on the evidence provided, that additional social benefits similar to those already felt, will vest in the community as a result of the Application. The Commission accepts that Additional Contributions will have a positive social impact. The Commission is further satisfied that the Additional 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 in Leopold and Greater Geelong (in accordance with conditions of any approval of this Application), the

⁴⁹ See, generally, GR Act, section 3.6.9.

⁵⁰ See *Lynbrook Tavern Pty Ltd at Lynbrook Hotel Premises (Gaming – EGM Increase)* [VCGLR] 32 (31 July 2018), paragraph 139.



Commission considers these contributions to be a positive benefit to which it affords a marginal weight.

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

133. 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.
134. The Commission refers to and relies upon the evidence set out in paragraphs 90 to 100 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 90, the Commission accepts that harms associated with the incidence of problem gambling are wide-ranging and attributable to low-risk, moderate-risk and problem gamblers and across the community more broadly.
135. The Commission finds that this Application, to vary the number of EGMs at an existing approved premises from 35 to 42, is estimated to be associated with new expenditure of approximately \$66,289 and \$81,020 in the first year and \$162,000 and \$236,790 in the second year following completion of the Stage 2 Works. It accepts that a proportion of this new expenditure will be associated with problem gambling. As concluded at paragraph 99, the Commission finds that while the Club is situated in an area of low to moderate relative socio-economic disadvantage and therefore vulnerability to problem gambling, there are numerous social and economic indicators which show that it is resilient to the harms of problem gambling. This includes the profile of the Catchment Area specifically, where the majority of gaming room patrons reside, exhibiting less disadvantage than Greater Geelong.
136. The Commission is therefore of the view that granting this Application has the potential to increase the incidence and impact of problem gambling in Greater Geelong but only to a minimal extent, taking into account the expected low increase in new gambling expenditure, the existing level of gaming available at the Club, the socio-economic resilience of gaming patrons, and the current RSG practices of the Club management. As such, the Commission accepts that the disbenefit associated with problem gambling is a negative social impact upon which it places marginal weight.



Community attitude

137. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,⁵¹ 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.
138. The evidence before the Commission regarding community attitude towards this Application is contained in:
- (a) the Council Submission in opposition to the Application, as the representative body of the relevant community and charged with statutory duties under various pieces of legislation;⁵²
 - (b) submissions by six members of the public who submitted objections to the Application through the Do Gooder advocacy and campaign service; and
 - (c) after the Hearing, a submission from an organisation called Australian Multicultural Community Services Inc in opposition to the Application. The submission expressed concerns about gaming losses in Greater Geelong, the vulnerability of the culturally and linguistically diverse (**CALD**) seniors community in Greater Geelong and the layout of the Club with the gaming room being partially visible. Due to the timing of this submission, the Applicant was not able to address the matters raised. Accordingly, whilst the Commission has had regard to the submission, it has not placed any weight on it.
139. The Commission notes that while Council objected to the Application, the Council Submission noted that the Council Electronic Gaming Policy outlines criteria that proposals for gaming machines are required to be assessed by and that the Application achieves almost all criteria, excepting the following:
- (a) gaming is not carried out in an environment that develops and reinforces a commitment to responsible gambling because the Club provides partial visual access to the gaming room from the entrance and the bistro;
 - (b) community attitudes towards the effects of increasing EGMs were not surveyed by the Applicant when making the Application; and
 - (c) the Club is located in an area where the community only has one other late night eating

⁵¹ (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.

⁵² 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].



venue, contrary to the criterion that EGMs should only be located in areas where the community has a choice of non-gaming entertainment and recreation activities and established social infrastructure, some of which operate during the times that the proposed EGMs will operate in the local area.

140. At the Hearing, the Applicant provided evidence to the Commission of having installed screening at the Club to rectify the visibility concerns raised in the Council Submission regarding partial visual access to the gaming room from the bistro.
141. Due to the residential and Council objections received, the Commission accepts that there is some negative community attitude towards the Application. However, the Commission considers that, in the case of the residential objectors, this negative attitude is not specifically linked to the Application and reflects a more general apprehension regarding EGMs. Regarding the Council objection, the Commission notes the Council's position, however also considers that the Council Submission's provides numerous examples of the Application's compliance with Council Gaming Policy as well. Accordingly, the Commission considers it appropriate to attribute marginal weight to this negative social impact of the Application.

Conclusion on social impacts

142. 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 nil to marginal positive social impact of the Application.

Net economic and social impact

143. 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 of a relevant community will be either neutral or positive.⁵³
144. 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 is satisfied that the net social and economic impact to the well-being of the community of the municipal district in which the Club is located if the Application is approved will be slightly positive.

⁵³ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 at [52] per Dwyer DP.



Determination of Application

145. Overall, on the material put before it, the Commission does not consider 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. The Commission has determined that the *'no net detriment'* has been satisfied, and therefore considers that mandatory pre-condition set out in section 3.4.20(1)(c) of the GR Act is satisfied.
146. The Commission notes that there remains a discretion to determine whether or not to grant the Application. The Commission is satisfied that the Applicant understands and will continue to act in accordance with its obligations to, so far as reasonable, take measures to prevent problem gambling. Further, the Commission is not aware of any other matter that would warrant it to refuse to grant the Application. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the Application.
147. Accordingly, the Commission approves the Application to make the proposed amendment to the venue operator's licence to vary the number of EGMs permitted in the Leopold Sportsman's Club from thirty five (35) to forty two (42) subject to the conditions specified at Appendix A below.

The preceding 147 paragraphs and the following Appendices are a true copy of the Reasons for Decision of Mr Ross Kennedy, Chairperson.



Appendix A

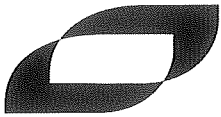
Conditions of the Decision of the Commission dated 21 September 2018 to vary the number of EGMs permitted in the approved premises, the Leopold Sportsman's Club located at 135 Kensington Road, Leopold (the **Premises**) from thirty-five (35) to forty-two (42).

1. Community Contributions

- (a) The Venue Operator will make cash contributions annually in the sum of \$17,000 (increased each year by the increase in CPI) (**the Additional Contribution**) for as long as any of the 7 additional electronic gaming machines (**Additional EGMs**) are in operation at the Premises.
- (b) The Additional Contribution will be allocated each year to not-for-profit community groups and sporting organisations providing services and facilities to residents in the City of Greater Geelong.
- (c) The Venue Operator will continue to pay existing cash contributions to not-for-profit community and sporting groups in the City of Greater Geelong in the sum of \$53,000 per annum (**the Existing Contributions**), in addition to the Additional Contribution, for as long as any of the additional EGMs are in operation at the Premises.

2. Works

- (a) The Works at the Premises (as defined in clause 2(b)) must be substantially completed to the satisfaction of the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) by the date that is 24 months after the commencement of the operation of any of the Additional EGMs at the Premises.
- (b) For the purpose of this clause, the Works must generally accord with the plans concerning works identified as the Stage 2 Works contained at Annexure 1 of the Witness Statement of Mr Raymond John McPhee dated March 2018 submitted to the Commission on 4 May 2018.
- (c) If the Works referred to in condition 2(b) are not substantially completed by the date that is 24 months after the commencement of the operation of any of the Additional EGMs at the Premises, then the approval to operate the Additional EGMs at the Premises will lapse.



- (d) The Commission may, on the request of the Venue Operator, agree to extend the time for completion of the Works referred to in condition 2(b). The request must be made no later than the date that is 21 months after the commencement of the operation of any of the Additional EGMs. Any request for an extension of time must include an explanation as to why the Works have not been substantially completed.
- (e) If the Commission agrees to extend the time for completion of the Works in accordance with condition 2(d), the Commission may require that any of the Additional EGMs cease operation during the period of any extension of time granted by the Commission.

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	Expenditure from capital works	56 to 61	Expenditure on capital works at a cost of \$2 million in the next two years is an economic benefit for Greater Geelong. Due to the fact that some of the capital works would have been completed regardless of the approval of this Application, only a marginal weight can be afforded.	Marginal
	Community contributions	62 to 64	Expenditure on additional cash contributions of \$17,000 per year is an economic benefit affording a marginal weight.	Marginal

	<p>Gaming expenditure not associated with problem gambling</p>	<p>65 to 73</p>	<p>The portion of new expenditure not attributable to problem gambling is an economic benefit.</p> <p>The Club is located in an area of mixed yet overall below average relative socio-economic disadvantage compared to other areas of the municipality.</p> <p>The expenditure expert prediction of 35% anticipated transfer rate is considered reasonable in the circumstances and therefore the anticipated new expenditure in both the first and second years following approval of the Application is low. The Commission affords this marginal weight.</p>	<p>Marginal</p>
	<p>Increased gaming competition in Greater Geelong</p>	<p>74 to 78</p>	<p>Similar applications would increase gaming competition by providing additional EGMs, and possibly a wider variety of types of machines or games, 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 Greater Geelong.</p>	<p>Nil to marginal</p>



	Additional employment	79 to 82	<p>The Application will result in the creation of 11.5 FTE positions at the Club.</p> <p>The Commission accepts there is a degree of uncertainty as to whether two of the anticipated 11.5 new FTE positions would be filled by residents of Greater Geelong and therefore result in an economic benefit to the municipality. This leaves a remainder of 9.5 additional FTE positions likely to be filled by residents of Greater Geelong which is not an insignificant amount of additional employment that will be a positive benefit to the municipality. Further the Commission notes that the low level of anticipated transfer of expenditure means it is not likely that much of the additional employment will be transferred from nearby venues. As such the Commission affords this benefit a marginal weight.</p>	Marginal
	Supply contracts and complementary expenditure	83 to 89	<p>No direct evidence presented that increased supply contracts would be a benefit of this Application, despite an assertion that 60% of new supply contracts would derive from Greater Geelong.</p> <p>There is some evidence presented that additional EGMs and the Stage 2 Works will increase the appeal of the Club and the demand for associated food and beverage services however the \$810,000 figure of estimated complementary expenditure was not supported by evidence as to how it was quantified.</p>	No weight

Disbenefit	Gaming expenditure associated with problem gambling	90 to 100	The portion of new gaming expenditure attributable to problem gambling is an economic disbenefit. The Catchment Area of the Club exhibits lower than average levels of socio-economic disadvantage compared with the municipality as a whole (which itself is moderately disadvantaged), indicating that the residents in the Catchment Area have a lower level of financial vulnerability which would make them more vulnerable to gambling-related harms.	Marginal
Diversion of trade from other gaming venues and retail facilities	101 to 106	The anticipated transfer rate of 35% is expected to be spread across existing gaming venues within Greater Geelong of which there is a single competitor venue approximately 5 kilometres from the Club and 7 competitors within 10 kilometres of the Club. Due to the low level of transferred expenditure, the Application is likely to have minimal impact on other gaming venue. The maximum impact that could be had on other retail facilities is equal to new expenditure in municipality which is estimated to be between \$66,289 and \$81,020 in the first 12 months of trade post installation of the new EGMs and between \$162,222 and \$236,790 in the second 12 months after the completion of the Stage 2 Works which is relatively low. Accordingly, diversion of trade is an impact that the Commission attributes nil to marginal weight.	Nil to marginal	
Alteration to taxation paid	107 to 108	Any difference to tax paid to the government as a result of the Application is not a relevant consideration and the Commission does not afford any weight to this factor.	No weight	



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Social impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
Benefits	Improved facilities enabling a greater range of services	111 to 117	The Commission accepts that the Stage 2 Works will result in new non-gaming services at the Club that are not currently on offer including the new alfresco dining area, new kitchen, new bar and the new uses for the squash court. Marginal weight considering some of these new services would have been available after five years, regardless of the outcome of the Application.	Marginal
	Increased gaming opportunities for those who enjoy gaming	118 to 125	The Application will increase gaming opportunities by providing an additional 7 EGMs at which patrons may choose to play. Nil to marginal benefit in light of the modest increase and the current utilisation rates of the existing EGMs at the Club only reaching peak utilisation 16.8% of the time.	Nil to marginal
	Social benefit derived from increased community contributions	126 to 132	The Applicant proposed to increase its cash contributions to a range of community, sporting and support services groups in the Leopold and Greater Geelong of \$17,000 per year as additional cash contributions. These contributions will have a positive social impact on community groups operating in Leopold and across the municipality.	Marginal



Social impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
Disbenefits	Possibility of increased incidence and the potential impact of problem gambling on the community (including family violence)	133 to 136	<p>A proportion of total gaming expenditure at the Club will be associated with problem gambling contributed by a small proportion of total gaming patrons at the Club. Adverse impacts include health, jobs, finances, emotional states and relationships.</p> <p>The area surrounding the Club is generally of low to moderate relative socio-economic disadvantage however the patronage of the Club exhibits an above average resilience for dealing with the harms of problem gambling. Granting the Application has the potential to increase the incidence and impact of problem gambling in Greater Geelong to a marginal extent, taking into account the expected increase in new gambling expenditure, the existing level of gaming available at the Club, socio-economic resilience of gaming patrons, and the current RSG practices of the Club management.</p>	Marginal
Community attitude	Community attitude	137 to 140	<p>The Commission has taken into account Council's intended role in which it represents the community interest and submissions from six individuals residing in Greater Geelong.</p> <p>A general negative attitude towards the Application from within the community of Greater Geelong is reflective of community attitudes generally however community concerns were not specifically in relation to the Application and therefore this is afforded marginal weight. The Commission notes that the specific concerns regarding the visibility of the gaming room were addressed by the Applicant prior to the Hearing.</p>	Marginal