



Victorian Commission for Gambling and Liquor Regulation

DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by TTHL Pty Ltd for amendment of its venue operator's licence to vary the number of electronic gaming machines permitted in the approved premises, Torquay Hotel located at 36 Bell Street, Torquay, from thirty (30) to forty-five (45).

Commission:

Ms Helen Versey, Deputy Chair
Dr Dina McMillan, Commissioner

Appearances:

Ms Sarah Porritt, Counsel for the Applicant (instructed by
BSP Lawyers)
Ms Brooke Hutchins, Counsel Assisting the Commission

Date of Hearing:

7 June 2018

Date of Decision:

26 June 2018

Date of Reasons:

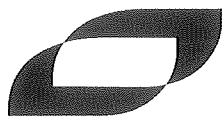
19 July 2018

Decision:

The application is granted subject to the conditions set out at Appendix A.

Signed:

Ms Helen Versey
Deputy Chair



REASONS FOR DECISION

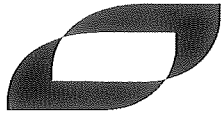
INTRODUCTION

1. This is an application by TTHL Pty Ltd (**the Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) to amend its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) permitted in the Torquay Hotel, located at 36 Bell Street, Torquay (**the Premises**), from thirty (30) to forty-five (45) (**the Application**).
2. The relevant municipal authority is the Surf Coast Shire Council (**the Council**). The Council made an economic and social impact submission in relation to the Application dated 26 April 2018.
3. The Commission considered the Application by way of a public inquiry.¹ To this end, a public hearing was conducted on 7 June 2018 (**the Hearing**). The Applicant was represented by Ms Sarah Porritt of Counsel, instructed by BSP Lawyers. Mr Pike and Ms Bennett appeared on behalf of the Council.

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;*

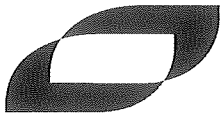
¹ A public inquiry is required to be conducted by the Commission in relation to the Application pursuant to section 28(g)(iii) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (VCGLR Act). As to the manner in which the Commission is to conduct an inquiry, see generally Pt 3 Div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



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

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

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



- (f) *fostering responsible gambling in order to—*
 - (i) *minimise harm caused by problem gambling;*
 - (ii) *accommodate those who gamble without harming themselves or others.*
 - (2) *The purpose of this Chapter is also to—*
 - (a) *provide for the allocation of gaming machine entitlements in order to maximise the financial and social benefits to the Victorian community within the regulatory framework applying to the allocation of entitlements;*
 - (b) *promote a competitive gaming industry with the aim of providing financial and social benefits to the Victorian community.*
7. The relevant provision concerning the Application is in 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.
8. Sections 3.4.18 to 3.4.19 of the GR Act provide for the manner in which requests for amendments under section 3.4.17(1)(b) are to be made. Relevantly for the Application, section 3.4.18 provides, inter alia, that:
- (1) *A request by a venue operator for an amendment of licence conditions—*
 - ...
 - (c) *in the case of ... an amendment to increase the number of gaming machines permitted in an approved venue, must be accompanied by a submission—*
 - (i) *on the net economic and social benefit that will accrue to the community of the municipal district in which the approved venue is located as a result of the proposed amendment; and*
 - (ii) *taking into account the impact of the proposed amendment on surrounding municipal districts—*
- in the form approved by the Commission and including the information specified in the form.*
9. Section 3.4.18(2) provides that if the request is for an amendment to increase the number of gaming machines permitted in an approved venue, the venue operator must give the relevant



municipal council a copy of the proposed request before submitting the request to the Commission.²

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. Relevantly for this Application, that section provides:

(1) *Without limiting the matters which the Commission may consider in deciding whether to make a proposed amendment the Commission must not amend a venue operator's licence unless—*

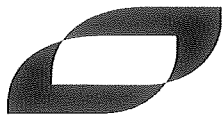
...

(b) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the regional limit or municipal limit for gaming machines for the region or municipal district in which the approved venue is located will not be exceeded by the making of the amendment; and*

(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;*

...

² The Applicant provided the Commission with a receipt from Toll Online indicating delivery to the Council which the Commission regarded as sufficient evidence for the purposes of s 3.4.18(2) of the GR Act.



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.³
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.⁴
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.⁵ The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.
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.⁶ 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.⁷
16. The Commission has adopted the same approach as VCAT in setting out a table of likely economic and social benefits both to enhance clarity of Commission decisions and facilitate greater consistency between the Commission and VCAT.⁸

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

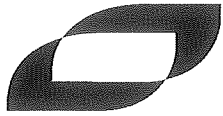
⁴ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [42]-[43] per Warren CJ, Maxwell P and Osborn AJA (the *Romsey case*).

⁵ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey No. 2)* [2009] VCAT 2275, [332], [348] per Bell J ('*Romsey No. 2*') cited in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [58] per Dwyer DP.

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

⁷ See *Romsey No. 2* [2009] VCAT 2275 [352] per Bell J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [58] per Dwyer DP.

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



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.⁹ 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.¹⁰
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;¹¹ 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.¹²
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*¹³ that, if all of the mandatory considerations under the GR Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval - other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.
20. Finally, pursuant to section 3.4.20(1)(a) of the GR Act, the Commission must be satisfied that the proposed amendment does not conflict with a Ministerial direction, if any, given under section 3.2.3 of the GR Act. Additionally, pursuant to section 9(4) of VCGLR Act, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation.

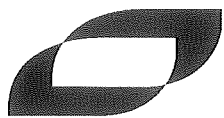
⁹ See *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M; see also *Mount Alexander Shire Council 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).

¹⁰ GR Act, section 3.4.20(2).

¹¹ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [98] per Dwyer DP.

¹² *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.

¹³ [2013] VCAT 101, [98].

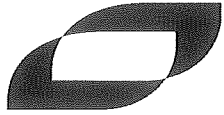


21. There is no relevant direction issued pursuant to section 3.2.3 of the GR Act that relates specifically to this Application.¹⁴

MATERIAL BEFORE THE COMMISSION

22. The Applicant provided the Commission with the following material in support of its Application:
- (a) Gaming Application form 'Amendment to venue operator licence – vary gaming machines' received by the Commission on 9 February 2018 (**the Application Form**);
 - (b) Social and Economic Impact Statement prepared by Ms Colleen Peterson, Managing Director of Ratio Consultants Pty Ltd (**Ratio**) dated February 2018 (**the Ratio Report**). Ms Peterson was a witness at the Hearing, adopted the Ratio Report as her evidence and provided oral evidence to the Commission;
 - (c) Expenditure Analysis Report prepared by Mr Tim Stillwell, partner of ShineWing Australia (**ShineWing**), accountants and advisors, dated 22 January 2018 (**the ShineWing Report**). Mr Stillwell was a witness at the Hearing, adopted the ShineWing Report as his evidence and provided oral evidence to the Commission;
 - (d) witness statement of Mr John Taylor, Director of the Applicant, dated February 2018. Mr Taylor was a witness at the Hearing, adopted his witness statement as his evidence and provided oral evidence to the Commission;
 - (e) witness statement of Deborah Lorraine Powell, Gaming Manager of the Applicant, dated February 2018. Ms Powell was a witness at the hearing, adopted her witness statement as her evidence and provided oral evidence to the Commission;
 - (f) witness statement of Mr Lee Barrett, partner and regulatory compliance consultant of Lee Barrett & Associates Pty Ltd, dated 29 January 2018. Mr Barrett was a witness at the Hearing, adopted his witness statement as his evidence and provided oral evidence to the Commission;
 - (g) a copy of the public notice appearing in the Herald Sun newspaper dated 23 February 2018; and

¹⁴ For the sake of completeness, the Commission has considered both the Decision-Making Guidelines entitlement 'Approval of Premises as Suitable for Gaming' dated 13 February 2017 (*Victorian Government Gazette, S30, 14 February 2017*), which relate to locating gaming machines in a building with permanent residential accommodation, and the Decision-Making Guidelines entitled 'Assessment of children's play areas in gaming premises' dated 14 October 2013 (*Victorian Government Gazette, S361, 16 October 2013*). As neither the current Premises (nor the Premises after the proposed renovations) contain a children's play area or residential accommodation, the Commission is satisfied that both Guidelines are not relevant for this particular Application.



- (h) a letter from BSP Lawyers to the Commission enclosing a letter from Ratio summarising the 2016 census updates in respect of the SEIFA I Index of Disadvantage and amended proposed conditions to attach to the approval in the event the Application is successful.
23. On 27 April 2018, the Council provided the Commission and the Applicant with an economic and social impact submission in respect of the Application, which included a Social and Economic Impact Assessment (**the Council Report**). In the economic and social impact submission form, the Council noted that no surrounding municipal districts objected to the Application. Mr Pike and Ms Bennett appeared on behalf of the Council at the Hearing for the purpose of making submissions in support of the Council Report.¹⁵
24. The following material, prepared by Commission staff, was provided to the Applicant and the Council and considered by the Commission:
- (a) a report titled *Economic and Social Impact Report* dated June 2018, as updated to reflect changes to the equivalised household income data (**the VCGLR Report**); and
- (b) a report titled *Pre-Hearing Inspection and Compliance Report* dated 16 May 2018 (**the Pre-Hearing Report**).
25. In addition, the Commission received correspondence in opposition to the Application from a community organisation, the Torquay Improvement Association, and eight individuals.
26. At the Hearing, the Applicant provided written submissions for the Application dated 7 June 2018 prepared by Ms Porritt.
27. Prior to the determination of this matter, Deputy Chair Versey and Commissioner McMillan each visited the Premises on separate occasions.

DECISION AND REASONS FOR DECISION

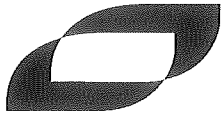
Background

Location

28. The Premises are located on Bell Street, Torquay in the Shire of Surf Coast.¹⁶ The Premises' site abuts Bell Street, Rudd Avenue and Parker Street and includes a carpark on the western side of Rudd Avenue. The site is located at the western end of a small neighbourhood activity centre towards the southern edge of Torquay.

¹⁵ The author of the Council's economic and social impact report was not called to give evidence at the Hearing and was not cross-examined by the Applicant.

¹⁶ Where reference is made in these reasons to the Shire of Surf Coast, this is a reference to the local government area (LGA).

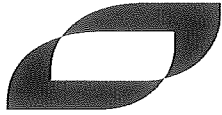


29. The Shire of Surf Coast is a regional Local Government Area (**LGA**) located 100 km south-west of Melbourne and covers an area of 1,553 square kilometres. Major centres in the Shire of Surf Coast include Torquay, Anglesea, Lorne and Winchelsea. The Shire of Surf Coast consists of two (2) Statistical Local Areas (**SLA**) being Surf Coast-Western and Surf Coast-East. According to the VCGLR Report, the Shire of Surf Coast has an estimated adult population of 22,493, which ranks it as 10th out of 35 rural municipalities. The annual rate of population growth projected by the Department of Environment, Land, Water and Planning is 2.0% as compared with the Victorian average of 1.8%.
30. Currently, there are three gaming venues operating within the Shire of Surf Coast with approvals to operate a total of 74 EGMs. The maximum permissible number of gaming machine entitlements in the area covered by the local government area of the Shire of Surf Coast as of 3 November 2017 is 227.
31. The VCGLR Report notes that the Shire of Surf Coast has an EGM density of 3.29 EGMs per 1000 adults, which is 38.5% less than the rural LGA average (5.3) and 40.2% less than the State average (5.5).¹⁷ This ranks the Shire of Surf Coast as the 22nd highest of 26 rural LGAs in terms of EGM density per 1000 adults. Also, as stated in the VCGLR Report, in the 2016-17 financial year, the Shire of Surf Coast had an average gaming expenditure of \$130 per adult (based on the 2016 population estimate), which is 61.9% less than the rural LGA average (\$341) and 76% less than the State average (\$542). Applying the estimate of increased gaming expenditure as received from the Applicant in the first year of operation of the additional 15 EGMs, approval of this Application would result in an increase in average gaming expenditure per adult of 6.5%. If the Application is approved EGM density will increase from 3.29 to 3.96, being an increase in EGM density of 0.20%.
32. In terms of the social and economic profile of the Shire of Surf Coast, the VCGLR Report shows the municipality is characterised by low levels of disadvantage and above average equivalised household incomes.

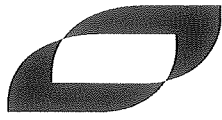
Nature of the Premises

33. The Premises itself currently comprises of:
- (a) a sports bar with full TAB facilities, big screen TVs, pool table and an outdoor beer garden which also provides live entertainment on occasion;

¹⁷ Note that the rates of gaming machines per adult and percentage variations are presented to one or two decimal places for ease of comprehension, whereas the calculations have been made using the real underlying numbers, which explains any discrepancy in the percentages.



- (b) a bistro with seating for 270 patrons and an outdoor courtyard area with seating for an additional 50 patrons;
 - (c) a children's play area;
 - (d) a function room that can cater for 60 to 80 patrons seated or for 100 patrons plus standing;
 - (e) a gaming room with thirty 30 EGMs;
 - (f) ten motel accommodation units, with three bedroom self-contained apartments; and
 - (g) a drive through bottle shop.
34. The Premises has a maximum licence capacity of 835 patrons. The liquor licence permits the hotel to trade seven (7) days per week with the following operating hours for the consumption of alcohol on the licenced premises:
- (a) from 26 December up to and including 31 January each year and from Thursday preceding Good Friday up to and including Easter Tuesday:
 - (i) Sunday between 10am and 2am the day following;
 - (ii) Monday to Wednesday between 7am and 2am the day following; and
 - (iii) Thursday to Saturday between 7am and 3am the day following;
 - (b) during the remainder of the year:
 - (i) Sunday between 10am and midnight;
 - (ii) ANZAC Day between 12noon and 1am the day following;
 - (iii) Monday to Wednesday between 7am and 1am the day following;
 - (iv) Thursday to Friday between 7am and 2am the day following; and
 - (v) Saturday between 7am and 3am the day following.
35. The gaming room generally operates between 9am and 11pm during the week in off-peak periods and 9am and 12 midnight on weekends in off-peak periods. During peak periods, the gaming room operates between 9am and 12 midnight seven (7) days.
36. According to Ms Peterson, the Applicant has fluctuating levels of employees varying between peak and off-peak season. During the peak season (summer and Easter), the Applicant employs the equivalent of approximately 40 fulltime employees. During off-peak season the number of



employees at the Premises drop to the equivalent of 32 fulltime employees.

37. On 23 October 2013 the Commission granted an application made by the previous operator of the Premises for an amendment to its venue operator's licence to vary the number of EGMs at the Premises from 15 to 30 (**2013 Application**).¹⁸ The previous operator told the Commission that the increase in revenue derived from the additional 15 EGMs would be used to improve the facilities of the Premises estimated to cost in excess of \$310,000.¹⁹ A commitment was also made by that Applicant to make annual community contributions in the sum of \$25,000 for the life of the EGM entitlements.²⁰

Catchment area of the Premises

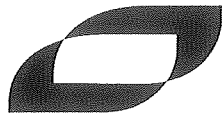
38. The '*no net detriment*' test refers to 'the community of the municipal district in which the approved venue is located'. In determining the impact of an application of this nature on a municipal district, previous Commission and VCAT decisions have had particular regard to the area serviced by the relevant premises, which is generally referred to as the 'catchment area'.²¹ 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.
39. The Applicant, under Ratio's guidance, conducted three separate suburb surveys of the patronage of the gaming room during the periods of 11 August 2017 to 24 August 2017, 3 October 2017 to 10 October 2017 and during the Melbourne Cup week 3 November 2017 to 9 November 2017.
40. Ms Peterson gave evidence that these surveys showed the following:
- (a) the first survey period, representing "non-peak season", showed that the primary non-peak patron catchment of the Premises comes from the suburb of Torquay (accounting for 62.8% of gaming patrons) while the secondary patron catchment comes from the suburbs of Anglesea and Grovesdale (accounting for 17% of the gaming patrons). 13.4% of patrons were classified as visitors or tourists to the area;
 - (b) the latter two surveys, representing "peak periods", showed that patrons classified as tourists and visitors equated to 29.1% and 35% respectively during the peak periods

¹⁸ *Vickers Willis Pty Ltd at The Torquay Hotel premises (Gaming-EGM increase)* [2013] VCGLR 58 (12 December 2013)

¹⁹ *Ibid*, at [17].

²⁰ *Ibid*, at [20].

²¹ 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).



compared to 13.4% in the off peak period; and

- (c) these results indicate that while the primary patron is from within a 5km radius of the Premises during both the peak and non-peak survey periods, a substantial portion of patrons are tourists or visitors to the Torquay area.

- 41. Mr Taylor and Ms Powell each gave evidence that they personally observed that, during peak weekend and holiday periods, the Premises sees a significant boost in tourists.
- 42. Ms Peterson gave evidence that given the location of the Premises along the Great Ocean Road tourist route, she would expect that the Premises has a seasonal tourist trade, especially during the peak summer months. She notes further that outside of peak times she would expect that most patrons of the Premises come from within a 5km radius and that the Premises would serve a predominantly local role.

Issues for determination

- 43. Pursuant to section 3.4.20 of the GR Act, the Commission cannot grant the Application unless it is satisfied of the following two matters:²²
 - (a) that the relevant regional or municipal limit for EGMs applicable to the Shire of Surf Coast will not be exceeded by the making of the amendment the subject of the Application; and
 - (b) that the net social and economic impact of the increase in EGMs permitted in the Premises will not be detrimental to the well-being of the community of the Shire of Surf Coast (the '*no net detriment*' test).

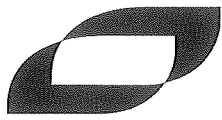
If having determined that these matters have been satisfied, the Commission is then required to exercise its discretion under section 3.4.20 to determine whether or not the Application should be granted; that is, whether or not the proposed amendment to the venue operator's licence should be made.²³

A. Municipal and regional limit

- 44. As noted in paragraph 30 above, the Shire of Surf Coast is subject to limits on the number of EGMs under a Ministerial Order under sections 3.3.4 and 3.4A.5(3A) of the GR Act. Approval of this Application would increase the number of EGM approvals within the Shire of Surf Coast from 86 to 101.

²² The Commission also considered and was satisfied as to the matters set out in section 3.4.20(1)(a) and (d) of the GR Act.

²³ An amendment may be made subject to any conditions the Commission thinks fit: GR Act, section 3.4.20(3).



45. On that basis, the Commission is satisfied that granting the Application would not cause the relevant municipal limit for gaming machines for the Shire of Surf Coast to be exceeded, and hence considers this aspect of the statutory test set out in section 3.4.20 of the GR Act to be satisfied.

B. 'No net detriment' test

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

Economic Impacts

47. 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.

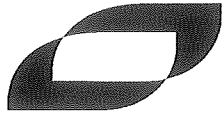
Expenditure on capital works

48. A potential economic benefit associated with this Application is that arising from the expenditure on the proposed renovation of the Premises and the associated economic stimulus in the LGA.

49. Mr Taylor gave evidence that the works that had been committed by the previous operator had not been completed, except in relation to an upgrade of the children's play area at an estimated cost of \$50,000.

50. Mr Taylor said that if the Application succeeds, the Applicant proposes to undertake renovations of the Premises at a cost of at least \$600,000. The proposed works are intended to go beyond the works proposed as part of the 2013 Application by the previous operator, to include the following:

- (a) enclosing the two existing alfresco dining areas at the front of the Premises (Bell Street frontage) with a new roof, walls and windows effectively increasing the capacity of the bistro by 52 seats;
- (b) construction of a new small alfresco dining area in the south east corner of the building, creating eight additional seats;



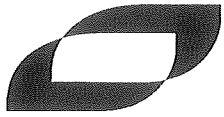
- (c) enclosing the existing veranda on the eastern side of the Premises with new walls, windows and a new entry door for the new bistro terrace, further increasing the capacity of the bistro by an additional 24 seats. This space will also function as a breakfast terrace for motel guests;
- (d) new motel entry from the bistro terrace.;
- (e) removal of access to the gaming room from the carpark and access to the gaming room from the motel reception.
- (f) extension of administration office and reception area through enclosure of the existing veranda;
- (g) renovation of existing front garden area with new awning, paving and seating;
- (h) reconfiguration of the existing bistro bar;
- (i) provision of new furniture and fitout to the bistro to modernise the Premises; and
- (j) reconfiguration of the existing gaming room bar.

51. Mr Taylor is also a director of the operator of the Grovedale Hotel. He detailed to the Commission the extensive renovations that have been undertaken at that venue and stated his intention that a similar approach be taken at the Premises in order to modernise the Premises to make it more appealing for tourists and locals alike.

52. Mr Taylor gave evidence that a local architect has been engaged for the design and documentation of renovation works at the Premises. A copy of the plans was provided to the Commission as an attachment to his witness statement. At the Hearing, Mr Taylor gave evidence to the Commission that the scope of the intended works have expanded beyond the plans provided, insofar that more substantial works will be undertaken to the entrance of the Premises.

53. Mr Taylor gave evidence that in the event that the Application was not successful, the Applicant would look to undertake some improvements to the existing gaming room, however beyond those works the proposed renovation will not proceed.

54. Further, Mr Taylor told the Commission that in the event that the Application is successful, the Applicant will install the EGMs before the works at the Premises commence in order to generate additional cash flow necessary to complete the works. Mr Taylor committed to the Commission that should the Application be granted, the Applicant would spend at least \$600,000 on the works,

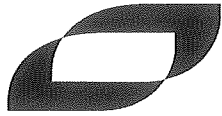


which will be substantially completed within two years from commencement of operation of the EGMs at the Premises.

55. Mr Taylor gave further evidence that, should the Application be successful, the construction works will go to tender and as part of that process the Applicant intends to give local builders the opportunity to tender and would like to engage local contractors where possible. Mr Taylor conceded that he cannot be certain whether engaging local contractors for all aspects of the works will be possible, or whether some contractors will come from outside of the municipality.
56. Ms Peterson gave evidence that the proposed works is expected to provide short-term employment for sub-contractors during construction of the planned renovations. It is acknowledged that the figure cannot be verified, however it is expected to be in the order of 15 to 20 equivalent full-time employees during the construction period. It is unclear on the evidence what the duration of the construction period will be, however it can be assumed to be less than two years given the Applicant's commitment that the works can be undertaken within this timeframe.
57. On the evidence of Mr Taylor, the Commission accepts that the renovations are premised on this Application being granted and that some proportion of the renovation expenditure would occur within the Shire of Surf Coast. The Commission reduces the amount of weight attached to this economic benefit because a proportion of the works were proposed as part of the 2013 Application. Further, the Commission is conscious that the benefits associated with the renovation expenditure are not to be double counted, having regard both to the estimated employment impacts of the proposed renovations and to the social impact that may result from the improved facilities. These aspects are considered further below at paragraphs 61 to 64 and 119 to 123 respectively. As such, the Commission considers this benefit should be given a marginally positive weight.

Complementary expenditure

58. Ms Peterson gave evidence that it is the Applicant's expectation that the Premises will achieve a \$276,000 increase in complementary expenditure in food and beverage in the first year if the EGMs are approved. This is anticipated to occur as a result of the larger bistro area and overall improvement to the venue. Ms Peterson considers that this amount provides some further stimulus to the economy and a considerable portion of this spend is likely to come from outside of the Shire of Surf Coast.
59. Whilst there was little evidence put forward by the Applicant to explain how they arrived at the figure of \$276,000, the Commission considers that it is reasonable to expect that there will be



complimentary expenditure arising out of the Application in light of the scale of the renovations and expected impact this will have on the Premises as a whole.

60. The Commission is of the view that the amount of the new complementary expenditure is small in the context of the LGA as a whole. As such, while the fact represents a positive impact of the Application, the Commission attributes this benefit a marginal weight.

Additional employment

61. Employment benefits associated with the Application may involve short-term employment benefits associated with the renovation and longer-term benefits following the introduction of the 15 EGMs at the Premises.
62. The Commission refers to the evidence given regarding the potential short-term employment benefits of the renovations detailed at paragraphs 55 and 56 above.
63. In relation to longer-term employment benefits, the Applicant estimates the operation of the additional 15 EGMs at the Premises would result in 1.5 equivalent fulltime (EFT) employees. Mr Taylor noted that approximately 70% of existing employees live in the Torquay postcode. In evidence Mr Taylor told the Commission that in the event the Application was successful the Applicant would undertake to employ an extra 1.75 EFT positions.²⁴ Mr Taylor said that he expects these additional employees would be engaged for the purpose of running the gaming room.
64. Given that introducing 15 EGMs is associated with relatively low levels of transferred expenditure (see paragraphs 68 to 76 below), the Commission agrees with the Applicant and finds that the economic impact arising from this Application includes the employment of approximately 1.5 EFT employees. The Commission is also satisfied these employees will be mostly residents of the Shire of Surf Coast. While the Commission regards this as a positive impact, given its scale, the Commission considers it is a benefit to the community to which it should attribute marginal weight.

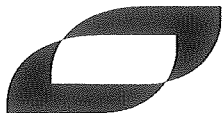
Community contributions

65. In determining the net economic and social impact of applications of this nature, both the Commission²⁵ and VCAT²⁶ have regularly treated community contributions proposed by an Applicant 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. In assessing the weight

²⁴ This is slightly higher than the 1.5 EFT positions indicated on the Application Form.

²⁵ See e.g., *Application by Richmond Football Club* [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

²⁶ See e.g., *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.



to be placed on such a benefit, it is important that the Commission does not conflate this benefit with the social benefit associated with such contributions.

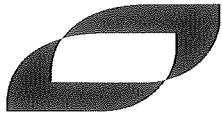
66. Having regard to the evidence and submissions made with respect to the community contributions that are set out in paragraphs 124 to 131, such contributions can also have a positive economic impact. With particular emphasis on the contributions arising as a result of this Application, the Commission considers the community contributions (distributed in accordance with the conditions of approval of this Application) and the impact on local community organisations to be an economic benefit that is given marginal weight.

Gaming expenditure not associated with problem gambling

67. To the extent that gaming expenditure is not associated with problem gambling, it has been recognised that such expenditure can be treated as an economic positive.²⁷ As Bell J notes in *Romsey No. 2*, this approach also brings to account the benefit obtained from pure consumption by the lone gambler who does not use EGMs for social reasons.²⁸
68. Mr Stillwell, in the ShineWing Report and at the Hearing, gave evidence regarding the likely increase in gaming expenditure should the Application be granted.
69. Mr Stillwell detailed that in the last six years there have been several changes to the number of gaming machines in the Shire of Surf Coast including an increase of four gaming machines at the Anglesea Golf Club during the 2013 financial year, the Torquay Golf Club ceased to operate 40 gaming machines during the 2015 financial year, a reduction of four gaming machines and eight gaming machines at the Lorne Hotel during the 2014 and 2015 financial years and an increase of 12 gaming machines and three gaming machines at the Premises during the 2015 and 2016 financial years. Mr Stillwell gave evidence that the Shire of Surf Coast has seen an average decrease of 4.9% per annum for gross gaming expenditure over the last five years. The estimated net EGM expenditure per adult for the year ending 30 June 2017 in the Shire of Surf Coast of \$130 was said to be significantly lower than the average of the State being \$542. Mr Stillwell noted that it should be borne in mind that these figures represent where the expenditure occurs, not necessarily where the people generating the expenditure reside.

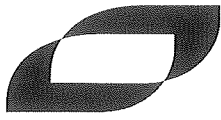
²⁷ See *Romsey No. 2* [2009] VCAT 2275 [351] per Bell J.

²⁸ *Ibid.* Bell J further notes at [352] that the other approach is to say (as Morris J did in *Branbeau Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2005] VCAT 2606 at 79) that gaming extends 'substantial economic and social benefits' to gaming machine users, which treats consumption as a benefit without saying whether it is economic or social. While Bell J states both approaches are correct, for the purposes of this Application, this benefit is treated as an economic benefit.



70. Mr Stillwell gave evidence that following from his analysis of the gross expenditure in the Shire of Surf Coast and factoring in the estimated revenue to be derived from the additional 15 EGMs at the Premises should the Application be successful, based on the estimated 2017 adult population of the LGA, the average net amount of gaming expenditure per adult in the LGA is expected to be \$142 in the first 12 months of trade post the installation of the additional machines, with a density of 3.96 gaming machines every 1,000 adults. This expected expenditure per adult, based on the 2017 financial year, compares with the average for the State of \$542 and 4.47% respectively.
71. Of the increased expenditure anticipated at the Premises, Mr Stillwell opines that it is reasonable to conclude that 20% would be transferred expenditure, with the remaining expenditure being new expenditure. This would equate to new expenditure of between \$247,405 and \$291,065 in the first 12 months of trade post the installation of the additional 15 EGMs. Having regard to the proposed number of EGMs at the Premises and the gross gaming expenditure estimated, the net machine revenue (**NMR**) will be \$130 at the Premises. This is below the average for country hotels in the State of Victoria which is \$247.
72. In arriving at his estimate for additional gross gaming expenditure as a result of the increase in gaming machines at the Premises, Mr Stillwell considered the most appropriate approach was the empirical evidence method, which looks at similar venues that have recently introduced additional EGMs, and analyses the impact of the introduction of the additional EGMs on the expenditure in those venues.²⁹ Mr Stillwell selected an appropriate sample group for analysis which was undertaken with regard to the following factors:
- (a) the increase in number of gaming machines at each sample venue occurred during the 2013/2014 or early in the 2015/2016 financial year;
 - (b) each sample venue is a hotel located in a Victorian regional area;
 - (c) each sample venue operated between 20 and 35 EGMs prior to the installation of the additional EGMs; and
 - (d) the increase in gaming venues EGMs was greater than 25% of the current number of EGMs in operation at each venue and the venues which experienced a decline in gaming expenditure over the period, despite the increase in the gaming machines, were eliminated

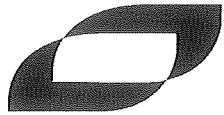
²⁹ Mr Stillwell noted in his report that utilisation of gaming machines is a benchmark is a methodology that can be considered, however it was not deemed appropriate in this instance given that the granting of the Application would result in a significant increase in gaming machines as a proportion of the number currently in operation coupled with the fluctuation in gross gaming expenditure at the Premises due to the seasonality of trade. Mr Stillwell also noted that benchmarking analysis, where a selection of venues are assessed in order to determine an appropriate estimate for the gaming expenditure to be derived from an increase at the venue, is also not appropriate as there are limited venues which are comparable to the Premises due to the unique Shire characteristics of the Shire of Surf Coast compared to other LGAs.



from the sample group.

Of the sample group, Mr Stillwell then assessed the movement in gaming expenditure between the last full year with the original number of EGMs and the first full year with the increased number of EGMs.

73. Mr Stillwell found that his analysis of the gaming expenditure for the 2012 to the 2014 financial year shows that there has been a permanent disruption to gambling expenditure within the industry resulting in a decrease in the gaming expenditure during this period. Mr Stillwell found the results of his analysis with reference to the sample groups indicated that on average that every 1% increase in EGMs operating in a sample venue, revenue would increase by approximately 0.37% at the venue on a normalised (adjusted) basis.
74. Mr Stillwell also conducted an analysis of the impact of the installation of the additional 12 EGMs at the Premises in December 2014 and the additional three EGMs in January 2016. It was considered that this increase in gambling expenditure at the Premises on the installation of these additional machines provides a reasonable indication of the additional growth gaming expenditure achievable with the introduction of the proposed additional 15 EGMs.
75. Mr Stillwell noted that the removal of EGMs from the Torquay Golf Club was a factor at that time, with at least 50% of the gross gaming expenditure being transferred to the Premises. Mr Stillwell adjusted the gross gaming expenditure derived after the installation of the EGMs to reflect this.
76. Having allowed for the transferred expenditure, the result of Mr Stillwell's evidence indicates that for every 1% increase in EGMs operating at the Torquay Hotel gaming expenditure increased by approximately 0.34% on a normalised basis. The Commission accepts Mr Stillwell's evidence.
77. The Council Report did not directly address or lead any contrary evidence to Mr Stillwell's gross gaming expenditure figures for the additional 15 EGMs.
78. In assessing the extent of the benefit associated with this increased gaming expenditure, the Commission has had regard to the evidence outlined in paragraphs 79 to 99 below with respect to gambling expenditure associated with problem gambling. Generally, the Commission considers that the portion of new expenditure not attributable to problem gambling is an economic benefit. Having regard to factors outlined above and in the sections below related to problem gambling, the Commission considers that the majority of new expenditure would not be associated with problem gambling, particularly in light of the social and economic profile of the catchment area and the evidence that a considerable proportion of that expenditure is from clientele who come to the Premises from outside the municipality. However, given the relatively low estimated levels of



new expenditure that the Commission considers will result if this Application is granted, the Commission considers this benefit to be one to which it attributes marginal weight.

Gambling expenditure associated with problem gambling

79. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an economic disbenefit.³⁰ 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 gambling 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.
80. In assessing the extent of this disbenefit, the Commission has regard to the expenditure evidence set out in paragraphs 69 to 76 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.³¹

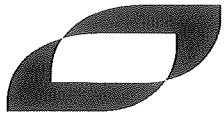
The vulnerability of the Shire of Surf Coast and the catchment area

81. The extent to which it can be considered that new expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with this Application, will be influenced by the socio-economic status and vulnerability of the community of the Shire of Surf Coast, and particularly those living in the catchment area surrounding the Premises. This is because communities characterised by socio-economic disadvantage and greater vulnerability are more susceptible to gambling-related harms.³²
82. In the Ratio Report and at the Hearing, Ms Peterson gave evidence that the patrons of the Premises can be considered to fall within two categories, those within the local area (generally within 5k of the Premises) and those from outside of the local area (from a range of suburbs across Victoria). The local area catchment primarily comes from the suburb of Torquay and the secondary portion of the local catchment consists of Anglesea and Grovesdale, which are a little further afield. As noted above in paragraph 40(a) during non-peak periods, the primary local

³⁰ The Commission recognises that, on review, the key likely disbenefit of 'problem gambling' has, for convenience, been treated under the heading of 'social impacts' in various instances: see *Mount Dandenong Tourist Hotel Pty v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted; see, for example, *Mount Alexander Shire Council* [2013] VCAT 101 at [178] and following per Dwyer DP. For completeness, the Commission considers both the economic and social impacts of problem gambling in assessing this Application.

³¹ 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.

³² This common-sense approach accords with the VCAT's treatment of this issue in *Molwin Pty Ltd v Mornington Peninsula SC* [2015] VCAT 1982 (23 December 2015), [68].



patron catchment accounts for 62.8% of the patrons using the gambling room and it is expected that during peak holiday periods the proportion of visitors from outside the local area would increase.³³

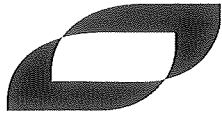
83. Ms Peterson told the Commission that it is anticipated that the additional EGMs will make the most difference during the peak period, when the non-local catchment will have a much greater share of the patron profile.
84. In relation to non-local patrons Ms Peterson, conceded that she is not able to review the social/economic profile of the tourist patronage. Ms Peterson did however express her opinion that it is reasonable to assume that as a general rule, tourists coming into Torquay, whether it be for a day trip or for longer periods, are not significantly disadvantaged. Ms Peterson has a degree of comfort that the costs involved in being able to rent holiday accommodation in Torquay is at a level which in itself acts as a protective barrier against the most disadvantaged people being at risk of harm from gambling at the Premises.
85. In relation to patrons of the Premises that are local residents, Ms Peterson gave evidence that the patron catchment shows few signs of social and economic disadvantage. Based on the 2011 data, the SEIFA Index of Disadvantage for the Shire of Surf Coast LGA sits well above the medium for both regional Victorian LGAs and the Victorian median LGA (1066 and 993 respectively). The suburbs that comprise the patron catchment of the Premises have SEIFA scores generally above the median SEIFA score for Victorian suburbs. They range from 47th percentile up to 88th percentile. This shows that the Premises is located with a SA1 that sits in the 5th percentile. The majority of the surrounding SA1s within a 5km radius sit in the 8th percentile and above. The exception being two SA1s immediately to the north of the Premises, however it is noted that this area consists of the Torquay Central Shopping Centre and a large retail/activities centre centred around Bristol Road and Gilbert Street. These factors indicate that the patron catchment shows very few signs of social and economic disadvantage.
86. Ms Peterson detailed that in 2006 the Surf Coast Shire had a population of 29,397³⁴ which is projected to increase by 9.9% to 32,312 in 2021 and by 34.6% to 39,577³⁵ by 2031. The Shire of Surf Coast is expected to experience higher population growth than the Victorian average for all time periods. The population forecast prepared for the Shire of Surf Coast show that the expected population growth for Torquay is 64.6% between 2016 and 2031.³⁶

³³ As identified at paragraph 39 above, this is demonstrated by the second and third rounds of surveys that showed that the primary local catchment reduces to 54.4% and proportion of visitors and tourists increases from 13.4% in the off peak period to 29.1% in the peak period.

³⁴ ABS Census 2016.

³⁵ 21 DELWP, Victoria in the Future 2016.

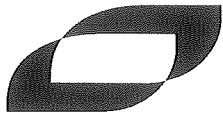
³⁶ DELWP, Victoria in the Future 2016, VIFFA.



87. Ms Peterson outlined the 2016 Census data in relation to household stress, which is taken to arise when a household is spending more than 30% of their income on both rent and mortgages. This data shows that the Torquay catchment experiences above average levels of housing stress (from mortgages) when compared to regional Victoria (7.1% cf. 5.8%). Ms Peterson opined that the test of whether a household is suffering from housing stress should more properly be regarded as occurring where housing costs exceed 30% of their income and they are in the bottom 40% of income distribution.³⁷ Ms Peterson's view is that consideration should be given to the income size in assessing mortgage stress as households with higher incomes are better placed to "afford" housing stress. Ms Peterson also undertook an assessment of data provided by Profile.Id which provides figures for households where the low 40% of incomes are paying more than 30% of their usual gross weekly income on rent and home loan repayments. These figures show that Torquay experiences a lower level of housing stress when compared to regional Victoria (8.2% cf. 10.5%). Ms Peterson expects that the relatively moderate level of housing stress, when reviewed in the context of SEIFA scores and other socio/economic indicators, is a mix of the locality being an established residential area, where older residents are more likely to own their homes and lower property/rental prices and the locality also experiencing significant growth where young families and professionals are purchasing homes with mortgages.
88. In relation to unemployment, Ms Peterson notes that the Shire of Surf Coast LGA's rate of unemployment of 2.7% sits significantly below the State and Country Victorian averages of 5.9% and 5.4% respectively.³⁸ Torquay had an unemployment rate of 2.4% in the June 2017 quarter.
89. In relation to gambling-related harms, Ms Peterson told the Commission it is reasonable to assume that as a consequence of the introduction of additional gaming machines there is a risk of increase gambling-related harms. However, Ms Peterson considers this risk to be relatively low with reference to the following matters:
- (a) the Barwon South West Region (within which the Shire of Surf Coast sits) recorded a prevalence of 1.2% of adults surveyed as part of the State Government's "Study of Gambling and Health in Victoria, findings from the Victorian Prevalence Study 2004", being problem gamblers with the rate of problem gambling in Victoria sitting at 0.81%;
 - (b) the Gambling Information Resource Office (**GIRO**) provided advice that Bethany Community Support delivers gamblers' help services across the Barwon catchment which includes the Shire of Surf Coast. During the 2016/2017 financial year, a total of 34 unique clients that live in the Shire of Surf Coast presented to Bethany for gambler's help. Ms

³⁷ National Summit on Housing Affordability in 2004.

³⁸ June 2017 Quarter Small Area Labour Market.

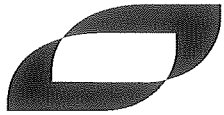


Peterson notes that this data is limited insofar that it does not capture those that use the phone or online gamblers' health service nor does it capture people who have not provided a residential address;

- (c) with reference to the utilisation studies detailed at paragraph 39 above, Ms Peterson opined that given there are only two peak hours across the two-week survey period and the remainder of the surveyed period shows consistent peaks and troughs and EGM utilisation, this suggests that problem gambling is not significantly prevalent at the Premises. Ms Peterson says this is also supported by the low NMR at the Premises compared to the country hotel average. Ms Peterson acknowledges that while there is insignificant information to accurately determine to what level problem gambling is occurring at the Premises, she is satisfied that the level of expenditure and the level of peak utilisation of the machines do not indicate any significant concerns; and
- (d) the proposal includes an increase in staffing of the gaming room (by 1.5 EFTs) without an increase in the size of the gaming room. Increased supervision and customer interaction with the gaming patrons are considered protective factors. Further, the proposed removal of direct access from the car park and motel reception into the gaming room will assist in general surveillance of gaming patrons from the bistro and motel reception and reinforce the non-gaming entertainment option at the Hotel. The requirement for patrons to enter the Premises through the front entrance will act as a protective factor as it provides patrons with another cause to pause; upon entry to the Premises patrons will need to make a conscious choice whether to turn into the gaming room or whether to continue on to the Premises' bistro.

90. Ms Peterson also gave evidence concerning whether the proposal is likely to increase in convenience gambling at the Premises. Ms Peterson noted that:

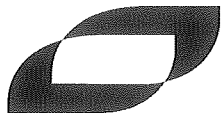
- (a) the location of the Premises is within a small neighbourhood activity centre and is primarily made up of small commercial premises focused towards the provision of goods and services to visitors to the area such as surfboard hire, boutique retailing/homewares, food and drinks premises such as a fish and chipper, ice creamery and small restaurant. It was accepted that some local residents would pass by and frequent the centre, but it is not considered to be a "convenience centre" in the sense that it does not provide for essentials such as a large supermarket. Ms Peterson classifies the Premises as a 'destination venue';
- (b) the utilisation rates on the existing EGMs means residents of the Shire of Surf Coast already have access to EGMs during non-peak periods.



91. In summary, Ms Peterson was of the view that gambling-related harms arising from the granting of the Application was a disbenefit. However, she proposed that in light of the above there is unlikely to be any noticeable impact on the local community. Ultimately Ms Peterson found that gambling-related harms for this Premises was a negligible disbenefit.
92. In the Council Report, the Council submits that, while the Premises is not located in a main activity zone in Torquay, the Bell Street precinct is highly utilised during both peak and non-peak periods by locals and tourists and therefore convenience gambling can still occur. The Council Report also details concern that an upgrade to the Premises will increase the patronage at the Premises and therefore increase the likelihood of convenience gambling. An increase in the prevalence of problem gambling may also occur as a result of the development of the Premises frontage, as this may expose the gaming facilities to more people and require those attempting to avoid the gaming room being tempted by its presence upon entering and exiting the building.
93. Torquay Improvement Association raises in its submission that EGMs are linked with increased risks of family violence, financial hardship, mental health issues and poverty. It is submitted that these additional machines increase the risk of problem gambling in the Shire of Surf Coast.

RSG practices at the Premises

94. In considering the extent to which any new expenditure may give rise to an increased risk of problem gambling, the manner in which gaming is to be conducted at the Premises is also a relevant consideration. Specifically, in relation to the Premises' Responsible Service of Gaming (RSG) practices:
 - (a) Mr Taylor gave evidence that the Premises has adopted a comprehensive Responsible Gaming Policies and Procedures Manual and a Venue Code of Conduct. This process has been developed with the assistance of Mr Barrett who has been engaged by the Applicant;
 - (b) Ms Deborah Powell is the Gaming Manager of the Premises and has held this position since approximately 2014. Ms Powell gave evidence that Responsible Service in Gambling (RSG) is managed on the Premises on a day to day basis, with staff interaction with patrons being a key driver. All staff are aware of the codes introduced by Mr Barrett and are refreshed on a regular basis. Ms Powell told the Commission that all staff have training in all areas relating to the RSG and Responsible Service of Alcohol. Bethany Gamblers Help and Lee Barrett and Associates are in regular contact to ensure that all staff are up to date with all procedures. Ms Powell gave further evidence that the Premises has a good relationship with Gamblers Help. They work closely with their support worker Mr Mark Thompson with whom they meet at least twice a year and have regular telephone contact; and



(c) Mr Barrett, a consultant in regulatory compliance services and staff training for gaming venues in Victoria, has developed a Torquay Hotel Responsible Gambling Policies and Procedures Manual in consultation with the Applicant. Mr Barrett undertook an audit of the Premises on 10 November 2017, shortly after the Applicant assumed operation of the Hotel and again in January 2018. While there were numerous areas for non-compliance in the November 2017 audit, Mr Barrett was comfortable that the January 2018 audit found that the Applicant had made significant improvements in regulatory compliance at the Hotel. This was said to be consistent with the Applicant's demonstrated commitment to responsible gambling customer care practices that Mr Barrett had seen undertaken at the Grovesdale Hotel. Mr Barrett told the Commission that the proposed renovations to the Premises, particularly the removal of access to the gaming room from the carpark, will significantly reduce the potential for impulse gambling to occur. The Applicant also proposes to remove visibility of the gaming room from the motel's reception, which is seen as a positive factor to assist in the reduced potential for impulse gambling. Further, Mr Barrett noted that the venue's existing characteristics of providing a very broad range of non-gambling facilities was a protective factor against potential problem gambling.

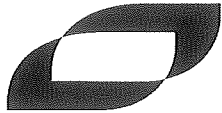
95. The Commission notes that the Pre-Hearing Report states that an inspection undertaken at the Premises on 10 May 2018 identified one gaming breach, namely the Venue Operator's Licence was not on display.

96. The Commission considers that the Applicant is conscious of its RSG requirements and accepts that this assists to mitigate any risks of an increase in incidents of problem gambling that the Application would cause.

The Commission's view

97. Having regard to all the circumstances, should this Application be granted, the Commission considers that there is a risk of increased gambling-related harms expenditure associated with this Application. That increased expenditure would come from the additional expenditure the additional 15 EGMs would generate.

98. The Commission is persuaded by the evidence of Ms Peterson, particularly her evidence showing that the community exhibits few signs of disadvantage. The Commission accepts the evidence that a considerable portion of the patrons utilising the additional EGMs will be tourists during peak periods. Further, specifically in relation to the risk of an increased incidence of gambling-related harms to the community of the Shire of Surf Coast that may arise should the Application be granted, the Commission is persuaded by Ms Peterson that any impact on local residents is likely



to be mitigated due to the matters detailed above at paragraphs 89 and 90.

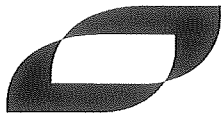
99. The Commission notes as a positive the lack of emphasis on gambling throughout the rest of the Premises including the bistro. It also notes as positives that neither visibility inside the gaming room nor noise from inside the gaming room are apparent in other areas of the Premises. The Application will also result in an additional staff member on the gaming floor. Such factors are accepted to decrease the potential for gambling-related harms. Overall, the Commission is satisfied that the disbenefit of an increase in gambling-related harms be given a marginal weight in the overall circumstances.
100. In arriving at this view, the Commission has taken into account the submissions received from the Council and others in opposition to the granting of the Application.
101. Accordingly, and having regard to all circumstances and factors, the Commission considers with respect to this Application that the potential expenditure associated with gambling-related harms is a negative economic impact upon which it should place marginal weight. Issues relating to the negative social impacts associated with gambling-related harms are considered further in paragraphs 132 to 136 below.

Diversion of trade from other gaming venues

102. Mr Stillwell gave evidence that the introduction of EGMs at the Premises would cause a diversion of trade from other gaming venues within the municipality. More specifically, he estimated 20% of the additional gaming expenditure would be transferred from other venues within the Shire of Surf Coast. He did not specify the extent to which other retail expenditure may be diverted. Ms Peterson gave evidence that the diversion of trade from other gaming venues is not considered to be a noticeable disbenefit given the nearest venue within the LGA is approximately 15 to 20 km away, the competition objective of the GRA, and that only 10% will be transferred expenditure from within the LGA.
103. Given that the introduction of an additional 15 EGMs is associated with relatively low levels of transferred expenditure, the Commission considers that there may be some impact on other venues that any diversion of trade would be minor. Having regard to these factors, and focusing on the Shire of Surf Coast, the Commission assigns no weight to this negative impact.

Diversion of trade from non-gaming businesses

104. Ms Peterson noted that a potential disbenefit as a result of granting the Application might be lower spending and job losses from local, non-gaming businesses. The Commission, while being careful



not to double count this impact with the impact of gaming expenditure associated with gambling harms, notes that Ms Peterson found this impact difficult to determine and could be partially offset by triggering innovation by or improvements in other venues.

105. A concern raised by individual objectors included that the increase in EGMs may lead to a decrease in local income being spent within local stores and instead being diverted into poker machine spending.
106. In the Council's Report it is submitted that, while it is recognised that gaming venues create some level of employment in local communities, a greater number of jobs would be created if this money was spent on retail and hospitality in the Surf Coast outside of a gambling premises. The Council's report states that if residents and tourists spent \$1m on retail and hospitality in the Shire of Surf Coast, this would result in nine new jobs and additional two indirect jobs whereas the same amount spent on gambling would not result in any additional jobs.³⁹
107. The Commission is of the view that the maximum impact that could be felt by local non-gaming businesses is the value of the new expenditure from this Application, discussed at paragraphs 67 to 78 above. However, the Commission agrees with the Applicant that whether that expenditure would necessarily have been spent elsewhere is difficult to determine with the evidence provided. As such, the Commission places no weight on this factor.

Increased gaming competition in the Shire of Surf Coast

108. Increasing competition in gaming in the Shire of Surf Coast is a factor to be considered by the Commission in light of the statutory purposes of the Act⁴⁰ and the consumer benefits that derive from competition.
109. Mr Taylor gave evidence that the granting of the Application would allow the Applicant to be more competitive, as the money raised from the increase in EGMs would be used to renovate the Premises thereby increasing patronage and profitability of the Premises. Ms Peterson gave evidence of her view that this benefit carries some weight because competition is a relevant statutory purpose. However, given that the nearest competitor is approximately 15 kms to the north, being the Grovesdale Hotel, and there are no real competing venues within the LGA. Ms Peterson ascribes this benefit a neutral weight.
110. The Commission agrees with the opinion of Ms Peterson, and ascribes this economic benefit nil to marginal weight.

³⁹ Attachment 3, additional social and economic impact information, Torquay Hotel Application, under the heading "Impact of Gambling".

⁴⁰ See GR Act, s 3.1.1(2).



Increased tourism in the Shire of Surf Coast

111. Despite the Applicant, in the Application Form, stating it is unable to accurately determine the estimated impact of gaming on tourism resulting from the Application for the first 12 months, various witnesses gave some evidence that tourism in the Shire of Surf Coast would be assisted by the granting the Application, including:

- (a) Mr Taylor, who noted that the Applicant provides an important offering for tourists. It is Mr Taylor's desire that renovation will result in increased patronage from tourists and locals;
- (b) Ms Peterson, who is of the view that the Premises' ability to attract and provide facilities for the increasing tourism industry, resulting in a higher spend within the Shire of Surf Coast, represents an economic benefit; and
- (c) in the Council Report, the Council noted that the Premises serves as a tourist destination offering a variety of facilities.

112. Promoting tourism, employment and economic development generally in the State is one of the objects of Chapter 3 of the GR Act.⁴¹ The Commission is of the view that the Premises' improved facilities have the potential to attract and increase tourism spend in the municipality. However, there was a lack of direct detailed evidence given on this factor by the Applicant. Further, the Commission is careful not to double count this benefit with the economic impact of complementary expenditure considered above and the social impact of improved facilities considered below. As such, the Commission gives this economic benefit no weight.

Conclusion on economic impacts

113. After considering the economic benefits of the Application and balanced against the detriments, the Commission considers that, on balance, the Application is likely to have a marginal positive economic impact.

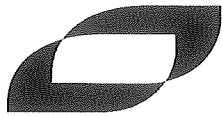
Social Impacts

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

Increased gaming opportunities for those who enjoy gaming

115. This is a positive impact if the Application will better serve the needs of gaming patrons through

⁴¹ GR Act, s 3.1.1(e).



providing additional opportunities and choice for those who choose to play EGMs.

116. Ms Powell and Mr Taylor both gave evidence that in peak times when all the EGMs are being utilised, there are instances where patrons who wish to use the EGMs leave the Premises and go to other venues offering EGMs.
117. Ms Peterson considered the increased opportunities for recreational gaming to be of neutral benefit. Little weight was ascribed given the access to gaming machines within the broader community, although there is some benefit to patrons of the Premises given that the primary beneficiaries will be non-locals.
118. The Commission finds that granting approval of the Application will better serve the needs of gaming patrons through providing additional EGMs. However, given peak utilisation tended to occur most often when the Premises has approximately 61% tourist patrons, the Commission considers this to be of little social benefit to the community in the Shire of Surf Coast itself, and hence one on which it places nil to marginal weight.

Improved facilities enabling greater range of services

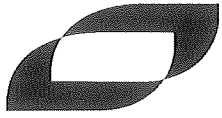
119. Separate from the economic benefit that may be associated with expenditure involved in capital works at a venue, there are also potential social benefits to the community that may arise having regard to the nature of the renovations that are intended to take place.
120. As detailed above, the proposed renovation works include an extensive renovation of the Premises including upgraded alfresco and bistro areas, new motel entering, an extension of the administration office and reception area, new furniture and fit out to the bistro to modernise the Premises.
121. Ms Peterson said that some weight attached to the additional seating in the bistro and the positive changes to the eastern entrance to the venue. She opined that this meant that the access to the gaming room will be more in line with best practice requirements as well as providing a greater offer to the local community. Ms Peterson conceded that the amount of weight attached to these benefits must be discounted given that much of the works were proposed as part of the previous approval for the 15 EGMs in 2013. She therefore ascribed this social benefit negligible weight.
122. In its report, the Council acknowledges that upgrades to the Premises are a benefit to locals with regards to live music and dining.
123. The Commission accepts that it is appropriate to consider the social benefits arising from the community's access to and use of the improved facilities resulting from granting this Application.



Focusing on the well-being of the community of the Shire of Surf Coast, the Commission considers the improved facilities will provide a social benefit to the community of the Shire of Surf Coast for the purposes of the 'no net detriment' test. However, the weight ascribed to this benefit is affected by the previous commitments made to renovate the Premises as part of the 2013 Application. Accordingly, the Commission places nil to marginal weight on this positive social impact.

Social benefit derived from increased community contributions

124. Related to the economic impact associated with increased community contributions, such contributions can also have a positive social impact by improving the social fabric of the community in which they are made. In assessing the weight to be placed on such a benefit, it is important that the Commission does not conflate this benefit with the economic benefit associated with such contributions.
125. The Applicant currently makes cash and in-kind contributions to the value of \$25,000 annually arising from the 2013 Application. It is raised in the Council Report that there was a shortfall of \$2,900 in the amount of contributions made by the Applicant for the 2017 financial year. The Applicant accepts that this is correct and told the Commission that this shortfall has now been rectified.
126. Mr Taylor gave evidence that Existing Commitment is distributed to the local cricket, football and netball clubs, with a focus on ensuring these funds go towards young people. Donations are also made to the local surf rescue club. Mr Taylor expressed an interest in the mental health and wellbeing of young people in the community and will look to direct contributions in a manner that can assist in this regard.
127. Should the Application be granted, the Applicant has committed to continuing the \$25,000 payments arising from the 2013 Application in addition to a further cash contribution annually in the sum of \$30,000. Accordingly, \$55,000 in total community contributions will be made by the Applicant should the Application be granted.
128. The Applicant has also committed to establishing a committee, comprising of a representative from the Applicant and a community representative nominated by the Applicant who will oversee the distribution of community contributions. The committee will advertise in the local newspaper that community members can apply for the allocation of funds to their cause.
129. The Applicant confirmed that whilst the EGMs are in operation at the Premises that these contributions would continue. If the contributions are not allocated then the Applicant is required by the conditions to cease operation of the EGMs immediately.

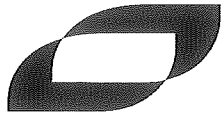


130. The Commission notes that the Applicant has not only set out the proposed amount to be paid but also a suggested process for determining who should receive those amounts. So, in relation to this particular community contribution, and relying on the proposed conditions and taking the organisations that receive the current contributions as a guide to where the additional contributions might be made, the Commission is satisfied that these contributions will result in funds being distributed to not-for-profit community groups and sporting organisations providing services and facilities to residents of the Shire of Surf Coast. Further, the Commission is satisfied that these additional contributions will only occur if the Application is granted.⁴²
131. The Commission's focus when considering the benefit of the contributions is upon the new contributions arising from this Application. While the Commission is satisfied that these contributions will be made to a variety of community groups operating in the Shire of Surf Coast (in accordance with conditions of any approval of this Application), the amount of contributions is relatively low. Accordingly, this positive social benefit is accorded a marginal weight.

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

132. Wherever accessibility to EGMs is increased, there is a risk of an increase in gambling-related harms, which leads to other costs such as adverse health outcomes, family breakdowns and other social costs. Accordingly, the Commission accepts that there is potential for a negative social impact through increased gambling expenditure.
133. The Commission refers to and relies upon the evidence set out above with respect to the economic impact of gambling-related harms on the community, which equally apply to the social impact of gambling-related harms. As is concluded there, the Commission is satisfied that there is potential for increased risk in gambling-related harms as a result of this Application. This gives rise to a negative social impact. The Commission accepts that harms associated with gambling are wide-ranging and attributable to all categories of gamblers ('low-risk', 'moderate-risk' and 'problem gamblers') and across the community more broadly.
134. Ms Peterson noted the impact on community health and connectedness was a disbenefit, and believed there would be limited, if any, impact given the existing access to EGMs at the Premises and the likelihood that the additional 15 EGMs would be used by tourists or non-locals.
135. In the Council Report, the Council notes a range of gambling-related harms including personal distress and family disruption and violence. The Council Report outlines that, according to the Victorian Health Population Survey, the Shire of Surf Coast has a higher rate of depression than

⁴² As to the conditions that the Commission has determined to apply in this matter, see paragraph 145 below.



the Victorian average, with 24.5% of residents suffering from depression. It is said that these rates mean it is more likely for gambling-related harms to be prevalent within the municipality. The Council also raises its concern that there is limited access to problem gambling assistance in Torquay, as the closest access to support is in Geelong.

136. Here, and referring to and relying on its findings in relation to the economic impact of problem gambling, the Commission accepts that the risk of increased incidence and potential impact of gambling-related harms on the community in this Application is of such a level to ascribe it a marginal weight.

Community attitude

137. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,⁴³ 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 within, and as part of, the 'no net detriment' test.

138. The Council does not support the installation of additional EGMs at the Premises. The Council Report details a survey completed in 2010 which was conducted to identify the general community attitudes towards the introduction of EGMs within the municipality. The results of this survey were said to highlight a negative community attitude towards EGMs and more broadly gambling in the Shire of Surf Coast. No survey has been undertaken in relation to this Application specifically.

139. In response to the Council's submission, Ms Porritt submitted on behalf of the Applicant that the Council's 2010 survey related to the Beach Hotel at Jan Juc. It was conducted in relation to a new premises approval in 2010 and in circumstances where gaming opportunities in Torquay were greater in terms of the numbers of machines and venues than is now the case. It is submitted that, while of historical interest, little can be drawn from this survey to assist the Commission in its determination of this Application.

140. Several objections received by the Commission detail a number of individual's concerns with the introduction of additional EGMs at the venue.

141. The Applicant did not provide any evidence as to the community's attitude in relation to the Application. Ms Peterson did not believe that the additional 15 EGMs would have any impact on the psyche of residents, as residents already have exposure to gaming at the Premises and so the introduction of the additional machines will only have a small, incremental impact. Ms

⁴³ The *Romsey* case [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.



Peterson noted that the Application essentially seeks to cater for the tourist trade during peak seasons. Ms Peterson was of the view that the responses received by the Council in relation to its 'Have Your Say' portal and information session reinforced her view that the community was less concerned about the Application as access to gaming already exists.

142. Overall, the Commission is satisfied that the Council's report and the objections suggest there is a negative attitude in small portions of the community to this Application. However, many of the concerns raised relate to EGMs and gambling in general, rather than providing a specific focus on this Application. Ultimately, the Commission is not persuaded that these views represent the views of the community in the Shire of Surf Coast generally. In all of these circumstances, the Commission considers it appropriate to attribute marginal weight to this negative social impact.

Conclusion on social impacts

143. After considering the social benefits of the Application and balanced against the disbenefits, the Commission considers that, on balance, there is likely to be neutral positive social impact of the Application.

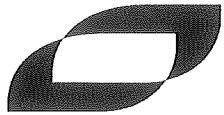
Net economic and social impact

144. The '*no net detriment*' test in section 3.4.20(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.⁴⁴
145. After consideration of the material before it, including the evidence provided at the Hearing (and weighted as outlined above and summarised in tabular form at Appendix B of these Reasons for Decision), the Commission is satisfied that the social and economic impact to the well-being of the community of the municipal district in which the Premises are located if the Application is approved, will be slightly positive.

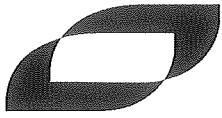
Determination of Application

146. On the material that has been put before it, the Commission has determined that the '*no net detriment*' test has been satisfied and that the total number of EGMs will be under the relevant municipal limit. The Commission notes that there remains a discretion to determine whether or not to grant the Application.

⁴⁴ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 at [52] per Dwyer DP.



147. The Commission is satisfied that the Applicant understands and will continue to act in accordance with its obligations in relation to responsible gambling. The Commission considers this will work towards the purpose of minimising harm caused by gambling and accommodating those who gamble without harming themselves or others. Further, the Commission is not aware of any other matter that would warrant it to refuse to grant this Application.
148. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the Application and make the proposed amendment to the Venue Operator's licence to vary the number of EGMs permitted in the Premises from thirty (30) to forty-five (45) subject to conditions which, for the purposes of clarity, are contained in Appendix A.



Appendix A

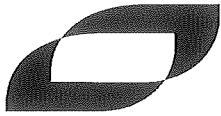
Conditions of the Decision of the Commission dated 26 June 2018 to vary the number of EGMs permitted in the approved premises, Torquay Hotel located at 36 Bell Street, Torquay, from thirty (30) to forty-five (45)

1. Works

- (a) The Works (as defined in condition 1(b) below) at the Premises must be substantially completed by the Applicant to the satisfaction of the Commission by the date that is two (2) years after the commencement of the operation of any of the 15 additional EGMs (**the Additional EGMs**).
- (b) For the purposes of this clause '**Works**' comprises the works, at a cost of not less than \$600,000, generally in accordance with those detailed in:
 - i. Mr Taylor's Witness Statement at paragraph 24; and
 - ii. the plans prepared by James Dean and Associates Architects, Annexed to Mr Taylor's Witness Statement.
- (c) If the Works referred to are not substantially completed by the date that is two (2) years after the commencement of the operation of any of the Additional EGMs, then the approval to operate the Additional EGMs at the Premises will lapse.
- (d) The Commission may, at the request of the Applicant, agree to extend the time for the completion of the Works. Any request for an extension of time must:
 - i. be made two months prior to the expiry of the time for completion of the Works; and
 - ii. provide 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 clause 1(d) above, the Commission may require that any of the Additional EGMs cease operation during the period of any extension of time granted by the Commission.

2. Community Contributions

- (a) In 2013 there was an increase of 15 EGMs at the Premises (**2013 EGMs**) and a commitment given to make cash or in-kind contributions annually to the value of \$25,000.



- (b) The Applicant undertakes to:
- i. continue to make the cash and/or in-kind contributions annually to the value of \$25,000 (increased each year by the increase in CPI) for as long as the 2013 EGMs are in operation at the Torquay Hotel; and
 - ii. make additional cash contributions annually in the sum of \$30,000.00 for as long as the Additional EGMs are in operation at the Torquay Hotel,
- (collectively **the Contributions**).
- (c) The Contributions will be allocated each year to not-for-profit community and sporting organisations in the Shire of Surf Coast.
- (d) Distribution of the Contributions in accordance with condition 2(b) will be determined by a Committee (**the Committee**) established by the Applicant comprising:
- i. two representatives of the Venue Operator; and
 - ii. a community representative nominated by the Venue Operator.
- (e) The Committee will advertise annually in a newspaper circulated in the Shire of Surf Coast area for submissions from not-for-profit community and sporting organisations, providing services and facilities to residents within the Shire of Surf Coast regarding the distribution of the Contributions to be made by the Applicant each year. The Committee will assess requests for cash contributions in accordance with guidelines to be established by the Committee.
- (f) If distribution of the Contributions does not occur each full year in accordance with the undertakings at 2(b) to (e) above, the operation of the 2013 EGMs and Additional EGMs must cease immediately where the Contributions, or part thereof, remain outstanding.



Victorian Commission for
Gambling and Liquor Regulation

Appendix B

Summary of economic and social impacts

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

Economic impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	Expenditure on capital works by way of investment in renovations of the Premises	[48]-[57]	The Applicant proposes to undertake renovations with a committed spend of at least \$600,000. The Commission is satisfied that a proportion of the renovation expenditure will occur within the Shire of Surf Coast. The weight attached to these works is reduced given that \$310,000 of works has previously been offered by the prior operator at the time of the 2013 Application. The Commission is also mindful not to double count the benefits associated with the renovation expenditure in relation to both the estimated employment impacts and the social impact that may result from improved facilities. This positive economic impact is given marginal weight.
	Complementary expenditure	[58]-[60]	The Commission accepts the Applicant's evidence that the increase in EGMs may result in additional spending at the Premises in areas other than the gaming room (such as the bistro) in the vicinity of \$276,000 per annum. The Commission accepts Ms Peterson's evidence that this amount will result in further stimulus to the local economy with a considerable portion of the spend likely to derive from outside the LGA. This positive economic impact is given a marginal weight.



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	Impact	Paragraph numbers	Comment relevant to weight
	Additional employment	[61]-[64]	<p>In relation to the short-term employment benefits associated with the proposed renovation activities, as the expenditure associated with the renovation is separately considered (see 'expenditure on capital works' above), the Commission gives this benefit no weight.</p> <p>In relation to the longer-term benefits following the introduction of the proposed 15 EGMs, the employment of 1.5 EFT employees and 20 seasonal (part-time) positions, the Commission is satisfied the employees will mostly be residents of the Shire of Surf Coast. This benefit is given marginal weight due to the small number of additional employees and uncertainty surrounding total hours to be undertaken by the seasonal employees.</p>
	Community contributions	[65]-[66]	<p>The Applicant undertakes to make additional cash contributions as a result of this Application in the amount of \$30,000 per annum while the additional EGMs are in operation. Further, the Applicant undertakes also to continue the existing cash and in-kind contributions of \$25,000 while the EGMs approved in the 2013 Application are in operation.</p> <p>Having regard to the evidence and submissions made with respect to the community contributions, and the undertakings provided, such contributions can have a positive economic impact. Emphasising the contributions arising as a result of this Application, the Commission gives this positive impact marginal weight.</p>
	Gaming expenditure not associated with problem gambling	[67]-[78]	<p>The portion of new expenditure not attributable to problem gambling is an economic benefit. The Commission accepts Mr Stillwell's estimate, derived from the empirical evidence methodology, that the grant of the Application is estimated to result in new expenditure between \$247,405 and \$291,065, which is an approximate 9% increase in relation to the overall local economy. The Commission is satisfied that a portion of this spend will come from visitors that are resident outside of the LGA. The Commission also accepts Mr Stillwell's evidence as to the expected transferred expenditure.</p> <p>Having regard to the evidence with respect to the gambling expenditure associated with problem gambling and the factors outlined therein, the Commission considers that it is likely that the majority of new expenditure will not be associated with problem gambling. Given the estimated level of new expenditure, and the evidence that a considerable proportion is from patrons outside the Shire of Surf Coast, this factor is allocated marginal weight.</p>



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	Impact	Paragraph numbers	Comment relevant to weight
	Increased gaming competition in the Shire of Surf Coast	[108]-[110]	<p>This benefit carries some weight as competition is a relevant purpose pursuant to the GRA.</p> <p>The weight to be given to the benefit is affected by the fact that the nearest competitor is approximately 18 km from the Premises and there is otherwise an absence of competing venues within the LGA.</p> <p>This economic impact is given nil to marginal weight.</p>
	Increased tourism in the Surf Coast	[111]-[112]	<p>The Commission is of the view that the Premises' improved facilities have the potential to contribute to attract and increase tourism spend in the municipality. There was no direct evidence provided by the Applicant in this regard. However, the Commission is careful not to double count this benefit with the economic impact of complementary expenditure considered above and the social impact of improved facilities considered below. As such, the Commission gives this economic benefit nil weight.</p>
Disbenefit	Gambling expenditure associated with problem gambling	[79]-[80]	<p>The Commission accepts Ms Peterson's evidence that the SEIFA indices the residents in the primary catchment area have a level of advantage making them, when compared to more disadvantaged and financially vulnerable areas, generally less susceptible to gambling-related harms. It is also accepted that during peak times the additional EGMs are likely to be used by tourists, a significant number of whom will be from outside the municipality. The Commission is persuaded that any increased incidence in problem gambling in the Shire of Surf Coast that may arise upon the grant of the Application is likely mitigated by factors such as the varied offerings at the Premises and the Applicant's RSG practices.</p> <p>Having regard to all factors and circumstances, the Commission considers there is a risk of increased problem gambling expenditure associated with this Application, which it regards as a marginal negative economic impact</p>



Victorian Commission for
Gambling and Liquor Regulation

	Impact	Paragraph numbers	Comment relevant to weight
	Diversion of trade from other gaming venues in the Shire of Surf Coast	[102]-[103]	<p>In relation to the expenditure resulting from the 15 additional EGMs, Mr Stillwell estimates that 20% of the additional expenditure generated by would be transferred, and of that 10% of the additional gaming expenditure would be transferred from other venues in the Shire of Surf Coast. The Commission accepts this evidence and takes into consideration that the closest venue operating EGMs in the LGA is approximately 18 km away. The diversion of trade is likely to be minor.</p> <p>Nil weight is ascribed to this factor.</p>
	Diversion of trade from non-gaming businesses	[104]-[107]	<p>The Commission is of the view that the maximum impact that could be felt by local non-gaming businesses is the value of the new expenditure from this Application. However, the Commission agrees with the Applicant that whether that expenditure would necessarily have been spent elsewhere is difficult to determine. As such, the Commission finds that there is an economic disbenefit associated with the diversion of trade from retail facilities within the Shire of Surf Coast as a result of this Application, and so places nil to marginal weight on this negative factor.</p>

Social impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	Increased gaming opportunities for those who enjoy gaming	[115]-[118]	<p>Granting the Application will better serve the needs of gaming patrons by providing additional opportunities and choice for those who choose to play EGMs. The Commission accepts the Applicant's evidence that utilisation issues occurred primarily during peak periods where a significant percentage of patrons were tourists.</p> <p>Nil to marginal weight is ascribed to this factor.</p>



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Improved facilities enabling greater range of services	[119]-[123]	<p>Social benefits arise from the community's access to and use of improved facilities that the Applicant undertakes to perform as a condition of the approval of this Application. The Commission is careful not to conflate this impact with the economic benefit of tourism considered above. The amount of weight given to this benefit is also affected by the commitments made in the 2013 Application for similar works to be undertaken.</p> <p>Nil to marginal weight is ascribed to this factor.</p>
Social benefit derived from increased community contributions	[124]-[131]	<p>The Commission accepts that community contributions in the form of cash and in-kind donations can have a positive social impact by improving the social fabric of the community in which they are made.</p> <p>The Commission is satisfied that these contributions (distributed in accordance with the conditions of the approval of this Application) will result in funds being distributed to not-for-profit community groups and sporting organisations providing services and facilities to residents of the Shire of Surf Coast.</p> <p>The Commission's focus when considering the benefit of the contributions is upon the new contributions arising from this Application.</p> <p>Marginal weight is ascribed to this factor.</p>



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	Impact	Paragraph numbers	Comment relevant to weight
Disbenefits	Possibility of an increased incidence and potential impact of problem gambling on the community	[132]-[136]	<p>For the reasons set out with respect to "Gambling expenditure associated with problem gambling", the Commission is satisfied that there is a disbenefit in the potential for increased risk of problem gambling, however the risk is less than would otherwise be the case in other less advantaged municipalities. Also of relevance is the number of tourists utilising EGMs during peak times and the atmosphere and non-gambling offerings at the Premises.</p> <p>Marginal weight is ascribed to this factor.</p>
	Community attitude	[137]-[142]	<p>The Commission has considered the submissions made by the Council, the Torquay Improvement Association and several individuals in opposition of the Application.</p> <p>The Commission is satisfied that the responses received from the community suggest there is a negative attitude in small portions of the community to the increase of EGMs at the Premises. Due to the small number of community responses, the Commission is not persuaded that these views represent the views of the community in the Shire of Surf Coast generally.</p> <p>Marginal weight is ascribed to this factor.</p>

