



# Victorian Commission for Gambling and Liquor Regulation

## DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by Beretta's Langwarrin Pty Ltd for amendment of its venue operator's licence to vary the number of electronic gaming machines at the approved premises, the Langwarrin Hotel, located at 220 Cranbourne-Frankston Road, Langwarrin, from fifty-two (52) to sixty-two (62).

**Commission:**

Ms Helen Versey, Deputy Chair  
Mr Des Powell, Commissioner

**Appearances:**

Mr Nick Tweedie SC of Counsel for the Applicant (instructed by Ms Sarah Porritt of Counsel)  
Mr John Rantino for Frankston City Council (instructed by Maddocks Lawyers)  
Mr Justin Ghattas as Counsel Assisting the Commission

**Date of Hearing:**

19 February 2016

**Date of Decision:**

24 March 2016

**Date of Reasons:**

24 March 2016

**Decision:**

The application is granted subject to the conditions outlined at Paragraph 80 of these Reasons for Decision.

**Signed:**

**Helen Versey**  
Deputy Chair



## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by Beretta's Langwarrin Pty Ltd (**the Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Langwarrin Hotel, 220 Cranbourne-Frankston Road, Langwarrin (**the Premises**), from 52 to 62 (**the Application**).
2. The Premises is located in the City of Frankston (**Frankston**) and the relevant municipal authority is the Frankston City Council (**the Council**). By reference to the Economic and Social Submission dated 25 January 2016, the Council indicated that it did not support the Application and wished to make submissions in relation to the Application.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Gambling 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* (**Act**). The Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities. For this reason the Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some, and a potentially harmful activity for others.
4. The objectives of the Act are set out in section 1.1, which provides, *inter alia*:  
...
  - (2) *The main objectives of this Act are—*
    - (a) *to foster responsible gambling in order to—*
      - (i) *minimise harm caused by problem gambling; and*
      - (ii) *accommodate those who gamble without harming themselves or others;*
    - (ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*
    - (b) *to ensure that gaming on gaming machines is conducted honestly;*
    - (c) *to ensure that the management of gaming equipment and monitoring equipment is free from criminal influence and exploitation;*



- (d) *to ensure that other forms of gambling permitted under this or any other Act are conducted honestly and that their management is free from criminal influence and exploitation;*
- (e) *to ensure that-*
  - (i) *community and charitable gaming benefits the community or charitable organisation concerned;*
  - (ii) *practices that could undermine public confidence in community and charitable gaming are eliminated;*
  - (iii) *bingo centre operators do not act unfairly in providing commercial services to community or charitable organisations;*
- (f) *to promote tourism, employment and economic development generally in the State.*

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

- (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.*





6. The relevant provision concerning this particular Application is to be found in section 3.4.17(1)(b) of the Act, which provides

(1) *The conditions of a venue operator's licence including—*

(a) ...

(b) *variation of the number of gaming machines permitted in an approved venue;*

(c) ...

(d) ...

*may be amended in accordance with this Division.*

7. Section 3.4.20 sets out the matters that are for consideration before the Commission with respect to a proposed amendment. Relevantly for this Application, that section provides, *inter alia*:

(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;*

...

8. 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.<sup>1</sup>

<sup>1</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.



9. The Act does not specify the matters which the Commission must consider in deciding whether this ‘*no net detriment*’ test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:
- the likely economic impacts of approval;
  - the likely social impacts of approval; and
  - the net effect of those impacts on the well-being of the relevant community.<sup>2</sup>
10. As such, the ‘*no net detriment*’ test is a composite test requiring consideration of a single net impact in economic and social terms on well-being of the community.<sup>3</sup> 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.
11. 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.<sup>4</sup> 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.<sup>5</sup>
12. The Commission also notes that on review, it has been indicated by VCAT that:

*A table of likely economic and social benefits and disbenefits, and with some comments relevant to the relative weight to be given to particular factors ... is a useful way of transparently dealing with the ‘no net detriment’ test, and might perhaps be considered for wider application.*<sup>6</sup>

<sup>2</sup> *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [42]-[43] per Warren CJ, Maxwell P and Osborn AJA.

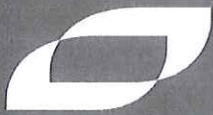
<sup>3</sup> *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275, [332], [348] per Bell J cited in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [58] per Dwyer DP.

<sup>4</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [57] per Dwyer DP.

<sup>5</sup> See *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275, [352] per Bell J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [58] per Dwyer DP.

<sup>6</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [60] per Dwyer DP.





This approach has been adopted in a number of VCAT decisions.<sup>7</sup> To facilitate greater consistency between the Commission and VCAT, the Commission has adopted the same approach.

13. If the Commission is not satisfied that the '*no net detriment*' test is met, that is clearly fatal to the application given the opening words of s 3.4.20(1) of the Act. The test is a mandatory pre-condition to approval. However, although s 3.4.20(1) sets out certain mandatory considerations for the Commission, the provision is not cast in exhaustive terms.
14. 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.<sup>8</sup> In considering the exercise of this discretion:
  - it must be exercised having regard to the purposes of the Act and, in particular, the specific purposes of Chapter 3 of the Act dealing with the regulation, supervision and control of gaming machines;<sup>9</sup> and
  - it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the Act as a whole.<sup>10</sup>
15. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*<sup>11</sup> that if all of the mandatory considerations under the Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval - other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.

## MATERIAL BEFORE THE COMMISSION

16. The Applicant provided the Commission with the following material in support of its Application:

<sup>7</sup> See, for example: *Darebin CC v Victorian Commission for Gambling and Liquor Regulation & Anor* [2013] VCAT 1389; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Monash CC v L'Unico Pty Ltd* [2013] VCAT 1545; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

<sup>8</sup> 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 s. 3.3.7).

<sup>9</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [98] per Dwyer DP.

<sup>10</sup> *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M. As to policy principles identified for consideration, see *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

<sup>11</sup> [2013] VCAT 101, [98].



- a) Social and Economic Impact Assessment, prepared by Ratio Consultants Pty Ltd (**Ratio**), dated October 2015;
  - b) Social and Economic Impact Assessment (Addendum), prepared by Ratio, dated February 2016;
  - c) Expenditure Report, prepared by PVS Australia Pty Ltd (**PVS**), dated October 2015;
  - d) Expenditure Report (Addendum), prepared by PVS, dated February 2016;
  - e) Application for Planning Permit to Council, prepared by Ratio, dated 9 November 2015;
  - f) Witness Statement of Leigh Barrett, Leigh Barrett and Associates, dated 26 October 2015;
  - g) Witness Statement of Peter John Beretta, Director of the Applicant, dated October 2015;
  - h) Witness Statement (Supplementary) of Peter John Beretta, Director of the Applicant, dated February 2016; and
  - i) Witness Statement of Crystal Gina Anagnostopoulos, dated February 2016;
17. The Council provided the Commission with the following material in support of its Application:
- a) Submission from City of Casey (**Casey Council**) to the Council, dated 7 January 2016;
  - b) Social and Economic Impact Submissions, dated 24 January 2016;
18. The following material, prepared by Commission officers, was provided to the Applicant and Council, and was considered by the Commission:
- a) a report titled *Economic and Social Impact Report*, dated February 2016 (**the VCGLR Report**); and
  - b) a report titled *Pre-Hearing Inspection and Compliance Report*, dated 8 January 2016.

#### **CITY OF FRANKSTON AND THE LANGWARRIN HOTEL**

19. The Premises is located close to the intersection of Cranbourne-Frankston Road and Union Road in Langwarrin and close to the Gateway Shopping Centre. The majority of land in the 2.5 kilometre radius in which the Premises is located is mainly for residential use, with the exception of the aforementioned shopping centre, play areas, sporting fields and a retirement village.
20. The Premises facilities currently comprises –





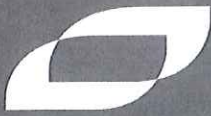
- a) 370 seat bistro area with additional 100 seat alfresco area known at 'The Deck';
- b) Sports bar and lounge with TAB (also used for private functions and live entertainment) with a capacity for 400 patrons;
- c) Children's play area;
- d) Gaming lounge with 52 EGMs;
- e) Drive-through bottle shop with attached offices;
- f) Car parking for 195 vehicles; and
- g) Overall maximum patron capacity of 1400 persons.

21. The VCGLR Report outlines some general information in relation to the area in which the Premises is located, including –

- a) Frankston is a metropolitan Local Government Area (**LGA**) located approximately 42 kilometres south of the Melbourne CBD, and covers approximately 131 square kilometres. Major centres within Frankston include Frankston, Langwarrin and Carrum Downs. Frankston has an estimated adult population of 106,008 and the annual rate of population growth is projected by the Victorian Department of Transport, Planning and Local Infrastructure to be 0.8% for the period 2016 to 2021, as compared with the Victorian average of 1.7%;
- b) Frankston is subject to a municipal limit of 954 EGMs.<sup>12</sup> Currently, there are ten gaming venues within the municipality with approvals to operate a total of 591 EGMs. However, the number of EGMs actually in operation in these venues, as opposed to the number permitted to be operated, is 536 EGMs. The Commission is satisfied in accordance with section 3.4.20(1)(b) that approval of this Application would increase the number of licensed EGMs within Frankston to 601 and, as a result, the municipal limit would not be exceeded;
- c) Frankston has an EGM density of 5.0 EGMs per 1000 adults, which is 6.7% less than the metropolitan average (5.4) and 11.9% less than the State average (5.7). This ranks Frankston as the 11<sup>th</sup> lowest of 31 metropolitan municipalities in terms of EGM density per 1000 adults. If the Application is approved, this would rise by 0.9% to 5.4 EGMs per 1000

<sup>12</sup> Pursuant to section 3.4A.5(3A)(b) of the Act, the Victorian Commission for Gambling and Liquor Regulation determined, in accordance with the criteria specified in the Minister for Gaming's Order on 15 August 2012, the maximum permissible number of gaming machine entitlements under which gaming may be conducted in each region.





adults;

- d) Frankston has an average gaming expenditure of \$585 per adult, which is 1.6% higher than the metropolitan average (\$576) and 5.8% higher than the State average (\$553). Applying the estimate of increased gaming expenditure as received from the Applicant, approval of this Application would result in an increase in average gaming expenditure per adult of 0.4%;
- e) Overall gaming expenditure within Frankston has decreased by 18.6% in real terms over the past five years, which is a greater decrease than the metropolitan average of 9.4% in real terms over the past five years;
- f) 8.9% of SA1s<sup>13</sup> within 2.5km of the Premises are in the most relatively disadvantaged quintile of the SEIFA<sup>14</sup> index of relative socio-economic disadvantage scores, with 17.9% of SA1s within the most relatively advantaged fifth quintile. The remaining SA1s are evenly distributed between the second, third and fourth quintiles, indicating that the local area is not particularly advantaged or disadvantaged; and
- g) The unemployment rate in Frankston is 7.6%, which is above metropolitan unemployment rate of 6.4%. Unemployment in Frankston has remained fairly stable over the past 12 months.

## APPLICANT WITNESSES AND SUBMISSIONS

### *Ms Colleen Peterson, Ratio Consultants Pty Ltd*

- 22. Ms Colleen Peterson, a director of Ratio, prepared a Social and Economic Impact Assessment report in support of the Application. Ms Peterson provided oral submissions at the hearing of the Application and adopted her written report and addendum as her evidence.
- 23. Ms Peterson assessed the local area – both within 2.5 kilometres and 5 kilometres of the Premises – as exhibiting a variety of both advantage and disadvantage. Like other areas around Victoria, some SA1s in Frankston exhibit particularly high levels of disadvantage, whilst others areas – such as the location of the Premises – exhibit higher levels of advantage.
- 24. The Premises is only one of three venues within a five-kilometre radius, and is the only venue

<sup>13</sup> Statistical Area Level 1 (SA1) have been designed by the Australian Bureau of Statistics (ABS) as the smallest unit for the release of Census data.

<sup>14</sup> Socio-Economic Indexes for Areas (SEIFA) is a product developed by the ABS that ranks areas in Australia according to relative socio-economic advantage and disadvantage. It consists of four different indexes, including the Index of Relative Socio-economic Disadvantage.



within the 2.5 kilometre radius used to undertake the Social and Economic Impact Assessment of the area. Ms Peterson indicated that the location of the Premises was distinctly within Langwarrin, and was quite remote in terms of accessibility to prospective patrons. These factors combine to make the Premises a destination venue, and less likely to be utilised by 'impulsive' gamblers.

25. Further, Ms Peterson considers that the likelihood that patrons would travel to the Premises from outside of the immediate Langwarrin area is relatively low, and was not supported by the results of the patron survey undertaken at the Premises. The patron survey revealed that 67.7% of patrons surveyed were from Langwarrin, with a further 16.9% from Frankston and 5% from Cranbourne.
26. In response to concerns raised by Casey Council regarding the likelihood of residents of the City of Casey being able to access additional EGMs, Ms Peterson acknowledged that Cranbourne has quite significant pockets of disadvantage, and some parts are as close to the Premises as other suburbs of Frankston. However, patron surveys show that the proportion of patrons coming from Cranbourne is low, because Cranbourne is relatively distant (being approximately 7 to 8 kilometres away from the location of the Premises), and that Cranbourne has a number of gaming venues to service its residents. Ms Peterson also pointed out that residents of Cranbourne see themselves as a distinct township, with a separate identity, to Langwarrin. She did not consider the apparent proximity to Cranbourne as a significant risk in relation to the Application.
27. In respect of social and economic impact the Application would have if it were granted, it was the evidence of Ms Peterson that –
  - a) Greater accessibility and game choice during peak periods will allow the Applicant to cater for increased patron demand during peak dining periods –
    - (i) EGM utilisation at the Premises was generally quite high, with peak usage occurring across 22 hours in the fortnight period that was surveyed. Ms Peterson indicated that these heightened instances of utilization indicate that the Premises is popular within the local community because of a lack of nearby competitors and the high quality of services and facilities on offer.
    - (ii) Ms Peterson also considered that whilst the nearby shopping centre may not be isolated by its distance from the Premises, there is a physical separateness that reduces the likelihood of people visiting the shopping centre attending the Premises impulsively.
    - (iii) The results of the patron survey undertaken at the Premises indicated that over two-





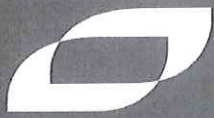
thirds of the patrons surveyed were Langwarrin residents, which supports the position that the Premises is 'remote', a destination venue for the purpose of gambling, and this mitigates against the risk of impulsive gambling.

- (iv) Whilst acknowledging that the utilisation at the Premises is high (and therefore, has a greater risk of problem gambling occurring than, for instance, a venue with low EGM utilisation), the associated disbenefit is unlikely to be realised as the Responsible Service of Gaming (**RSG**) practices at the Premises are of a high standard.
  - (v) Ms Peterson did not consider that additional EGMs at the Premises would necessarily result in a greater likelihood for problem gambling to occur, and the relatively high EGM utilisation can be explained by reference to the location of the Premises and lack of competition in the immediate surrounding trade area.
- b) Whilst there are parts of the municipality that have higher than average levels of disadvantage, the area in which the Premises is located is an area that is relatively advantaged and, therefore, would be more likely to absorb the additional EGMs at the Premises without creating economic detriment or disadvantage within the community.
- c) Expansion of the children's play area at a cost of \$1 million will provide improved facilities, including an all-weather facility and separate play areas for children of different ages –
- (i) The improvements to the children's play area is a benefit that derives from the Application being granted. The proposition from Council that the play area will encourage a greater level of consumption of liquor and gambling is at odds with Ms Peterson's assessment that, whilst it may cause patrons to remain at the Premises for a greater amount of time, it will likely cause a greater uptake in the bistro facilities. Ms Peterson pointed out that supervision is required of children utilising the play area (which is not possible if a parent is utilising EGMs at the Premises); and
  - (ii) The benefit of the enclosed play area allows for the Premises to be utilised in all weather conditions and throughout the entire year. This increases the attractiveness of the Premises, particularly to families with children that are opting to utilise the facilities within the local community. There is no similar facility within the Langwarrin area;
- d) Employment benefits, with an increase of 3.2 FTE positions at Premises (including 1.5 FTE positions in the gaming room);

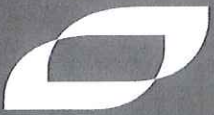


- e) Community contributions of \$10,000 to Theodora House, in addition to the \$80,000 that is already required under existing community contribution payments;
  - f) An increase of approximately 5% in supply contracts from local food and beverage suppliers will also result; and
  - g) Ms Peterson assessed the Application against the draft "Frankston Local Gambling Policy Implementation Report" that was endorsed at a Council meeting held on 13 April 2015. Ms Peterson considered that the Premises mostly complied with the Council policy in relation to appropriate areas, sites and premises for gaming to occur within the municipality.
28. In cross-examination, Ms Peterson conceded that the Premises may exercise some commercial advantage by way of a revenue increase resulting from increased numbers of EGMs. However, this concession was qualified by reference to the Act, and that one of the purposes of the Act is to foster competition. Ms Peterson considered that the competition between traditional restaurants and eateries is a commercial reality. While the increased finances available to the Applicant by way of increased revenue derived from EGM expenditure may cause some local restaurants and eateries to experience commercial pressures, this ought not be considered by the Commission to be a disbenefit to the community, as it increases choice and quality.
29. Further, Ms Peterson did not consider the comparison between gaming venues, like the Premises, and non-gaming venues, such as traditional restaurants and eateries, to be a 'like-for-like' comparison, as both types of venues offer points of difference that may be attractive to particular parts of the community, but not others (for instance, intimate dining as opposed to the 'pub atmosphere' that would be experienced at the Premises).
30. Ms Peterson did not consider that the relocation of EGMs from the Riveira Hotel in Seaford to be either a benefit or a disbenefit to the Application and placed little weight on the transfer of EGMs between the two venues as a factor impacting the Application in any way.
31. Ms Peterson's assessment of the social and economic impact of the grant of the Application was that both the benefits and disbenefits resulting from the Application were relatively small, and that the main disbenefit – being the increased risk of problem gambling – is mitigated by the Applicant's high level approach to customer service and RSG, and is outweighed by the benefits.
- Mr Richard Whitehouse, PVS Australia Pty Ltd***
32. Mr Whitehouse adopted his written report and addendum report as well as providing oral evidence to the Commission in relation to the operation and financial position of the Premises.





33. Mr Whitehouse provided his expenditure estimates to the Commission in relation to the likely new expenditure and transferred expenditure that would occur should the Application be granted. With reference to the addendum report provided to the Commission as part of his written evidence, Mr Whitehouse estimated that the likely total expenditure that would result if the Application were granted would be approximately \$470,316 in the first twelve months of operation, of which 76.1% (or \$358,005) would be transferred expenditure from other venues, and the remaining 23.9% (or \$112,312) would be new expenditure at the Premises.
34. Mr Whitehouse considered that the lack of competitors near to the Premises may have some impact on the level of transferred expenditure that may occur, with most venues in the municipality outside of a five kilometre radius from the Premises.
35. Mr Whitehouse considered that the proposed increase in the number of EGMs will have an impact on the gaming revenue at the Premises, but did not consider that the proposed expansion of the children's play area would have an impact on the level of gaming revenue at the Premises.
36. Mr Whitehouse considered that the number of EGMs at the Premises was likely to not be currently servicing patrons satisfactorily. Mr Whitehouse also considered that the net machine income (NMI) at the Premises was quite low, when considered against the volume of patrons attending the Premises, both for gaming and non-gaming activities.
37. Mr Whitehouse considered that the level of transferred expenditure that will likely result if the Application is granted is due to the lack of competitors located near to the Premises. Specifically, Mr Whitehouse outlined that whilst there are 15 venues located within the local network and all within 12 kilometres, the closest venue is almost 4.5 kilometres away from the Premises. On this basis, it is less likely that the Premises will draw expenditure from other venues in the local network due to the remoteness and likely requirement for patrons to travel further to attend the Premises.
38. Mr Whitehouse considered that the proposed increase in hours of operations across the Premises generally may result in an increase in gaming revenue by virtue of the greater number of patrons present at the Premises. However, Mr Whitehouse also considered that other factors – such as the types and cost of EGMs available – will have some impact on whether patrons attend the Premises primarily for gaming.
39. In cross-examination, Mr Whitehouse made reference to the Geotech Model to outline his position in relation to the stance from Council that the children's play area may have a detrimental impact on the community by drawing patrons into the Premises. Mr Whitehouse outlined that whilst the use of a children's play area was a factor that was inputted into the Geotech Model to ascertain



the strength of a positive relationship between that particular feature and venue attractiveness resulting in increased gaming revenue, the resultant positive relationship was considered to be so negligible that it did not have any tangible outcome or impact on the results emanating from the Geotech Model.

40. It was the evidence of Mr Whitehouse that granting the Application would allow the Applicants to provide greater gaming diversity, increased community contributions and a wider range of facilities available to patrons.

***Mr Leigh James Barrett, Leigh Barrett and Associates Pty Ltd***

41. Mr Barrett is the director and principal consultant of Leigh Barrett and Associates Pty Ltd who specialise in the provision of a range of regulatory compliance services and staff training for gaming venues in Victoria. He adopted his witness statement and gave oral evidence to the Commission in relation to the Application.
42. According to his statement, Mr Barrett has been engaged by the Applicant to provide regulatory compliance services. This has involved developing the Applicant's responsible gambling policies and procedures, training the Applicant's staff and conducting quarterly audits of the Applicant's regulatory compliance.
43. Based on those audits, Mr Barrett has found the Applicant to be strongly compliant. Mr Barrett's statement details the responsible gambling practices engaged in by the Applicant's staff and management, and the responsible gambling training that all of the Applicant's gaming room and front-of-house staff and management committee members undergo, which includes an approved Responsible Service of Gambling (RSG) course.
44. Mr Barrett outlined that the recommendations that resulted from his audits have been, or will be, adopted by the Applicant at the Premises.
45. Mr Barrett gave evidence that the commitment of the Applicant's management to responsible gambling practices is extremely high – those practices start at the top with Mr Beretta and the management team of the Applicant and are taken on board by all staff. Mr Barrett said that he has observed a high level of interaction between staff and gaming patrons.
46. Mr Barrett concluded that the combination of management practices, venue layout and alternative entertainment available at the Premises are factors that provide mitigation in relation to the risk of problem gambling with the addition of 10 EGMs.





***Mr Peter John Beretta, Director of the Applicant***

47. Mr Beretta is the director of the Applicant and has owned and operated the Premises since October 1999. Mr Beretta adopted his written statement and addendum and provided oral evidence to the Commission in relation to the operations of the Premises.
48. Mr Beretta provided the Commission with an outline of the proposed improvements, and in particular, the expansion of the children's play area and how it would fit within the layout of the Premises.
49. Mr Beretta conceded that the expansion of the children's play area would occur irrespective of the result of the Application. However, the scope of that project would only be executed in part. As part of the reduction in the scale and scope of the project, the play area would not be an enclosed facility and would not be able to be utilized on a year-round basis.
50. Mr Beretta indicated that the Premises service a high proportion of families, with a significant number of patrons utilising the non-gaming facilities at the Premises. The basis for the Application was to increase the attractiveness of the Premises to this particular market, which would have the impact of increasing bistro revenue at the Premises by taking advantage of a particular segment of the community – young mothers and children – that do not have quality dining options available in the local area.
51. Mr Beretta responded to questions in relation the increased bistro hours and employment at the Premises. In summary, Mr Beretta outlined that the predicted increased number of patrons would require more staff filling additional hours of trade at the Premises, so as to properly service patrons. The new hours, facilities and offering (particularly the proposed play area improvement) would require additional staffing as the hours throughout the Premises are extended.
52. The Theodora House organisation is a charitable organisation that delivers food and assistance parcels to people in need in the Frankston area. Mr Beretta addressed the witness statement of Crystal Gina Anagnostopoulos and confirmed that the Applicant would make at least \$10,000 in annual contributions to Theodora House, in addition to the \$80,000 in annual contributions that are already made to community organisations throughout Frankston.
53. Mr Beretta confirmed that the Applicant would ensure that the full allotment of required community contributions of \$80,000 would be made in each annual period.



### **'NO NET DETRIMENT' TEST**

54. The Commission's consideration of the '*no net detriment*' test is set out below (and summarised in tabular form at Appendix One) and is the Commission's assessment of the social and economic benefits and disbenefits associated with this Application, including the weighting given to each of these impacts.

### **ECONOMIC IMPACTS**

55. The Commission accepts the evidence of Mr Whitehouse that approval of this Application is likely to result in an increase in gaming expenditure at the Premises of no greater than \$470,316 over the first 12 months, consisting of approximately \$112,312 of new expenditure and \$358,005 in transferred expenditure from other gaming venues in Frankston.
56. The Commission finds that the portion of new expenditure not attributed to problem gambling is an economic benefit. To the extent that additional expenditure is derived as a result of problem gambling, the Commission accepts the evidence of Ms Peterson and Mr Barrett in relation to the RSG practices in place at the Premises to mitigate that risk. In any event, the extent of the additional expenditure is not large, and marginal weight is given to this as an economic benefit.
57. Given the low level of anticipated additional expenditure and the patron profile at the Premises, the Commission accepts that any increase in problem gambling as a result of the Application is likely to be minor, and hence a marginal weight is placed on this impact.
58. The Commission finds that the approval of additional EGMs will create an improved financial position for the Application which will enable the expansion of the proposed children's play area at an estimated cost of \$1 million. The Commission does not accept the Council proposition that the proposed improvements at the Premises will encourage patrons to drink and gamble and thus increase the risk of problem gambling.
59. The expansion of the play area at the Premises will provide both an economic and social benefit to the community by providing increased patronage at the Premises, allowing better use of the current facilities, and providing a year-round facility that the Langwarrin community does not have at present. This benefit is given low weight by the Commission.
60. The Commission considers that the proposed additional community contributions of \$10,000 per annum which the Applicant will make if the Application is approved is both a social and economic benefit to the community. In terms measuring the economic impact, given the relatively small amount of the contribution, the Commission has given this benefit marginal weight.





61. The Commission has considered the question of competition and economic development as an economic benefit, and given the relatively small net increase of EGMs (five of which are sourced from within the region), the Commission has assigned marginal weight to this benefit.
62. The Commission has considered the submissions made by Council, which has focussed on the key risk areas of a decrease in expenditure at other venues in the local network, and the risk of an increase in problem gambling. In relation to the decrease in expenditure at other venues in the local network (including venues that may be outside the municipality), the Commission formed the view that consumers will decide their preferred way to spend their surplus funds on entertainment. Accordingly, no weight was attributed to this as a disbenefit.
63. The Commission notes the proposed additional employment that may result as a consequence of the increased number of EGMs is likely to occur from the flow-on impact of increasing the hours of operation and changing of roles to positions within the Premises. The increase in employment is therefore likely to occur as a transfer of employment from within the region, and accordingly, the Commission has assigned this benefit marginal weight.
64. Overall, the Commission considers that there will be a minor, but positive, economic impact on the Frankston community if the Application were to be approved.

## **SOCIAL IMPACTS**

65. The Commission acknowledges that whilst the economic benefit associated with the proposed contribution to Theodora House may be marginal, the associated social benefit is significant to the organisation, given that these contributions would be the first time that the organisation has had consistent funding, according to the statement of Ms Anagnostopoulos, and will provide some comfort in relation to the ongoing success and operation of the organisation. On that basis, the Commission assesses the proposed additional community contributions to be of low social benefit.
66. The Commission accepts the evidence of Ms Peterson in relation to the level of utilisation occurring at the Premises, and the opportunities that an increase in EGMs at the Premises will bring for patrons wishing to undertake recreational (i.e. non-problem) gambling at the Premises. To the extent that the increased number of EGMs are utilised in such a way, there is a small social benefit derived on the basis of increased number of EGMs to cater for patron choice, as well as ensuring that the high utilisation is properly serviced. On that basis, the Commission assigns marginal weight to this benefit.



67. In relation to the impact of the expanded children's play area, the Commission notes that the Applicant intends to proceed with this project irrespective of the outcome of the Application, albeit in an abridged fashion (by limiting the scope/extent of the project, and subsequently, the benefit that flows). The Commission considers the potential benefit to the Langwarrin community to utilise a weatherproofed facility that does not already exist within the area to be reasonably significant in the circumstances. The Commission considers that this benefit carries with it moderate weight.
68. Wherever accessibility to EGMs is increased there is always a risk of an increase in problem gambling, which can lead to other costs such as lost productivity, increased health and social service requirements and other social costs. Accordingly, the Commission accepts there is potential for negative social costs through possible increased problem gambling expenditure.
69. In relation to the potential for an increase in problem gambling, the Commission has considered the submissions of Council, as well as the framework that Applicant has in place to mitigate against this risk. Particularly, the Commission accepts the evidence of Ms Peterson and Mr Barrett in relation to the protective features that the Applicant has in place, being the increased non-gaming offering at the Premises and the RSG practices in place, as well as the location of the Premises being reasonably remote and likely a destination venue for patrons wishing to attend the Premises.
70. Particularly, Council made submissions that a grant of the Application would have an impact on community health and connectedness, with reference to the potential for increase in problem gambling, demand for community services, and both current and future supply stress in relation to the provision of those services.
71. The Commission also considers the risk of an increase to problem gambling as a result of this Application being approved is limited by the already high accessibility to EGMs in the Frankston LGA and relatively low NMI at the Premises. The Commission recognises that Frankston has an above average number of EGMs per 1,000 adults. However, as President Morris noted in *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation (Occupational and Business Regulation)* [2007] VCAT 2 (11 January 2007) at [59]:

*... it is unrealistic for all municipalities to expect that the number of gaming machines in their municipality per 1,000 adults will be average or below average. It is almost inevitable that the average number of gaming machines per 1,000 adults in some municipalities will be greater than the metropolitan average; and in other municipalities less than the metropolitan average.*





72. Overall, taking into account the marginal increase in EGM density and EGM expenditure per adult together with the socio-economic profile of the municipality, the Commission finds that whilst some parts of Frankston may present as particularly vulnerable to problem gambling, the Commission is satisfied that the potential for an increase in problem gambling at the Premises as a result of this Application is low.
73. This is based on the fact that the premises is located in an area of relative advantage, the majority of patrons are from the Langwarrin area, it is a destination venue and has a number of protective measures in place, including strong RSG practices. The Commission assigns marginal weight to this social disbenefit.
74. After considering the social benefits of the proposal and balanced against the disbenefits, the Commission considers that, on balance, there is likely to be a low, but positive, social impact of the proposal.

#### **NET ECONOMIC AND SOCIAL IMPACT**

75. The no net detriment test in section 3.4.20(1)(c) of the Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.<sup>15</sup>
76. After consideration of the material put forward by the Applicant, and weighted as outlined above and summarised in tabular form at Appendix One of these Reasons for Decision, the Commission has concluded that there is likely to be a minor net positive social and economic impact to the well-being of the community in the municipal district in which the Premises is located if the Application is approved.

#### **OTHER RELEVANT CONSIDERATIONS**

77. Having determined that the '*no net detriment*' test has been satisfied, there remains a discretion with the Commission to determine whether or not to approve the Application.
78. Whilst submissions were received from Casey Council in relation to this Application, the evidence provided to the Commission suggests that the likely social and economic impact on neighbouring municipalities is likely to be low or negligible, given the remote location of the

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<sup>15</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.



Premises and likelihood that Casey residents would be serviced by licensed gaming venues within, or nearer to, that municipality.

79. On that basis, the Commission does not find any appropriate reason to exercise its discretion in this particular Application.
80. In granting approval, the Commission believes it is appropriate that approval should be subject to appropriate conditions. The conditions that the Commission considers appropriate are as follows:

**A. Community contributions**

1. *The Venue Operator will make an additional annual cash contribution in the sum of \$10,000 (indexed to CPI [all groups, Melbourne]) whilst and so as any of the additional ten (1) electronic gaming machines ("additional EGMs") operate at the Premises up to and including 15 August 2022.*
2. *The additional contribution will be allocated each year to Theodora House Incorporated. In the event that Theodora House Incorporated ceases to operate, the funds are to be distributed to a local community charitable group.*
3. *The Venue Operator continues to make annual contributions in the sum of \$80,000 to local community and sporting groups.*

**B. Works**

1. *The Works at the Premises (as defined in Condition B2 below) must be completed to the satisfaction of the Victorian Commission for Gambling and Liquor Regulation ("the Commission") by the date that is one (1) year after the commencement of the operation of any of the additional EGMs at the Premises.*
2. *For the purpose of this clause, "The Works" comprise the development of the new play area in accordance with planning permit 31/2013/P.*
3. *If the works referred to in Condition B2 are not completed by the date that is one (1) year after the commencement of the operation of any of the additional EGMs at the Premises, then the approval to operate the additional EGMs at the Premises will lapse.*
4. *The Commission may, at the request of the Venue Operator, agree to extend the time for completion of the works referred to in Condition B2. The request must be made no later than 11 months after the commencement of the operation of any additional EGMs. Any request for an extension of time must include an explanation as to why the Works have not been completed.*

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



## Appendix One

### Summary of social and economic impacts

#### Economic impacts

	Impact	Comment relevant to weight
<b>Benefit</b>	Investment in children's play area	Total of \$1 million investment to renovate the Premises, with the Applicant indicating that \$300,000 will be spent on improvements irrespective of the outcome of the Application. Little economic benefit, and per PVS assessment, no increase to venue attractiveness, with the main benefits relating to social benefits. Low weight.
	Additional gaming expenditure not associated with problem gambling	Additional total expenditure of \$470,316, of which \$112,312 is estimated to be new expenditure. Additional expenditure estimated to be relatively small, particularly the portion of which will be new expenditure. Marginal weight.
	Increased gaming competition	Increase of ten EGMs, with five coming from within the region. Marginal weight.
	Additional employment	3.2 FTE positions created at the Premises and 1.5 FTE created in the gaming room specifically. Evidence that changes to the hours of operation and role changes, due to bistro extension, will allow for 'sharing' of staff between areas/locations within the Premises. Marginal weight.
	Community contributions	Additional \$10,000 per annum, providing relatively small contribution to the economy. Marginal weight.
<b>Disbenefit</b>	Lower spending at other gaming venues in the municipality	Given distance from other venues and the 'destination' nature of the Premises, the expected impact on other venues is not likely to be significant. No weight.
	Problem gambling	There is a disbenefit, albeit uncertain in size, in higher costs to health and service providers and lower spending on local goods and services. However, Premises is a destination venue, patron profile primarily from Langwarrin, good gaming room layout and strong RSG procedures. Marginal weight.



**Social Impacts**

	<b>Impact</b>	<b>Comment relevant to weight</b>
<b>Benefit</b>	Increased opportunities for recreational gaming (i.e. non-problem gambling)	Whilst the number of additional EGMs is small (10), the relative isolation of the venue results in much greater opportunities for additional recreational gaming than if there were a large number of nearby venues. The Premises will also be able to better cater for the overall increase in demand that is already present and may occur at the Premises. Marginal weight:
	Additional employment	Creation of 1.5 FTE positions in the gaming room. However, likely transferred employment from within local network. Marginal weight:
	Expansion of children's play area	A benefit to local community given current popularity with families. Creation of separate spaces for all age groups will allow children of all ages to utilise the facility, which will in turn encourage more families to make use of the Premises during the day. Also, overarching benefit to the community to have access to a children's facility irrespective of weather conditions. Moderate weight
	Contributions to Theodora House	Whilst the economic impact will likely be marginal (given the relatively small amount pledged), the social impact of the contributions will be significant as Theodora House has not previously had a dedicated funding stream to assist in the ongoing operation and success of the organisation. Low weight:
<b>Disbenefit</b>	Problem gambling	As outlined above in economic disbenefits – mitigating factors present at the Premises will reduce the risk of problem gambling resulting as an effect of granting this Application. Low weight:
	Impact on community health/connectedness	Commission accepts this as a concern of Council, but cannot accept that the consequence of this Application will necessarily be an increase in the consumption of liquor and gaming products at the Premises. Mitigating factors also reduce the impact of this particular disbenefit of the Application. Marginal weight: