



Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application by Myrtleford Savoy Sporting Club Inc under section 3.3.4(1) of the *Gambling Regulation Act 2003* for amendment of its venue operator's licence to vary the number of electronic gaming machines at the approved premises, the Myrtleford Savoy Sporting Club, located at 252–254 Great Alpine Road, Myrtleford from 26 to 40.

Commission:

Mr Ross Kennedy, Deputy Chair
Ms Deirdre O'Donnell, Commissioner

Appearances:

Mr Dale Curtis, solicitor from Tresola Legal, for Myrtleford Savoy Sporting Club Inc.

Ms Brooke Hutchins of Counsel as Counsel Assisting the Commission.

Date of Hearing:

15 March 2016

Date of Decision:

13 April 2016

Date of Reasons:

13 April 2016

Decision:

The Application is granted.

Signed:

Ross Kennedy
Deputy Chair



REASONS FOR DECISION

INTRODUCTION

1. This is an application by the Myrtleford Savoy Sporting Club Inc (**Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**Commission**) for an amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Myrtleford Savoy Sporting Club, located at 252-254 Great Alpine Road, Myrtleford (**Premises**), from 26 to 40 (**Application**).
2. The relevant municipal authority is the Alpine Shire Council (**the Council**). On 14 January 2016, the Commission notified the Council of the Application. The Council responded to the Commission on 15 February 2016, advising that it did not oppose the Application. The Council did not make any written submissions or appear at the hearing of 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. Section 9(3) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)* provides, inter alia:

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



7. The relevant provision concerning this Application is to be found in s. 3.4.17(1)(b) of the Act, which states that variation of the number of EGMs permitted in an approved venue may be amended in accordance with this Division.
8. Section 3.4.20 sets out 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;*
 - ...
9. Paragraph 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.¹
10. 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:
 - (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.²
11. 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.³ 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.

¹ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 (*Mount Alexander Shire Council*) at [52] per Dwyer DP.

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

³ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275 (*Romsey No. 2*) at [332] and [348] per Bell J; cited in *Mount Alexander Shire Council* at [58] per Dwyer DP.



12. 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.⁴ In a number of decisions on review, the Victorian Civil and Administrative Tribunal (**VCAT**) has 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.⁵

13. 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.*⁶

This approach has been adopted in a number of VCAT decisions.⁷ The Commission has adopted the same approach in this instance to add clarity to its decision-making process.

14. If the Commission is not satisfied that the '*no net detriment*' test is met, then an application must fail in accordance with the opening words of s 3.4.20(1) of the Act. The test is a mandatory precondition 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. If the Commission is satisfied that the '*no net detriment*' test is met, it still has an ultimate discretion as to whether or not to grant the approval.⁸ The Commission must decide whether to make the proposed amendment, with or without any changes from that proposed by the Applicant, even where the applicant has satisfied the minimum threshold of the '*no net detriment*' test.⁹

⁴ *Mount Alexander Shire Council* at [57] per Dwyer DP.

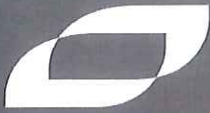
⁵ See *Romsey No. 2* at [352] per Bell J; *Mount Alexander Shire Council* at [58] per Dwyer DP.

⁶ *Mount Alexander Shire Council* at [60] per Dwyer DP.

⁷ 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 (**Bakers Arms Hotel**).

⁸ See *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel* at [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).

⁹ *Gambling Regulation Act 2003* (Vic), section 3.4.20(2).



15. In considering the exercise of this discretion:
- (a) it must be exercised having regard to the purposes of the Act and, in particular, the specific purposes of Chapter 3 of the Act dealing with the regulation, supervision and control of gaming machines;¹⁰ and
 - (b) it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the Act as a whole.¹¹
16. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council*¹² 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

17. The Applicant provided the Commission with the following material in support of its Application:
- (a) form titled *Amendment to venue operator licence – vary gaming machines* dated 12 November 2015;
 - (b) form titled *Application for approval to modify a gaming machine area in an approved venue* dated 12 November 2015 (supporting materials received 4 January 2016);
 - (c) report titled *Social and Economic Impact Assessment*, prepared by Urbis (**Urbis**), dated December 2015 (**Urbis Report**);
 - (d) report titled *Expert's Report in respect of Myrtleford Savoy Sporting Club*, prepared by ShineWing Australia Pty Ltd (**ShineWing**), dated 22 December 2015 (**Expenditure Report**);
 - (e) Witness Statement of Rick Watt, General Manager and Gaming Venue Operator, Liquor Licence Nominee and Authorised Officer (Secretary) of the Applicant dated 24 December 2015; and

¹⁰ *Mount Alexander Shire Council* at [98] per Dwyer DP.

¹¹ *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire Council* at [99] per Dwyer DP; *Bakers Arms Hotel Pty Ltd* at [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 at [7] per Warren CJ, Maxwell P and Osborn AJA.

¹² Loc.cit at [98].



(f) Planning Permit issued by the Council to the Applicant for the installation and use of an additional 14 EGMS in accordance with the endorsed plans, including covering letter and enclosures, dated 11 September 2015.

18. The following material, prepared by Commission officers, was provided to the Applicant and was considered by the Commission:

(a) report titled *Economic and Social Impact Report*, dated March 2016; and

(b) report titled *Pre-Hearing Inspection and Compliance Report*, dated 25 February 2016.

19. Commissioner O'Donnell visited the Premises following the public hearing.

DECISION AND REASONS FOR DECISION

Background

20. The Shire of Alpine is a rural municipality located approximately 270 kilometres north-east of Melbourne and covers an area of 4,788 square kilometres. Major centres include Myrtleford, Bright and Mt. Beauty. The Shire of Alpine has an adult population of 9,604, which ranks 23 out of 35 Rural Municipalities. The Shire of Alpine's annual rate of population growth of 0.2% for the period 2016-21 is projected by the (then) Victorian Department of Transport, Planning and Local Infrastructure to be lower than the Victorian average of 1.7%. It is estimated that 50.4% of the population will be over 50 by 2021.

21. The Premises are situated on Myrtle Street, off the Great Alpine Road. The immediate surrounding land is generally vacant. The main retail area in Myrtleford is around 1.5 kilometres from the Premises, separating it from any level of pedestrian activity. The Premises offer a variety of facilities including a 40 seat bistro with bar, another 100 seat bistro and dining room, a 250 seat function room, members lounge, gaming room, six indoor bocce courts and a table tennis area.

22. There is only one other gaming venue in the Shire of Alpine, being the Star Hotel Bright. The Mount Beauty Country Club was also an operational gaming venue within the Shire of Alpine, however it has recently closed.

23. The number of EGMS per 1,000 adults in the Shire of Alpine is currently 13.7% less than the rural average. Although the Applicant seeks to increase its number of EGMS by 14, the closure of the Mount Beauty Country Club is likely to result in a net decrease in the number of EGMS within the Shire of Alpine by the end of the 2015/2016 financial year. EGM density for the 2015 year was 6.56 EGMS per 1,000 adults. With operations ceasing at the Mount Beauty Country



Club, EGM density is predicted to fall to 4.56 EGMs per 1,000 adults at the end of the 2016 financial year. With the approval of the Application, this figure for the 2016 financial year is predicted to be 6.04 EGM's per 1,000 adults.

24. The Shire of Alpine has an average gaming expenditure of \$292 per adult, which is 12.9% less than the rural average (\$333) and 49.3% less than the State average (\$553). Overall gaming expenditure within the Shire of Alpine has decreased by 18.04% in real terms over the past five years. Applying the estimate of increased gaming expenditure as received from the Applicant, approval of this Application is expected to result in an increase in average gaming expenditure per adult of 6.8%.

Reasons for Decision

25. Pursuant to section 3.4.20 of the Act, the Commission must be satisfied of the following two matters before it can grant the Application:
- (a) that the regional limit for EGMs for the Shire of Alpine will not be exceeded by the increase in EGMs at the Premises; and
 - (b) that the net economic and social impact of the increase in EGMs will not be detrimental to the well-being of the community of the Shire of Alpine (the '*no net detriment test*').

A. Regional limit

26. A regional limit of 99 EGMs applies for the Shire of Alpine.¹³
27. At the time of this decision, there is one other operational gaming venue in the Shire of Alpine - the Star Hotel in Bright - with 18 EGMs. Accordingly, along with the Applicant's existing 26 EGMs, there are 44 EGMs in the Shire of Alpine.
28. Approval of the Application, will result in the total number of EGMs in the Shire of Alpine increasing to 58.
29. This number is within the regional limit, and accordingly, the Commission is satisfied that the first element of section 3.4.20 is fulfilled.

B. 'No net detriment' test

¹³ Pursuant to section 3.4A.5(3A)(b) of the Act, the Commission 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 a given region or municipality. While the number of entitlements operating within a particular region or municipality is capped, the Commission notes that there is nothing to preclude the aggregate number of EGMs for which approved venues may be licensed from exceeding that cap.



30. Set out below (and summarised in tabular form at Appendix One) is the Commission's assessment of the economic benefits and disbenefits and social benefits and disbenefits associated with this Application, including the weighting given to each of these impacts.

Economic Impacts

Gaming expenditure not associated with problem gambling

31. As the economic category includes consumption, then to the extent that gaming expenditure is not associated with problem gaming, it has been recognised that such expenditure can be treated as an economic positive.¹⁴ 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 machines for social reasons.¹⁵
32. The Commission was provided with a range of evidence from Mr Quick of Urbis, in the Urbis Report and during the course of oral evidence at the public hearing, in relation to the social and economic impacts expected from the grant of the Application. Mr Quick gave evidence to the Commission that gaming expenditure not associated with problem gambling constitutes an economic benefit to the local municipality.
33. The Commission was also provided with a range of evidence from Mr Tim Stillwell of ShineWing Australia, in the Expenditure Report and during the course of oral evidence at the public hearing, in relation to the anticipated expenditure arising from the introduction of an additional 14 EGMs at the Premises. In summary, Mr Stillwell's evidence was that:
- (a) the Applicant has experienced an average decrease in the growth of gaming expenditure of 0.45% per annum over the past five years. The Shire of Alpine has experienced a decrease of 2.52% per annum in gaming expenditure within the LGA over the last five years;
 - (b) based on utilisation statistics, analysis of historical trends in gaming expenditure and an analysis of the recent trends in gaming expenditure, Mr Stillwell concluded that the level of additional gross gaming expenditure generated from an increase in EGMs at the Premises would be between \$136,555 and \$190,391 per annum in the first 12 months of trade post installation of the additional 14 gaming machines;

¹⁴ See *Romsey No. 2* at [351] per Bell J.

¹⁵ *Ibid* at [351]. Bell J notes further at [352] that the other approach is to say, as did Morris J in *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [79] that gaming extends 'substantial economic and social benefits' to gaming machine users, which treats consumption as a benefit without saying whether it is economic or social. While Bell J states both approaches are correct, for the purposes of this Application this benefit is treated as an economic benefit.



- (c) of this additional expenditure, Mr Stillwell determined that 10% would be transferred expenditure, with the remaining expenditure being new. This was said to equate to new revenue in the LGA of between \$122,900 and \$171,352;
- (d) on the premise that the Mount Beauty Country Club does not recommence operating gaming machines, the average net amount of gaming expenditure per adult in the Shire of Alpine will be \$270 with a density of 6.04 gaming machines for every 1,000 adults.
34. In assessing the extent of this benefit, the Commission has had regard to the evidence outlined in paragraphs [53]-[56] below with respect to the incidence of problem gambling. The Commission finds that the portion of new expenditure not attributable to problem gambling is an economic benefit. While demographic statistics in the area show some level of disadvantage, Mr Quick submitted that the elderly population in Myrtleford heavily influenced this result. The EGM expenditure increase at the Premises is expected to be quite low. Other factors suggesting that problem gambling at the Premises is likely to be low include the small size of the Premises and its location, in that it is not next to any retail facilities and is considered to be a destination venue which patrons have to make a conscious choice to visit.
35. With reference to the above, a low weight is given to this benefit.

Community contributions

36. In determining the net economic and social impact of applications of this nature, both the Commission¹⁶ and VCAT¹⁷ have regularly treated community contributions as a positive benefit.
37. Mr Watt gave evidence to the Commission that in the 2014/2015 financial year, the Applicant made donations of cash totalling \$29,450 and in-kind benefits estimated at a value of \$42,100. The in-kind community contributions include benefits such as discounts on food for members, complimentary food and drink for members and visitors, subsidised food and beverages for staff and free facility hire for not for profit organisations in the local community.
38. Mr Watt further told the Commission that it is the Applicant's intention that, should the Application be successful, the Applicant intends to increase its community contributions to over \$100,000 within a two year period. This is a 40% increase to the 2014/2015 financial year figure.

¹⁶ See, for example, Application by Richmond Football Club [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

¹⁷ See, for example, *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms Hotel*.



39. Mr Quick gave evidence that such contributions is an economic benefit to the community, which the Commission accepts. The Commission accepts also that these additional community contributions would not occur without the grant of the Application. This economic benefit is accorded a low weight.

Value of the development of the Premises

40. Mr Watt gave evidence to the Commission that the additional EGMs are sought to enable the Applicant to undertake development works at the Premises. It was explained that in May 2013 the Applicant developed plans to expand the existing deck area towards the front of the building with fold away doors and waterproof sail roof, with the intention of attracting a newer, younger clientele. These plans would also allow the Applicant to develop a newer café style menu and service. The development plan also includes a play area for children and a wedding “arbor” in the adjacent gardens.
41. Mr Quick describes in the Urbis Report that the new space which is intended to be developed will have the capacity to seat 120 people, significantly expanding the capacity of the existing bistro space. The new room extension is designed to accommodate patrons at café tables and chairs, high tables and stools and some lounge seats. The development is intended to be a relaxed area where the glass doors can be folded back on sunny days to make the most of the outdoor garden environment and views. This is expected to make the Premises a much more appealing space to the local community, particularly considering the demographics of Myrtleford and the Shire of Alpine.
42. Mr Quick gave evidence that the developments are expected to increase the number of visits to the Premises and provide greater facilities for the community. He anticipates that supply contracts will increase because of the Premises’ redevelopment. This is due to the increase in the demand for food, beverage and products relating to the operation of the bistro and bar areas. Mr Watt gave evidence that *“the utilisation of local suppliers for our supply contracts is, again, a non-negotiable of the Club’s operations. We endeavour to at all times utilise suppliers, trades people and assist the community’s reinvestment to ensure the community of Myrtleford remains vibrant”*. Mr Watt provided a detailed financial breakdown of the list of local suppliers that the Applicant purchased goods and services from for the financial year 2014/2015, which evidences the practice of using local suppliers by the Applicant.
43. Mr Watt gave evidence that the development works have not been possible due to the Applicant’s financial constraints. In light of this Application, the Applicant has more recently revisited the earlier plans and has estimated that the development works will cost approximately



\$500,000. The additional 14 EGMs are required for this project, and without them these works will not proceed.

44. The Commission accepts the proposed development will have a positive economic impact on the local municipality through the increase of business expected at the Premises. In determining the weight to be ascribed to this benefit, the Commission has paid regard to the efforts of the Applicant to use local suppliers. The Commission is further satisfied that the development will only occur if the Application is granted. The Commission ascribes this positive economic benefit a moderate weight.

Employment creation

45. As at June 2015, the Applicant employs 20 staff including four full time, five permanent part time and 11 casual employees. All but one of these employees reside in the Shire of Alpine.
46. In the Urbis Report, Mr Quick states "*although an additional 14 EGMs will not directly require an increase to the number of employees, there will be a need to hire an extra two full time equivalent staff when the Club develops the first stage of its new "deck" room*".
47. The Commission accepts the evidence given on behalf of the Applicant that if the Application is granted, and the development works are undertaken, then this is likely to result on the creation of the equivalent of two new full time positions at the Premises. In light of the Applicant's community-focused attitude, the fact that all but one of the current employees reside in the local area and the more isolated nature of Myrtleford, the Commission considers it likely that these new employees will be from the local area. Accordingly, the Commission regards the additional employment as a positive economic benefit to which it gives a low weight.

Value of other expenditure in Myrtleford

48. Mr Watt gave evidence on behalf of the Applicant that, through the development of the Premises, it hopes to attract more tourists to Myrtleford. The Applicant is hoping to attract the business of coaches of tourists that travel through the area to the snow fields during winter time. As the facilities currently stand, it is not able to adequately cater for and attract this business.
49. The Commission accepts that, should the Applicant be successful in attracting additional tourists to the Premises, it is likely there will be an increase in expenditure in the Myrtleford community generally. This is a positive economic benefit, however it is uncertain as it is dependent on the development achieving the hoped for results. The Commission ascribes this benefit a low weight.



Possibility of increased incidences and impact of problem gambling

50. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an economic dis-benefit.¹⁸ In assessing the extent of this dis-benefit, the Commission recognises that it does not include transferred expenditure because such expenditure cannot exacerbate problem gambling.¹⁹
51. In assessing the extent of this dis-benefit the Commission has had regard to the expenditure evidence set out in paragraph 33 above.
52. The extent to which it can be considered that the new expenditure will be associated with problem gambling, and hence may be regarded as a dis-benefit associated with this Application, will be influenced by the socio economic status of the community in the area surrounding the Premises.
53. In the Urbis Report Mr Stillwell details the features of the socio-economic characteristics of the surrounding areas as follows:
- (a) Myrtleford has an older population. About 21% of the Shire of Alpine residents are over the age of 65. While older age profile characteristics can be seen in many non metropolitan Victorian townships, the Shire of Alpine's average age is 3.7 years older than the benchmark;
 - (b) the Shire of Alpine has established housing stock with 47% of homes owned outright. Of those who are still paying a mortgage, the mortgage stress level of 3.5% across the Shire of Alpine is marginally above the non-metropolitan benchmark;
 - (c) household incomes across the Shire of Alpine are 11% to 12% lower than the non metropolitan average. This is partly reflected in the high number of residents aged 65 plus who have a low income level or do not record an income such as if they are living off savings;
 - (d) using the SEIFA index, residents of the Shire of Alpine are slightly more disadvantaged than other municipalities on average. The LGA is ranked 35 out of 80 LGAs in Victoria

¹⁸ The Commission recognises that on review, the key likely disbenefit of 'problem gambling' has for convenience been treated under the heading of 'social impacts' in various instances: see *Mount Dandenong Tourist Hotel Pty Ltd v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted: see, for example: *Mount Alexander Shire Council* at [178] and following per Dwyer DP. For completeness the Commission considers both the economic and social impacts of problem gambling in its assessment of this Application.

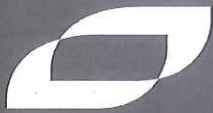
¹⁹ See *Bakers Arms Hotel* at [113] per Code PM and Nelthorpe M; *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J.



(where 1 is the most disadvantaged). Of the 35 rural municipalities in Victoria, the Shire of Alpine ranks better than most at 21 of 35;

- (e) another factor influencing the SEIFA ranking is the fact that a large portion of Myrtleford residents are of Italian heritage, and therefore many of the residents do not describe their English as good or indicate that they left school early; and
- (f) Myrtleford Lodge is a retirement village located in the small Decile 1 area to the west of the Premises. Many of these residents are retired and report no income which heavily impacts the SEIFA ranking and thus the index fails to capture the true level of disadvantage in this area where it relates to the potential of problem gambling.

- 54. In considering the extent to which any new expenditure may give rise to problem gambling, the manner in which gambling is to be conducted at the Premises is also a relevant factor. Mr Watt gave evidence to the Commission that a focus of his role is to ensure that the Applicant maintains compliance with its responsible service of gaming obligations. He described that the Applicant utilises the expertise and resources of Leigh Barrett from Leigh Barrett & Associates with regards to the responsible service of gaming and harm minimisation procedures and principles.
- 55. The Pre-Hearing Inspection and Compliance Report dated 25 February 2016 showed an issue of concern with regards to a staff member utilising an EGM outside of the Premises' opening hours. The Commission is satisfied upon the basis of the oral evidence given by Mr Watt that the Applicant has taken this matter very seriously and has endeavoured to rectify this problem and ensure a similar occurrence does not happen in the future. The Commission is satisfied that the Applicant understands its obligations in relation to problem gambling and responsible service of gambling and that it approaches its obligations seriously.
- 56. Mr Quick concluded in the Urbis Report that problem gambling does have an economic cost relating to the provision of service, for example, the financial losses of the gamblers themselves and other support services which deal with the problems of gamblers and their families and friends. He conceded that while a certain level of problem gambling exists in the region he considers that the change in the level of problem gambling will be minimal in the Shire of Alpine. Subsequently, Mr Quick opined that the economic cost would also be negligible.
- 57. The Commission finds that this Application will result in new expenditure of approximately \$122,900 to \$171,352 in the first 12 months. It accepts that a proportion of this expenditure will be associated with problem gambling. Further, the Commission finds that the area surrounding



the Premises does not present as particularly vulnerable to problem gambling and is satisfied that the potential for an increase in problem gambling is low. The Commission is also satisfied that the Applicant has in place appropriate systems, policies and procedures to endeavour to ensure compliance with its responsible service of gambling obligations. As such, while the Commission finds that there is an economic dis-benefit associated with problem gambling as a result of this Application, it places a low weight on this factor.

Finding on economic impact

58. After considering the economic benefits of the proposal and balancing these against the detriments, the Commission considers that, on balance, the proposal is likely to have a moderate positive economic impact.

Social Impacts

59. The material before the Commission, together with the evidence adduced at the public hearing, details a range of social benefits and dis-benefits associated with the Application.

Improved facilities enabling a greater range of services

60. The proposed development works which will occur if this Application is granted, as detailed above, will result in an improvement of social opportunities for members and visitors to the Club. The development will allow the Premises to serve a wider patronage, including visitors from outside of Myrtleford. Access to improved facilities is an outcome which the Commission²⁰ and VCAT²¹ have regularly determined is a positive social impact associated with applications of this nature.

61. The Commission accepts that the introduction of the EGMs at the Premises will enable the Applicant to renovate and develop its existing facilities, enabling a greater range of services. The Commission regards access to such improved facilities and a greater range of services as a positive social impact upon which it places a moderate weight.

Increased gaming opportunities for those who enjoy gaming

62. Mr Quick detailed in the Urbis Report that the increased investment in EGMs results in a social benefit for those who enjoy gaming, through the increase in variety of available machines.

²⁰ See, for example, *Application by Glenroy RSL* [2015] VCGLR (22 October 2015) (Commissioners Cohen and Versey).

²¹ See, for example, *Bakers Arms Hotel*.



63. The Commission has had regard to the lack of gaming competition in close proximity to the Premises and the inability for patrons to readily gamble elsewhere. The Commission finds that granting approval for the Application will better serve the needs of gaming patrons through providing additional variety in the EGMs available. The Commission considers this to be a positive social outcome to which it ascribes a low weight.

Increased community contributions

64. As outlined above, the Applicant made assurances to the Commission that, should the Application be granted, it will make additional contributions to various local community groups of over \$100,000 per annum within a two year period.

65. The Commission recognises that community contributions may have both an economic and social impact. The social impact from such contributions is often positive, as the funds can be put towards 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 the Commission does not conflate this benefit with the economic benefit associated with such contributions.

66. In the Urbis Report, Mr Quick notes in relation to the proposed community contributions "*while there is an economic value of those activities undoubtedly, the social value created far exceeds a dollar value. The ability of the Club in a small country town to contribute to local community and sporting groups, promote social interaction and general well being presents a very important social benefit of this application*".

67. The Commission finds that the additional community contributions will not occur if the Application is refused. In assessing the weight to be given to this social benefit, the Commission notes that the benefit is somewhat more significant in rural communities such as Myrtleford, where community organisations have comparatively limited opportunities for sponsorship. Accordingly, the Commission considers that the community contributions and the impact they will have on local community organisations to be a social benefit which is given a moderate weight.

Possibility of increased incidences and the impact of problem gambling on the community

68. Wherever accessibility to EGMs is increased there is always a risk of increase in problem gambling, which leads to other costs such as adverse health outcomes, family breakdowns and other social costs. Accordingly, the Commission accepts that there is a potential for negative social costs through possible increased problem gambling expenditure.



69. Mr Quick concludes in the Urbis Report that the change in the level of problem gambling from this Application will be minimal.
70. The Commission refers to and relies upon the evidence set out in paragraphs [53]-[56] above with respect to the economic impact of problem gambling on the community.
71. The Commission finds that the area surrounding the Premises does not present as particularly vulnerable to problem gambling and is satisfied that the potential for an increase in problem gambling is low. Consequently, the Commission finds that the social disbenefit associated with problem gambling as a result of the Application is a low risk, and thus a negative social impact, on which it places a low weight in this Application.

Community attitude

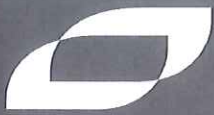
72. The Applicant provided the Commission with a number of letters from local community members expressing their support for the Application. The Commission notes that the Applicant did not undertake any research or surveys to ascertain community views more generally.
73. While the Commission considers that community attitudes are a relevant consideration when determining applications of this nature, given the very limited nature of the material presented by the Applicant in this regard, the Commission makes no finding in relation to this consideration.

Net economic and social impact

74. The no net detriment test in s 3.4.20(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. This test will be satisfied if, following the weighting 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.²²
75. After consideration of the material before it, including the evidence provided at the public hearing and weighed as outlined above and summarised in tabular form at Appendix 1 of these Reasons for Decision, the Commission has concluded that there is likely to be a net positive social and economic impact to the well being of the community and the municipal district in which the Premises are located if the Application is approved.

Other relevant considerations

²² *Mount Alexander Shire Council* at [52] per Dwyer DP.



76. 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 regional limit. The Commission notes that there remains a discretion to determine whether or not to approve the Application.
77. The Commission is satisfied that the Applicant understands that it will continue to act in accordance with its obligation, so far as is reasonable, to take measures to prevent problem gambling. Further, the Commission is not aware of any other matter that would warrant it to refuse to grant this Application. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the Application.

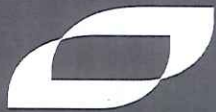
The preceding paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy, Deputy Chair and Ms Deirdre O'Donnell, Commissioner.

Appendix One

Summary of social and economic impacts

Economic impacts

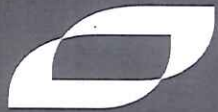
| | Impact | Paragraph Reference | Comments relevant to weight |
|---------|---|---------------------|--|
| Benefit | Gaming expenditure not associated with problem gambling | [31] to [35] | <p><i>The portion of new expenditure not attributable to problem gambling is an economic benefit.</i></p> <p><i>The Premises is a small venue with relatively low levels of EGM expenditure. While statistics show a level of disadvantage in the area, these statistics are influenced by the elderly population of Myrtleford.</i></p> <p><i>The anticipated extent of the new expenditure at the Premises is expected to be relatively low.</i></p> <p><i>Low weight.</i></p> |
| | Community contributions | [36] to [39] | <p><i>The proposed community contributions of \$100,000 per annum represent an increase of approximately 40% on previous donations.</i></p> <p><i>These contributions will result in a positive economic impact on community groups operating in Myrtleford.</i></p> <p><i>Low weight.</i></p> |
| | Value of development of the premises | [40] to [44] | <p><i>The developments are expected to increase the number of visitors to the Premises and create an increase in supply contracts for local suppliers that the Applicant uses.</i></p> <p><i>Moderate weight.</i></p> |
| | Employment creation | [45] to [47] | <p><i>It is expected that, upon completion of the development works, two new full time positions at the Premises will be created. These employees will most likely be from the local municipality.</i></p> <p><i>The additional employment is a positive economic benefit.</i></p> <p><i>Low weight.</i></p> |
| | Value of other expenditure in Myrtleford | [48] to [49] | <p><i>The development is expected to attract more tourists to Myrtleford. It is likely these tourists will spend money in the community generally.</i></p> |



| | | | |
|-------------------|--|--------------|---|
| | | | <p><i>This is a positive economic benefit, but uncertain but uncertain as it is dependent on the development achieving the hoped for results.</i></p> <p><i>Low weight.</i></p> |
| Disbenefit | Possibility of increased incidences and impact of problem gambling | [50] to [57] | <p><i>Expected to be a low risk given the low number of EGM numbers at the Premises, the level of anticipated new expenditure and the socio-economic characteristics of the community in the area surrounding the Premises.</i></p> <p><i>Low weight.</i></p> |

Social impacts

| | Impact | Paragraph Reference | Comment relevant to weight |
|-------------------|---|----------------------------|--|
| Benefit | Improved facilities enabling a greater range of services | [60] to [61] | <p><i>The introduction of additional EGMs at the Premises will enable the Applicant to renovate and improve facilities at the Premises, enabling a greater range of services.</i></p> <p><i>Moderate weight.</i></p> |
| | Increased gaming opportunities for those who enjoy gaming | [62] to [63] | <p><i>The Application will better serve the needs of gaming patrons through providing a greater variety and number of EGMs.</i></p> <p><i>Lack of gaming competition in close proximity to the Premises.</i></p> <p><i>Low weight.</i></p> |
| | Increased community contributions | [64] to [67] | <p><i>Level of community contributions and the impact on local community organisations to be a social benefit.</i></p> <p><i>Moderate weight.</i></p> |
| Disbenefit | Possibility of increased incidences and the impact of problem gambling on the community | [68] to [71] | <p><i>A proportion of total gaming expenditure at the Premises will be associated with problem gambling.</i></p> |



The area surrounding the Premises does not present as particularly vulnerable to problem gambling. There is relatively low levels of gaming expenditure at the Premises and the Applicant employs appropriate RSG practices at the Premises.

The Commission is satisfied that the potential for an increase in problem gambling is low.

Low weight.