



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 the Polish Community Association in Geelong Inc to amend its venue operator's licence to vary the number of electronic gaming machines at the approved premises, Polish Community Association in Geelong, located at 46-48 Fellmongers Road, Breakwater from thirty-five (35) to seventy-eight (78).

Commission: Ms Deirdre O'Donnell, Deputy Chair
Ms Helen Versey, Deputy Chair

Appearances: Mr John Larkins of Counsel for the Applicant (instructed by LGS Legal)
Ms Louise Hicks of Counsel for the City of Greater Geelong
Ms Caitlin McAlister, Counsel Assisting the Commission

Date of Hearing: 26, 27 and 28 February 2019

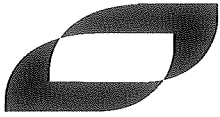
Date of Decision: 12 April 2019
Date of Reasons: 26 April 2019

Decision: The application is refused.

Signed:

A handwritten signature in blue ink, appearing to read 'Deirdre O'Donnell'.

Deirdre O'Donnell
Deputy Chair



REASONS FOR DECISION

INTRODUCTION

1. This is an application by the Polish Community Association in Geelong Inc (the **Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) to amend its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) permitted in the Polish Community Association in Geelong, located at 46-48 Fellmongers Road, Breakwater (the **Premises**), from thirty-five (35) to seventy-eight (78) (the **Application**).
2. The relevant municipal authority is the City of Greater Geelong (the **Council**). By correspondence dated 17 December 2018 to the Commission, the Council stated that it intended to make an economic and social impact submission in relation to the Application, and did so on 11 February 2019.
3. The Commission considered the Application by way of a public inquiry.¹ To this end, a public hearing was conducted over three days, namely 26, 27 and 28 February 2019 (the **Hearing**). The Applicant was represented by Mr John Larkins of Counsel, instructed by LGS Legal. The Council was represented by Ms Louise Hicks of Counsel.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

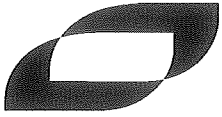
4. Gaming on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (**GR Act**). The GR Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and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

...

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

(a) *to foster responsible gambling in order to-*

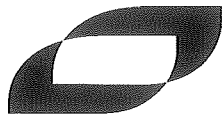
¹ A public inquiry is required to be conducted by the Commission in relation to the Application pursuant to section 28(g)(iii) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (**VCGLR Act**). As to the manner in which the Commission is to conduct an inquiry, see generally Pt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



- (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.*

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

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



- (d) *regulating the activities of persons in the gaming machine industry; and*
- (e) *promoting tourism, employment and economic development generally in the State; and*
- (f) *fostering responsible gambling in order to—*
 - (i) *minimise harm caused by problem gambling;*
 - (ii) *accommodate those who gamble without harming themselves or others.*

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

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

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

8. Sections 3.4.18 to 3.4.19 of the GR Act provide for the manner in which requests for amendments under section 3.4.17(1)(b) are to be made. Relevantly for the Application, section 3.4.18 provides, inter alia, that:

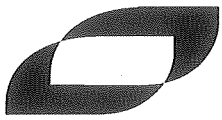
(1) *A request by a venue operator for an amendment of licence conditions—*

...

(c) *in the case of ... an amendment to increase the number of gaming machines permitted in an approved venue, must be accompanied by a submission—*

(i) *on the net economic and social benefit that will accrue to the community of the municipal district in which the approved venue is located as a result of the proposed amendment; and*

(ii) *taking into account the impact of the proposed amendment on surrounding municipal districts—*



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

9. Section 3.4.18(2) provides that if the request is for an amendment to increase the number of gaming machines permitted in an approved venue, the venue operator must give the relevant municipal council a copy of the proposed request before submitting the request to the Commission.²

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

(1) Subject to this section, after receiving a copy of a request for an amendment referred to in section 3.4.18(2), a municipal council may make a submission to the Commission—

(a) addressing the economic and social impact of the proposed amendment on the well-being of the community of the municipal district in which the approved venue is located; and

(b) taking into account the impact of the proposed amendment on surrounding municipal districts.

...

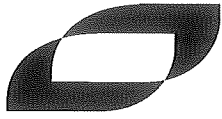
11. Section 3.4.20 sets out matters that are required to be considered by the Commission with respect to such a proposed amendment. Relevantly for this Application, that section provides:

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

(a) the Commission is satisfied that the amendment of the licence does not conflict with a direction, if any, given under section 3.2.3; and

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

² The Applicant provided the Commission with proof of delivery dated 29 November 2018, which the Commission regarded as sufficient evidence for the purposes of s 3.4.18(2) of the GR Act.



- (c) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the net economic and social impact of the amendment will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located;*

...

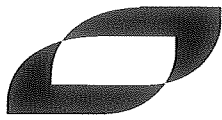
12. Section 3.4.20(1)(c) provides for what is now commonly described as the '*no net detriment*' test. It requires the Commission to be satisfied that there is no net detriment arising from the approval through positively and objectively establishing that the net economic and social impact will not be detrimental to the well-being of the community.³
13. The GR Act does not specify the matters that the Commission must consider in deciding whether the '*no net detriment*' test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:
- (a) the likely economic impacts of approval;
 - (b) the likely social impacts of approval; and
 - (c) the net effect of those impacts on the well-being of the relevant community.⁴
14. As such, the '*no net detriment*' test is a composite test requiring consideration of a single net impact in economic and social terms on the well-being of the community.⁵ The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.
15. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues, and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.⁶ On review, decisions in the Victorian Civil and Administrative Tribunal (VCAT) have held that for impacts that may be both economic and social – for example the benefits of gaming consumption – it does not matter whether the impact is considered on

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

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

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

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



the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.⁷ The Commission has adopted the same approach as VCAT in setting out a table of likely economic and social benefits both to enhance clarity of Commission decisions and facilitate greater consistency between the Commission and VCAT.⁸

16. If the Commission is not satisfied that the 'no net detriment' test is met, that is clearly fatal to the application before it, as given the opening words of section 3.4.20(1) of the GR Act, satisfaction of the test is a mandatory pre-condition to approval. However, although section 3.4.20(1) sets out certain mandatory considerations for the Commission, the provision is not exhaustive. If the Commission is satisfied that the 'no net detriment' test is met, it still has an ultimate discretion as to whether or not to grant the approval.⁹ The Commission must decide whether to make the proposed amendment, with or without any changes from that proposed by the applicant, even where the applicant has satisfied the minimum threshold of the 'no net detriment' test.¹⁰
17. In considering the exercise of this discretion:
 - (a) it must be exercised having regard to the purposes of the GR Act and, in particular, the specific purposes of Chapter 3 of the GR Act dealing with the regulation, supervision and control of gaming machines;¹¹ and
 - (b) it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the GR Act as a whole.¹²
18. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*¹³ that, if all of the mandatory considerations under the GR Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval - other than in relatively rare or

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

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

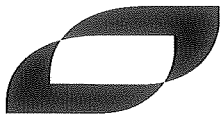
⁹ See *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M; see also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [97] and following per Dwyer DP (with respect to section 3.3.7 of the GR Act).

¹⁰ GR Act, section 3.4.20(2).

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

¹² *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M. As to policy principles identified for consideration, see the *Romsey* case (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

¹³ [2013] VCAT 101, [98].



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

19. Finally, pursuant to section 9(4) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)*, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation.
20. On 16 October 2013, a Ministerial guideline was published in the Victorian Government Gazette pursuant to section 5 of the VCGLR Act concerning applications for approvals of venues for EGMs and children's play areas incorporated in the venue. This guideline concerned the assessment of the suitability of premises for gaming. As such, it appears primarily to apply to a premises applying to be a new gaming venue, rather than an increase in the number of EGMs at an existing gaming venue. While this guideline is therefore not directly applicable to the Application, the Commission's view is that it is proper for the Commission to have regard to the underlying policy intent of such a guideline (which in this instance appears to relate to the legislative objective under section 1.1(2)(ab) of the GR Act that minors are neither encouraged to gamble nor allowed to do so) when considering the Application.

MATERIAL BEFORE THE COMMISSION

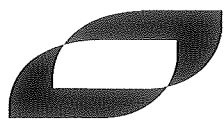
21. Before the Hearing, the Applicant provided the Commission with the following material in support of its Application:
 - (a) application form – amendment to venue operator licence – vary gaming machines received by the Commission on 29 November 2018 (the **Application Form**);
 - (b) social and economic impact statement prepared Mr Rhys Quick, director of Urbis (**Urbis**), dated 26 November 2018 (the **First Urbis Report**), and the second Urbis Report prepared by Mr Quick, dated 24 February 2019 (the **Second Urbis Report**);
 - (c) financial analysis by Mr David Baldi, general manager for Mercury Group Victoria Inc (**Mercury**), dated November 2018¹⁴ (the **Mercury Financial Analysis**);
 - (d) expenditure report prepared by Mr Clyde Hillier, director of Metro Management Services (**Metro**), as amended on 11 February 2019 (the **Metro Report**);
 - (e) witness statement of Ms Jacqueline Hutchison, compliance officer of Mercury, dated 4 November 2018;

¹⁴ The revised version was provided to the Commission on 28 January 2019.



- (f) witness statement of Mr Henry Szkuta, secretary of the Applicant, dated 4 November 2018;
- (g) witness statement of Mr Jacek (Jack) Karpinski, assistant treasurer of the Applicant, dated 30 October 2018;
- (h) witness statement of Ms Eufemia Asenrenner, member of the Applicant, dated 28 October 2018;
- (i) witness statement of Mr Jacek Tomaszewski, member of the Karakowiak Dance Ensemble, dated 28 October 2018;
- (j) witness statement of Mrs Tanya Jeynes, secretary of the Breakwater Eagles Soccer Club (**BESC**), dated 28 October 2018;
- (k) witness statement of Mr John Jeynes, president of the BESC, dated 28 October 2018;
- (l) witness statement of Mr Frank Definski, member of the Applicant, dated 28 October 2018;
- (m) witness statement of Mr Stan Jakubowski, member of the Applicant, dated 28 October 2018;
- (n) witness statement of Mr Mick Hassett, director of 2MH Consulting (sports facility design consultancy firm), dated 30 October 2018;
- (o) witness statement of Ms Andrea Tournier, venue manager of the Premises, dated 21 February 2019;
- (p) Applicant's financial statements for the financial year ending 30 June 2018, including audit report of Mr Michael Shulman, partner of Stannards Accountants and Advisors Pty Ltd (**Stannards**);
- (q) a copy of the public notice appearing in the Geelong Advertiser newspaper dated 3 December 2018;
- (r) letter from Mr Casey Tydens, director of Casey Tydens Consulting Pty Ltd, dated 20 February 2019, enclosing re-development plans for the Premises; and
- (s) various photographs of members of the Applicant.

22. On 11 February 2019, the Council provided the Commission and the Applicant with an economic and social impact submission in respect of the Application, which included both the Council's Response to the Application and a Social and Economic Impact Assessment prepared by Dr Kate Kerkin, director of K2 Planning, dated February 2019 (together, the **Council Report**).



23. The following material, prepared by Commission staff, was provided to the Applicant and the Council and considered by the Commission:
- (a) a report titled *Economic and Social Impact Report* dated February 2019 (the **VCGLR Report**); and
 - (b) a report titled *Pre-Hearing Inspection and Compliance Report* dated 22 February 2019 (the **Pre-Hearing Report**).
24. In addition, the Commission received correspondence, dated between January and February 2019, in opposition to the Application from the following local community organisations:
- (a) Geelong Inter-Church Social Justice Network;
 - (b) Barwon Health;
 - (c) Encompass Community Services; and
 - (d) Diversitat Aged Support.
25. The Commission also received letters, dated between January and February 2019, from local residents and persons residing in neighbouring local government areas (**LGAs**) in opposition to the Application.
26. In the Hearing, the Applicant provided the following further material to the Commission in relation to the Application:
- (a) "State Football Facilities Strategy to 2026";
 - (b) Bank of Melbourne Indicative Banking Proposal for the Applicant;
 - (c) letter of instruction from LGS Legal to Metro, dated 12 February 2019;
 - (d) previous drafts of the Metro Report;
 - (e) Applicant's staff policy handbook;
 - (f) Applicant's staff listing, including residential postcode details;
 - (g) email communication from the Council to LGS Legal and Mercury, dated 6 March 2018;
 - (h) email communications between Mercury and the Council, dated 29 May 2018; and
 - (i) draft proposed conditions to attach to approval of the Application, were the Commission to approve the Application.
27. In the Hearing, the Council provided to the Commission:



- (a) a diagram, titled Postcode 3219, indicating the 2018 burglary rate within 2.5km of the Premises,
 - (b) a list prepared by RACV of the top 10 riskiest suburbs in 2018; and
 - (c) population forecasts for 2016-2036.
28. The following witnesses gave oral evidence at the Hearing:
- (a) Mr Henry Szkuta, secretary of the Applicant;
 - (b) Mr David Baldi, general manager for Mercury;
 - (c) Mr Clyde Hillier, director of Metro;
 - (d) Ms Jacqueline Hutchison, compliance officer of Mercury;
 - (e) Mr Rhys Quick, director of Urbis;
 - (f) Ms Andrea Tournier, venue manager of the Premises; and
 - (g) Dr Kate Kerkin, director of K2 Planning.
29. After the Hearing, the Applicant provided the Commission and the Council with revised proposed conditions¹⁵ to attach to approval of the Application, were the Commission to approve the Application.
30. Both the Applicant and the Council provided the Commission with closing written submissions, and replies to each other's written submissions.
31. Prior to the determination of this matter, both of the Commissioners visited the Premises.

DECISION AND REASONS FOR DECISION

Background

The Applicant

32. The Applicant came into existence in the early 1950s when it was set up by first-generation Polish migrants in the City of Greater Geelong¹⁶ as an organisation dedicated to promoting

¹⁵ See paragraph 26(i) above.

¹⁶ Where reference is made in these reasons to the City of Greater Geelong, this is a reference to the local government area (LGA).

Polish culture. In the early 1980s, the Applicant purchased the Premises for the purposes of promoting the cultural and social connections of Greater Geelong's Polish community members. While the Applicant's operation of the Premises has evolved to include members of the broader local community, the strong focus on Polish culture and tradition has not changed, such as celebrating Polish national and religious events at the Premises,¹⁷ and traditional Polish activities.¹⁸

33. The Applicant has historically supported local sports groups, in particular the BESC, through the provision of free usage of the Premises' soccer pitches and soccer change room facilities as discussed in paragraph 40 below.¹⁹
34. In the 2017/2018 financial year, the Applicant made \$40,000 in-kind contributions for the BESC in the form of usage of the Premises' soccer facilities free of charge. In addition, the Applicant makes an annual cash contribution in the sum of \$4,000 towards BESC sponsorship.²⁰

Location

35. The Premises are located at 46-48 Fellmongers Road, Breakwater in the City of Greater Geelong. They are situated on the southern side of Fellmongers Road within the Industrial 1 Zone. Immediately to the north of Fellmongers Road and the Premises are residential zones. The Geelong Racecourse is also located to the north of Fellmongers Road and the Premises. To the north-west of the Premises are the northern boundaries of the Armstrong Creek Urban Growth Area.²¹ To the east of the Premises is the Geelong Combined Leagues Club (**Buckley's**).²²
36. The City of Greater Geelong is a regional LGA located 75km south-west of Melbourne and covers an area of 1,248 square kilometres. Major centres in the City of Greater Geelong include Geelong, Ocean Grove, Lara and Leopold. According to the VCGLR Report, the City of Greater Geelong has an estimated adult population of 196,065, which ranks it 1st out of the 13 regional municipalities with regard to population size. The annual rate of population growth projected by the Department of Environment, Land, Water and Planning (**DELWP**) is 2.6% as compared with

¹⁷ The Applicant celebrates at the Premises Polish Independence Day, Constitution Day, Polish *Wigilia* and *Smingus Dyngus*.

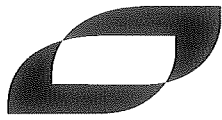
¹⁸ At the Premises, the Applicant hosts Polish dancing, Polish conversation sessions, Polish cooking classes, Polish choirs, and Polish seniors' club meetings.

¹⁹ The Applicant also makes in-kind contributions towards other community groups in the form of provision of usage of the Premises free of charge or at a reduced cost.

²⁰ The Applicant also makes an annual cash contribution to the Geelong Darts Association for sponsorship.

²¹ The Armstrong Creek Urban Growth Area is the largest Greenfield development in Geelong, and is envisaged to be a natural extension of the Geelong urban area providing for around 22,000 lots for some 55,000-65,000 residents at capacity.

²² Buckley's is the largest gaming venue in the LGA.



the Victorian average of 2.3%. Greater Geelong's percentage of population over 50 years of age in 2019 (35%) is projected by DELWP to be higher than the Victorian average (31.3%).

37. The unemployment rate in the City of Greater Geelong as at September 2018 (6.7%) was the second highest level out of the 13 regional municipalities and the tenth highest level in Victoria and above the regional rate (5.8%) and in Victoria (5.3%). The homelessness rate in Greater Geelong is ranked ninth by regional LGAs. The area was ranked twelfth for pensions and allowances per 1,000 adults by regional LGAs. The crime rate in Greater Geelong is ranked twelfth by regional LGAs. Housing stress in Greater Geelong is ranked the highest by regional LGAs in Victoria.
38. Greater Geelong (together with the Borough of Queenscliffe) is subject to a limit on the maximum permissible number of gaming entitlements, in accordance with a Ministerial Order pursuant to sections 3.2.4 and 3.4A.5(3A) of the GR Act. The maximum permissible number of gaming machine entitlements is 1,421.²³ Currently, there are 28 gaming venues within the City of Greater Geelong (together with the Borough of Queenscliffe) with approvals to operate a total of 1,467 EGMs, but with 1322 entitlements currently attached and EGMs operating.²⁴
39. Greater Geelong has an EGM density of 6.6 EGMs per 1,000 adults, which is 9.4% less than the regional LGA average (7.3) and 25.2% more than the State average (5.3). This ranks the City of Greater Geelong as fifth lowest by regional LGAs in terms of EGM density per 1,000 adults. Also, in the 2017-18 financial year, the City of Greater Geelong had an average gaming expenditure of \$599 per adult (based on DELWP data from 2018), which is 0.4% less than the regional LGA average (\$602) and 12.5% more than the State average (\$533). Applying the estimate of increased gaming expenditure as received from the Applicant in the first year of operation of the additional 43 EGMs, approval of this Application would result in an increase in average gaming expenditure per adult of an estimated 0.14%. In the 2017/2018 financial year, the expenditure on gaming for the City of Greater Geelong was \$117,520,489.61. Of that amount, the Applicant's 35 EGMs at the Premises had generated \$1,693,680.69.

Nature of Premises

40. The Premises include:

- (a) the White Eagle House main building (the **Main Building**) in the centre of the Premises;

²³ See Ministerial Order under sections 3.2.4 and 3.4A.5(3A) of the GR Act dated 20 September 2017 and taking effect on 3 November 2017 (Victorian Government Gazette No. S 318 Wednesday 20 September 2017).

²⁴ It is noted that one of these venues (Barwon Heads Hotel) has closed its gaming room.



- (b) three soccer pitches: two smaller pitches to the north of the Main Building, and a bigger main pitch to the west (the **Soccer Pitches**);
- (c) a warehouse type facility to the south of the Main Building with four soccer change room facilities at the entrance (the **Warehouse**); and
- (d) a children's open playground to the south of the Main Building (the **Children's Playground**).

41. The facilities of the Main Building of the Premises currently comprises:

- (a) a bistro with a seating capacity of 150 people;²⁵
- (b) an alfresco area with a seating capacity of 37 people;
- (c) a children's games room;
- (d) a conference hall/function room with a seating capacity of 450 people;²⁶
- (e) a sports bar/members' lounge with a seating capacity of 76 people;²⁷
- (f) a gaming room with 35 EGMs;²⁸ and
- (g) a smoking area with a seating capacity of 22 people.

42. The Applicant leases out the bistro and kitchen to an external caterer. The external caterer manages all operations for the service of food in the bistro and meal preparation in the kitchen. The Applicant intends to continue with this arrangement (were the Application approved).²⁹ The external caterer provides its own staff to work in the kitchen and bistro.

Catchment area of the Premises

43. The '*no net detriment*' test refers to 'the community of the municipal district in which the approved venue is located'. In determining the impact of an application of this nature on a municipal district, previous Commission and VCAT decisions have had particular regard to the

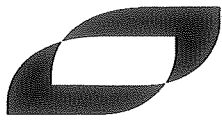
²⁵ The bistro is open 7 days a week for lunch and dinner.

²⁶ Between August 2017-2018, 93 functions were held in the function room: 28 accommodating more than 100 patrons, 20 averaging 60 patrons, 3 averaging 73 patrons, 10 Rock N Roll nights averaging 153 patrons and the remaining functions averaging 84 patrons: First Urbis Report, p15.

²⁷ Sports activities include billiards tables and dart boards. There are also live bands every Friday night between 8pm and 12 midnight.

²⁸ The gaming room is open daily between 10am and 10pm (Sunday to Tuesday), 10am and 11pm (Wednesday), 10am and 12 midnight (Thursday and Saturday), and 10am and 1am (Friday).

²⁹ Transcript of Hearing, Day 1, p48.



area serviced by the relevant premises, which is generally referred to as the 'catchment area'.³⁰ The determination of the likely catchment area in this instance is important in the Commission's consideration of the identity of those residents who will be most affected by the Application in terms of gambling-related benefits and harms.

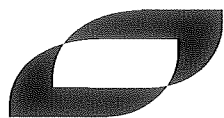
44. The Applicant, under Urbis' guidance, conducted hourly gaming patron surveys at the Premises during three weeks between 5 August 2018 and 19 August 2018 (inclusive). From analysis of these gaming room surveys, Mr Quick submitted that 93% of the gaming room patrons come from within the LGA. The patron surveys also indicated that 44% of the gaming room patrons reside within the immediate 2.5km radius of the Premises (i.e. St Albans Park, Whittington, Newcomb, and Breakwater). Mr Quick also indicated that patrons come from suburbs located within the 5km radius of the Premises, like Highton and Leopold, as well as beyond the 5km radius.
45. In the Council Report, while accepting that the gaming room patrons come from areas within both 2.5kms and 5km of the Premises and beyond, the Council was concerned not to lose focus on the area within 2.5km of the venue, indicating that it was of more relevance in understanding the potential social and economic impacts of the Application.
46. In this instance, the Commission considers that the gaming room patron survey provides a reliable indication of the likely gaming patrons for the Premises, with almost half (44%) of those patrons residing within the immediate 2.5km radius of the Premises, particularly from the suburbs of St Albans Park (18%) and Whittington (12%). Having regard to the material and evidence put forward by the Applicant and the Council, and noting the VCGLR Report analysing the surrounding area as a radius of 2.5km around the Premises, the Commission considers that the appropriate catchment area of the Premises consists primarily of the 2.5km catchment together with its surrounding area out to a radius of 5km.

Issues for determination

47. Pursuant to section 3.4.20 of the GR Act, the Commission cannot grant the Application unless it is satisfied of the following four matters:³¹
 - (a) that the amendment of the venue operator's licence does not conflict with a direction given under section 3.2.3 of the GR Act;
 - (b) that the relevant municipal limit for EGMs applicable to the City of Greater Geelong will

³⁰ See for example, *Romsey No. 2* [2009] VCAT 2275; *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 (7 April 2011).

³¹ The Commission also considered and was satisfied as to the matters set out in section 3.4.20(1)(a) and (d) of the GR Act.



not be exceeded by the making of the amendment the subject of the Application;

- (c) that the net social and economic impact of the increase in EGMs permitted in the Premises will not be detrimental to the well-being of the community of the City of Greater Geelong (the '*no net detriment*' test); and
- (d) if premises are proposed to be added to the Applicant's licence as an approved venue and the Applicant (or an associate of the Applicant) operates an approved venue within 100 metres of the Premises, that the management and operation of the Premises and other approved venues are genuinely independent of each other.

48. If having determined that these matters have been satisfied, the Commission is then required to exercise its discretion under section 3.4.20 to determine whether or not the Application should be granted; that is, whether or not the proposed amendment to the venue operator's licence should be made.³²

A. Directions given under section 3.2.3

49. Pursuant to section 3.4.20(1)(a) of the GR Act, the Commission must be satisfied that the proposed amendment does not conflict with a Ministerial direction, if any, given under section 3.2.3 of the GR Act. There is no relevant direction issued pursuant to section 3.2.3 of the GR Act that relates specifically to this Application.

50. On this basis, the Commission is satisfied that granting the Application would not conflict with a direction given under section 3.2.3 of the GR Act, and therefore considers that the mandatory pre-condition set out in section 3.4.20(1)(a) of the GR Act is satisfied.

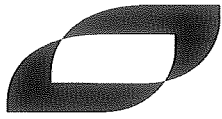
B. Regional cap

51. As noted in paragraph 38 above, the City of Greater Geelong (together with the Borough of Queenscliffe) is subject to a regional cap on the number of EGMs under a Ministerial Order under sections 3.3.4 and 3.4A.5(3A) of the GR Act. The maximum permissible number of gaming machine entitlements in the area covered by the City of Greater Geelong (together with the Borough of Queenscliffe) is 1,421.³³ At the time of the Application, the number of EGM approvals within the combined region is 1,467 with 1,322 EGMs presently in operation.

52. It is the position of the Commission that an approval to increase the maximum permissible

³² An amendment may be made subject to any conditions the Commission thinks fit: GR Act, section 3.4.20(3).

³³ See Ministerial Order taking effect on 3 November 2017 (Victorian Government Gazette No. S 318 Wednesday 20 September 2017) signed on 20 September 2017 by the Hon. Ms Marlene Kairouz.



EGMs at a venue cannot result in a regional cap or municipal limit being exceeded. This is due to the difference between 'Licensed EGM' numbers and 'Attached EGM' numbers:

- (a) 'Licensed EGMs' are the maximum permissible EGMs within an approved venue (i.e. the premises have been considered suitable and approved to install up to this number); and
- (b) 'Attached EGMs' are the number of EGMs (together with a corresponding entitlement) attached and operating at an approved venue.

53. If the total number of 'Licensed EGMs' exceeds the cap, this means that not all approved venues can 'attach' the maximum EGMs at the same time, as this would result in more than the capped number of EGMs operating within the relevant area. As outlined on page 7 of the VCGLR Report, there are already 1,467 Licensed EGMs over 28 gaming venues within the capped region, but only 1,322 Attached EGMs at 27 venues.³⁴ As such, while any approval of this Application would result in the number of Licensed EGMs increasing to 1,510, the number of Attached EGMs would be 1,365 which is within the regional cap.

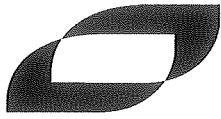
54. Since the introduction of the entitlements regime, the enforcement of capped numbers is managed through applications made under that regime (i.e. where a venue operator applies to the Commission to attach relevant EGM entitlements to an approved venue). At that time, the Commission (via a delegate) determines whether that attachment of EGM entitlements is permissible, taking into account the total current attached EGMs in a particular capped region or municipality and assessed against the relevant cap number.

55. The Commission is satisfied that granting the Application would not cause the relevant regional cap for gaming machines for the City of Greater Geelong (together with the Borough of Queenscliffe) to be exceeded, and therefore considers that the mandatory pre-condition set out in section 3.4.20(1)(b) of the GR Act is satisfied.

C. 'No net detriment' test

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

³⁴ It is noted that one of the 28 gaming venues (Barwon Heads Hotel) has closed its gaming room.



Economic Impacts

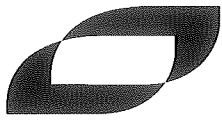
57. The materials before the Commission and the evidence adduced at the Hearing provided the evidentiary basis for a range of economic benefits and disbenefits associated with this Application.

Expenditure on development works

58. The Applicant submits that a potential economic benefit associated with this Application comes from the expenditure on the proposed development works and the associated economic stimulus in the LGA.

59. The scope of the proposed development works will be split into three stages:

- (a) Stage 1 involves an upgrade to the soccer change room facilities at the entrance of the Warehouse of the Premises after immediate deployment of 15 of the new EGMS in the existing gaming room in the Main Building of the Premises, were the Commission to approve the Application. The Applicant submitted that the additional 15 EGMS would allow upgrades comprising of:
 - (i) new female players' change room facilities;
 - (ii) new league standard referee change room facilities; and
 - (iii) an upgrade to the existing unisex player facilities.
- (b) Stage 2 involves enhancing the hospitality offer in the Main Building of the Premises after installation of a further 15 EGMS in the existing gaming room in the Main Building of the Premises, were the Commission to approve the Application, by:
 - (i) moving the bistro area to the existing members' bar and installing an outdoor area on the west side of the new bistro overlooking the soccer pitch;
 - (ii) installing a new children's playroom between the bistro and the function room;
 - (iii) renovating the kitchen;
 - (iv) installing a bar in the new bistro;
 - (v) removing the old bar and installing a central bar;
 - (vi) installing a cool room;



- (vii) renovating the toilets;
 - (viii) refurbishing and extending the gaming room;
 - (ix) installing a new entry and lobby, office, community rooms, and alfresco areas; and
 - (x) renovating the old bistro as a new members' area.
- (c) Stage 3 involves enhancing the quality of the soccer playing surface on the current main pitch of the Soccer Pitches of the Premises with a synthetic surface after installation of a further 13 EGMs in the extended gaming room in the Main Building of the Premises,³⁵ were the Commission to approve the Application.
60. Stage 1 of the proposed development works is expected to cost \$170,000. Stage 2 is expected to cost \$2.75 million. Stage 3 is expected to cost \$1.75 million.
61. The Applicant asserted that without approval of the Application, it would not be in a position to implement the proposed development works. The Applicant indicated (in its proposed conditions, if the Application were granted) that from the grant of the Application the development works would likely take:
- (a) up to one year for Stage 1;
 - (b) up to two years for Stage 2; and
 - (c) up to four years for Stage 3.
62. The Applicant stated that it would need to apply for planning permits for Stages 2 and 3. Further, according to the Mercury Financial Analysis, the Applicant would need to borrow \$2.75 million to complete Stage 2 and \$1.75 million to complete Stage 3.
63. Considering the expected cost of Stage 2 and Stage 3 involve expenditure of \$2.75 million and \$1.75 million respectively, Mr Quick on behalf of the Applicant submitted this impact should be given moderate to high weight.
64. The Council submitted that there was uncertainty from the Applicant's evidence surrounding the timing of completion of the proposed development works, particularly given no planning permit has yet been sought for the works, and Stage 2 and Stage 3 are to be financed from loans that have yet to be applied for. The Council asserted that implementation of Stage 1 was not contingent on approval of the Application based on Mr Szkuta's evidence in the Hearing that the

³⁵ See paragraph 59(b)(viii) above.



changing rooms could be funded from the Applicant's existing profits. Counsel on behalf of the Applicant disputed this assertion as Mr Baldi in the Hearing had indicated that, if the Application was not granted, the land comprising the Soccer Pitches may have to be sold, and therefore there would be no upgrade of changing room facilities (Stage 1). Overall, the Council submitted this impact should be given low weight.

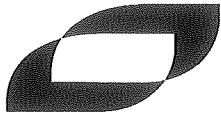
65. In relation to implementation of Stage 1, the Commission accepts the Applicant's evidence that the basis of the Application was that all three stages would be interconnected and dependent on each other proceeding. However, while the Commission accepts that the expected expenditure for all three stages is not inconsequential, the Commission is concerned about a lack of sufficient detail in both the Applicant's written materials and oral evidence in the Hearing as to the extent to which the goods and services required for the proposed development works would in fact be procured within the City of Greater Geelong. None of this specific detail was contained in the Applicant's revised proposed conditions as a means of assisting the Commission in satisfying itself of a minimum expenditure figure to be guaranteed by the Applicant within the City of Greater Geelong. In combination, the Commission does not have before it any clear evidence of how many contractors, subcontractors and tradespeople from the LGA would be involved in Stage 1, Stage 2 and Stage 3.
66. Overall, the Commission considers this expenditure is an economic benefit but, in the circumstances, one that should be given low weight. Further, the Commission is careful to ensure that benefits associated with the development works are not double counted, having regard to the social impact that may result from the works. This aspect is considered further below at paragraphs 128 to 138.

Additional employment

67. According to the Applicant, employment benefits associated with this Application may involve short term employment benefits in the LGA associated with the proposed development works and would involve longer term benefits in the LGA following the introduction of the additional 43 EGMs at the Premises.

Short-term employment

68. No evidence was given at the Hearing regarding using local builders to carry out the works. However, LGS Legal, by an email communication dated 28 February 2019, stated that the Applicant would "accept a condition that requires local builders being used subject to the skill set available". Later in written closing submissions, dated 12 March 2019, LGS Legal stated that



the Applicant would “agree [if the Application were approved] to engage only local labour other than the architect and the synthetic pitch provider”.³⁶

69. In spite of the assertions made by LGS Legal on behalf of the Applicant, the Commission notes that there is a lack of evidence in relation to the expected short term employment benefits for the City of Greater Geelong associated with the proposed development works (related to, but separate from, the economic benefit for the LGA associated with the expenditure on development works considered above). Given that the expenditure associated with the proposed development works has already been separately counted, and because of the lack of detail as to additional short-term employment in the LGA that may be created by the proposed development works, the Commission accords this particular benefit no weight.

Long-term employment

70. In relation to the long-term employment benefits, the Applicant estimated that the operation of an additional 43 EGMs at the Premises would result in 9.25 additional equivalent full time (EFT) positions at the Premises as follows:
- (a) an additional 5.5 EFT positions in the bistro and kitchen; and
 - (b) an additional 3.75 EFT positions in the bar and gaming room.
71. Further, the Applicant indicated that additional casual staff would also be required as a result of a likely increased demand for services.
72. The Council Report addressed the economic impact of the additional employment by stating that there is a lack of sufficient detail as to how many additional jobs are conditional on the additional EGMs, or any guarantee that such additional employment would be filled by locals and therefore of benefit to the local community.
73. Overall, the Commission regards the additional employment as a positive impact. However, given the Applicant’s evidence regarding the external caterer managing all operations for the service of food in the bistro and meal preparation in the kitchen,³⁷ the Commission cannot be satisfied from the evidence before it that the Applicant can necessarily guarantee an additional 5.5 EFT positions for locals in the bistro and kitchen. There was also no undertaking provided in the Applicant’s revised proposed conditions as to a minimal figure for additional EFT positions for locals whilst and so long as any of the additional EGMs operate at the Premises. Further, the

³⁶ As per the changes detailed in the Applicant’s revised proposed conditions: See paragraph 29 above.

³⁷ See paragraph 42 above.



Commission notes that there is uncertainty surrounding when and how many additional staff will be employed at which stage of the works. There was no evidence of any trigger points or milestones by which the additional employment would commence and to what extent. For these reasons, the Commission considers this impact is an economic benefit to the community to which it is appropriate to attribute no to marginal weight.

Community contributions

74. As noted in paragraph 15 above, it does not matter whether impacts are considered on the economic side or the social side, or both, so long as they are included and not double-counted in the ultimate composite test. In this Application, the Commission has adopted the approach it took in *Lynbrook Tavern Pty Ltd at Lynbrook Hotel Premises*³⁸, and has determined to consider the impacts associated with any proposed community contributions as a single impact under the 'Social Impacts' section as set out in paragraphs 128 to 133 below.

Increased gaming competition in the City of Greater Geelong

75. Increasing competition in gaming in the City of Greater Geelong is a factor to be considered by the Commission in light of the statutory purposes of the Act³⁹ and the consumer benefits that derive from competition.

76. In the First Urbis Report, Mr Quick indicated that the main competitor with the Premises is Buckley's with 105 EGMs, which is located approximately 300 metres east of the Premises. He said that, from his analysis of the Applicant's gaming room utilisation surveys conducted hourly at the Premises during three weeks between 10 August 2018 and 16 August 2018 (inclusive), there was a total of seven hours where the gaming room utilisation at the Premises exceeded 70% of its designed capacity. This occurred on Thursday and Friday nights when the Applicant was hosting other activities at the Premises.⁴⁰ Sunday lunchtime was another peak period. He said that on the remaining days of the week, usage of the gaming room was sparse.⁴¹

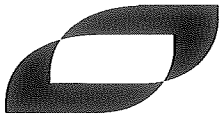
77. In the Metro Report, Mr Hillier gave evidence regarding his estimation of the likely increase in gaming expenditure for the Premises should the Application be granted. He expected that if the Application was granted the gaming expenditure following Stages 1, 2 and 3 of the development works (and, installation of all three tranches of additional EGMs) would increase by

³⁸ *Lynbrook Tavern Pty Ltd at Lynbrook Hotel Premises (Gaming – EGM Increase)* [2018] VCGLR 32 (31 July 2018).

³⁹ See GR Act, s 3.1.1(2).

⁴⁰ Activities on Thursday nights include: Rock N Roll dance lessons, members' cash jackpot and members' raffle. And, activities on Friday nights include: seniors' groups, live entertainments, poker or darts tournaments and the Fortune Friday promotion).

⁴¹ First Urbis Report, p22.

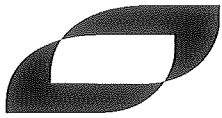


approximately \$800,000 per annum.⁴² He also expected that following the first and second tranche of EGMs (Stages 1 and 2 of the development works), the gaming expenditure would increase by \$308,202 per annum.

78. Taking into account the close proximity of Buckley's and the Premises being an existing venue, Mr Hillier estimated that the transfer rate within the City of Greater Geelong would be approximately 80%. In other words, \$640,000 of the \$800,000 per annum (following completion of all three tranches of the additional 43 EGMs) would be transferred expenditure from other venues in the LGA. Further, he estimated that \$246,000 of the \$308,202 per annum (following completion of the first and second tranche of EGMs), would be transferred expenditure.
79. Having regard to the estimated adult population of 196,065 in the City of Greater Geelong (based on DELWP data from 2018), the Commission notes that this Application, if approved, would:
- (a) increase the total number of attached licensed EGMs in the LGA by 43, to 1,365;
 - (b) increase EGM density in the LGA from 6.6 to 6.8 per 1,000 adults (as compared with the State average of 5.3 EGMs per 1,000 adults and the regional average of 7.3);
 - (c) on the basis of Mr Hillier's figures, would result in an estimated increase of approximately \$160,000 per annum of new expenditure in the LGA (following completion of all three tranches of the additional 43 EGMs), and approximately \$61,640 per annum of new expenditure in the LGA (following completion of the first two tranches of the first additional 30 EGMs); and
 - (d) approval of this Application would result in an increase in average gaming expenditure per adult in the City of Greater Geelong of an estimated 0.14% (following completion of all three tranches of additional EGMs).
80. The Council asserted that the Metro Report made no allowance for the installation delays in the introduction of the third tranche of EGMs, and said there was uncertainty with the expenditure evidence, particularly given that the introduction of all 43 additional EGMs would be potentially years away. As a side note, the Council also indicated in its closing submission that the calculations in the Metro Report were not based on modelling such as Geotech,⁴³ but this fact

⁴² Mr Hillier's calculations are based on the 'busy report' attached to his statement. The 'busy report' provides data on the number of EGMs played and the hourly gaming turnover for those EGMs.

⁴³ The 'Geotech model' predicts the future revenue performance of an increase in EGMs and the proportion of the venue that is being transferred from other venues based on factors such as venue attractiveness, facilities and distance from other venues.



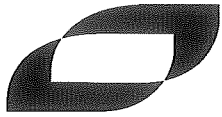
was not at the core of its concern. No evidence was led by the Council contrary to the estimations detailed in the Metro Report. Further, the Commission notes that the Geotech Model is only one method of estimating expenditure.

81. The Council Report indicates that within the immediate 2.5km area around the Premises there are presently 296 EGMs across five venues (including the existing 35 accessible at the Premises), and the EGM density is 8.38 EGMs per 1,000 adults within that 2.5km radius.
82. Considering all matters discussed above, while this impact would be a positive economic benefit, the Commission acknowledges that there are already 1,467 licensed EGMs over 28 gaming venues within Greater Geelong (together with the Borough of Queenscliffe), and that, while the EGM density in the LGA is 9.4% less than the regional average, the EGM density in the LGA stands 25.2% more than the State average.⁴⁴ Accordingly, the Commission considers it appropriate to attribute no to marginal weight to this economic benefit.

Supply contracts and complementary expenditure

83. The Application did not contain any figures or evidence in relation to the economic benefit associated with supply contracts (such as cleaning, EGM servicing and maintenance) or complementary expenditure, and the Applicant did not directly rely on these impacts as a benefit of this Application. While these potential impacts are at times dealt with separately by the Commission, they will be considered together for the purpose of this Application.
84. Complementary expenditure is a potential benefit where it results in increased economic activity in the municipal district in which the premises that are the subject of an application are located. However, the extent of this benefit will depend upon a range of factors, including:
 - (a) the extent to which the expenditure is a consequence of new spending (i.e. as a result of additional people coming to the municipal district as tourists compared to transferred expenditure from other venues within the municipality); and
 - (b) the extent to which that complementary expenditure results in additional spending on local goods and services.
85. In the Mercury Financial Analysis, Mr Baldi considered that the expansion in the number of EGMs would likely generate extra sales in the bistro bar operations. However, as noted in paragraph 42 above, an external caterer manages the operations for the service of food in the bistro and meal preparation in the kitchen, and the Commission had before it a lack of specific

⁴⁴ See paragraphs 39 and 79(b) above.



evidence regarding an increase in actual complementary expenditure in this part of the operations.

86. Overall, on the information available, the Commission considers there is insufficient evidence on these impacts. Even if increased patronage at the Premises is anticipated following any approval of the Application, and such increased patronage could result in increased supply contracts and/or complementary expenditure, there is significant uncertainty as to the extent that any such increase would generate increased economic activity within the local area as opposed to transferred activity within Greater Geelong.
87. For these reasons, the Commission finds that any benefit associated with supply contracts and complementary expenditure for Greater Geelong would be negligible and as such places no weight on this impact.

Gaming expenditure not associated with problem gambling

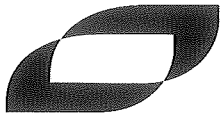
88. To the extent that gaming expenditure is not associated with problem gambling, it has been recognised that such expenditure can be treated as an economic positive.⁴⁵ As Bell J notes in *Romsey No. 2*, this approach also brings to account the benefit obtained from pure consumption by the lone gambler who does not use EGMs for social reasons.⁴⁶
89. The Commission notes from the VCGLR Report that the average net EGM expenditure per adult in the City of Greater Geelong, (based on spending in the 2017/8 financial year), (\$599), is more than the average for the State (\$533), but less the regional average (\$602).⁴⁷
90. As mentioned in paragraph 76 above, Mr Quick submitted that based on the Applicant's gaming room utilisation surveys, the Premises' gaming room is at full utilisation at certain times on Thursday and Friday nights, and peaks on Sunday lunchtimes. He considered that, while the usage of the gaming room on the remaining days of the week is sparse,⁴⁸ the peak utilisation hours indicate a need for additional EGMs.
91. Mr Hillier estimated that the additional 43 EGMs would yield additional gross gaming

⁴⁵ See *Romsey No. 2* [2009] VCAT 2275 [351] per Bell J.

⁴⁶ *Ibid.* Bell J further notes at [352] that the other approach is to say (as Morris J did in *Branbeau Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2005] VCAT 2606 at 79) that gaming extends 'substantial economic and social benefits' to gaming machine users, which treats consumption as a benefit without saying whether it is economic or social. While Bell J states both approaches are correct, for the purposes of this Application, this benefit is treated as an economic benefit.

⁴⁷ See paragraph 39 above.

⁴⁸ First Urbis Report, p22.

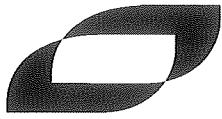


expenditure at the Premises of \$800,000 per annum.⁴⁹

92. Of the gross gaming expenditure derived from the additional 43 EGMs at the Premises, Mr Hillier estimated that 80% would be transferred expenditure from other venues within the City of Greater Geelong, and that approximately \$160,000 per annum (following completion of all three tranches of the additional 43 EGMs) would be new expenditure in the venue.
93. The Council did not lead any contrary evidence to Mr Hillier's estimated gaming expenditure figures for the Premises from the additional 43 EGMs. Dr Kerkin in the Council Report indicated that:
- (a) Buckley's, which is in close proximity to the Premises, generates the third highest EGM expenditure in the LGA;
 - (b) expenditure at Buckley's as at 30 June 2018 combined with the EGM expenditure at the Premises in the last financial year results in a total of \$10,796,380 EGM expenditure per annum between the two venues; and
 - (c) the average gaming expenditure in the LGA is more than the State average (12.5% more).
94. Since there was no contrary evidence to Mr Hillier's estimated gaming expenditure figures for the Premises from the additional 43 EGMs, the Commission accepts Mr Hillier's analysis. However, as a side note, given the significant increase in EGMs in this Application (over half the existing number), the Commission considers that Mr Hillier's calculated sum of the estimated increase in additional gaming expenditure is, on balance, a conservative amount.
95. In assessing the extent of the benefit associated with this increased gaming expenditure, the Commission has had regard to the evidence outlined in paragraphs 97 to 116 below with respect to gambling expenditure associated with problem gambling. In particular, the Commission notes from that evidence the following in respect to the Premises:
- (a) within the immediate 2.5km area from the Premises there are already 296 EGMs over five venues (including the existing 35 accessible at the Premises).⁵⁰ Buckley's is within 300 metres from the Premises with 105 EGMs;
 - (b) the gaming room operates between 12 to 15 hours every day;
 - (c) the City of Greater Geelong has an average gaming expenditure of \$599 per adult (based

⁴⁹ Mr Hillier's calculations are based on the 'busy report': See footnote 31 above.

⁵⁰ See Council Report, p30-31.



on DELWP data from 2018), which is 0.4% less than the regional LGA average (\$602), but 12.5% more than the State average (\$533);

- (d) eight of the thirteen suburbs that are home to the Premises' gaming room patrons as surveyed are relatively disadvantaged with a socio-economic index for areas (SEIFA) below 1,000, and 54% of the surveyed patrons live in those areas. Four of those eight suburbs are significantly disadvantaged with a SEIFA index below 970, and are in the bottom 20% of the most disadvantaged areas in Victoria (Newcomb – Moolap, South Geelong, Thomson, Breakwater, and Whittington) where there are significant levels of unemployment;⁵¹
- (e) the unemployment rate in the City of Greater Geelong as at September 2018 (6.7%) was the second highest level out of the 13 regional municipalities and the tenth highest level in Victoria and above the regional rate (5.8%) and for the State of Victoria (5.3%); and
- (f) income levels are lower in the areas in close proximity to the Premises relative to the rest of the City of Greater Geelong.

96. Generally, the Commission considers that the portion of new expenditure not attributable to problem gambling is an economic benefit. Having regard to the matters discussed in paragraphs 88 to 95 above regarding the Premises and in the section below related to problem gambling, the Commission considers that portions of new expenditure at these Premises would likely be associated with problem gambling which reduces the economic benefit of new expenditure. Accordingly, the Commission attributes this benefit no to marginal weight.

Gambling expenditure associated with problem gambling

97. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an economic disbenefit.⁵² In assessing this impact (and other effects of problem gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gambling undertaken by those who may be defined as 'problem gamblers', as well as those who may be otherwise regarded as 'low-risk' or 'moderate-risk' gamblers.

⁵¹ See Council Report, p46.

⁵² The Commission recognises that, on review, the key likely disbenefit of 'problem gambling' has, for convenience, been treated under the heading of 'social impacts' in various instances: see *Mount Dandenong Tourist Hotel Pty v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted; see, for example, *Mount Alexander Shire Council* [2013] VCAT 101 at [178] and following per Dwyer DP. For completeness, the Commission considers both the economic and social impacts of problem gambling in assessing this Application.



98. In assessing the extent of this disbenefit, the Commission has had regard to the expenditure evidence set out in paragraphs 88 to 96 above. In doing so, the Commission recognises that in considering this aspect of the '*no net detriment*' test it does not include consideration of transferred expenditure because such expenditure cannot be said to exacerbate problem gambling.⁵³

The potential vulnerability of the City of Greater Geelong to gambling-related harms

99. The extent to which it can be considered that new expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with this Application, will be influenced by the socio-economic status and potential vulnerability of the community of the City of Greater Geelong, and particularly those living in the catchment area surrounding the Premises. This is because communities characterised by socio-economic disadvantage and greater vulnerability are considered to be more susceptible to the harms arising from problem gambling.⁵⁴

100. In relation to the Premises, the Applicant accepts that there is an elevated level of disadvantage in the immediate 2.5km area surrounding the Premises with 63% of residents being recorded in the top two most disadvantaged SEIFA deciles, as are 21% of residents within the 5km radius of the Premises.⁵⁵

101. In relation to disadvantage in socio-economic terms, the Commission notes from the VCGLR Report that the SEIFA scores indicate that:

- (a) housing stress in Greater Geelong is ranked the highest by regional LGAs in Victoria;
- (b) income levels are lower in areas in close proximity to the Premises relative to the rest of the City of Greater Geelong; and
- (c) the unemployment rate in the City of Greater Geelong as at September 2018 (6.7%) was the second highest level out of the 13 regional municipalities and the tenth highest level in Victoria and above the regional rate (5.8%) and in Victoria (5.3%).

⁵³ See *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192 at [11] per Code PM and Nelthorpe M; *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J.

⁵⁴ This approach accords with the VCAT's treatment of this issue in *Molwin Pty Ltd v Mornington Peninsula SC* [2015] VCAT 1982 (23 December 2015), [68].

⁵⁵ First Urbis Report, p34.

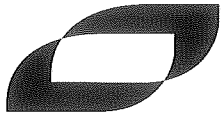


102. In his Urbis reports, Mr Quick submitted that various factors suggest that it is unlikely the risk of problem gambling at the Premises would increase should this Application be granted, including that:

- (a) the City of Greater Geelong is expected to experience a population growth of 1.3% per annum between 2016 and 2021 and 1.6% between 2021 and 2026. Relevantly, the Leopold-Newcomb district, where the Premises are situated, is predicted to experience a population growth of 1.3% per annum. Mr Quick expected that the population growth in the LGA would likely be faster than previously forecast by DELWP because their forecast for 2016 was well below the Census figure for the 2016 population;
- (b) the Premises are positioned to serve the Armstrong Creek growth area to the south, and as the population grows in Armstrong Creek, residents will have simple access to the area near the Premises.⁵⁶ The demographic profile in Armstrong Creek is not expected by Mr Quick to resemble the same elevated level of disadvantage as acknowledged by the Applicant in the immediate 2.5km radius;
- (c) there are a range of other entertainment options for patrons at these Premises besides gaming, including a bar, a bistro and an alfresco area, plus numerous activities and promotions held at the Premises;
- (d) the gaming room has recently been screened to reduce visibility from outside the gaming room;
- (e) the Premises are located within an area where access to EGMs is high (like Buckley's) and gaming is already present at the Premises (35 EGMs);
- (f) the Premises are located within an industrial area and removed from major uses that generate large amounts of activity. It is a 'destination' venue'; and
- (g) household income within the 5km radius catchments is 4.4% above the non-metro Victoria average.

103. In contrast, the Council argued that the social and economic factors in paragraph 101 above would suggest that the risk of problem gambling at the Premises would likely be increased should this Application be granted. The Council also submitted:

⁵⁶ See paragraph 35 above.



- (a) there is no evidence that residents of the Armstrong Creek growth area will access the Premises, and there is no evidence from the gaming room patron survey that patrons come from that area. Residents of Armstrong Creek are more likely to access EGMs at the Waurm Ponds Hotel, Grovedale Hotel, Geelong RSL, and Valley Inn Hotel;
- (b) based on the City of Greater Geelong – Gaming Policy Framework (the **Framework**), the Premises are not a ‘destination venue’, rather the Framework’s criteria for a ‘destination venue’ more clearly matches Buckley’s which is 300 metres from the Premises;
- (c) twenty-five of the twenty-nine statistical areas within 2.5km of the Premises are disadvantaged areas (including the suburb of Breakwater). Moolap, South Geelong, Thomson, Breakwater, and Whittington have a SEIFA index below 970, and are in the bottom twenty percent of the most disadvantaged areas in Victoria. Eighteen percent of people living in Newcomb – Moolap (to the north of the Premises) live below the poverty line, therefore are least able to bear the costs of additional gambling-related harm;
- (d) there are high levels of unemployment in the immediate 2.5km radius of the Premises, in particular, Whittington (10.4%), South Geelong – Thomson (8.4%), Breakwater (7.3%) and Newcomb – Moolap (6.4%);
- (e) 25.6% of Whittington residents live on the lowest income level compared to the income level of the LGA overall;
- (f) the suburb of Whittington is immediately adjacent to the Premises and has 60% of children who are vulnerable to one or more areas or domains of the Australian Early Development Census (**AEDC**), and 47.5% of children who are vulnerable to two or more areas or domains of the AEDC;⁵⁷ and
- (g) the burglary rate for the suburbs of Breakwater, East Geelong, Newcomb, St Albans, Thomson and Whittington is 1 in 39 homes and in the top 10 riskiest suburbs in the State (based on the RACV data from 2018).

RSG practices

104. In considering the extent to which any new expenditure may give rise to an increased risk of problem gambling, the manner in which gaming is to be conducted at the Premises is also a

⁵⁷ The AEDC is a nationwide data collection that shows how young Australian children have developed as they start their first year of full-time school. The areas or domains of the AEDC are linked to predictors of good adult health, education and social outcomes.

relevant consideration. Specifically, in relation to the Applicant's Responsible Service of Gaming (RSG) practices:

- (a) Mr Quick was of the view that the Applicant's staff in the gaming room are experienced in identifying any potential risk in gambling behaviour. While he acknowledged there is an elevated level of disadvantage in the immediate 2.5km area surrounding the Premises, he submitted that the staff in the gaming room of the Premises are experienced in RSG, and get to know their regular patrons;
- (b) Mr Szkuta, secretary of the Applicant, gave evidence that he, along with other Board members of the Applicant, have completed a Responsible Gaming Initiative Training Program with Mercury RSG Training;
- (c) Ms Hutchison, compliance officer of Mercury, stated that, having conducted an audit of the Applicant's current RSG processes, she found no matters of concern regarding the Applicant's RSG practices; and
- (d) Ms Tournier, venue manager of the Premises, stated that RSG practices are well embedded and an RSG incidents register is maintained by the Applicant. In the Hearing, she explained that she leads other gaming staff by example in approaching gaming patrons when they bet more than they normally do for the purpose of checking whether they need a break from the gaming room. The Commission was particularly impressed by Ms Tournier as a witness, and considers that she demonstrated she is both insightful and caring in her role at the Premises.

105. The Commission also notes that the Pre-Hearing Report detected no issues at the Premises from a gaming and liquor inspection on 10 January 2019 and that no known issues have been recorded in previous inspections conducted at the Premises.

106. Notwithstanding the above, the Council in response to the evidence regarding RSG practices stated that:

- (a) based on Mr Szkuta's evidence in the Hearing, his understanding of the additional risk that will arise from the additional 43 EGMs is limited. He has not read the Code of Conduct and, while he attended a Board meeting in December 2017 regarding RSG, there has been no evident Board meeting focus on RSG since then;
- (b) the fact that the Applicant's staff are allowed to play EGMs on the Premises after they have finished their shift raises concern as to the Applicant operating inconsistently with best RSG practice and venue management;



- (c) based on Ms Hutchison's evidence in the Hearing, while she is engaged by the Applicant as an RSG expert, she has had no conversations with the Applicant's management or the Board about how to transition from 35 EGMs to 78 EGMs;
- (d) the Applicant's venue manager, Ms Tournier, has had very limited experience working in a larger gaming venue (with more than 35 EGMs). The scope of her experience involved a total of three weeks work at Norlane Hotel⁵⁸ (with 84 EGMs)⁵⁹ before commencing employment at the Premises. Even though she is the venue manager, she gave evidence that she attends Board meetings *when it's practical* to update the Board on RSG; and
- (e) the Applicant failed to submit any materials setting out its strategies to address additional risks that arise with an increase in EGMs from 35 to 78. For example, there was no evidence given as to "floorwalkers",⁶⁰ additional staff in the gaming room, a manual, or details as to the proposed layout of the gaming room over the course of the three tranches given the additional risks from the proposed installation of an additional 43 EGMs in the gaming room.

107. The Applicant, however, did not accept this on the basis that (in summary):

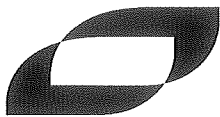
- (a) Mr Szkuta's evidence was that when this Application was contemplated, the Board, with the assistance of Mercury, refocused its attention on minimising harm and identified initiatives for improvement in venue appointments and operations. These initiatives were all implemented, including training all Board members as to the contents and operation of the Code of Conduct and a self-exclusion program, removing foyer signage regarding pokies,⁶¹ screening the gaming room to reduce external visibility, installing a partition to provide barriers to the gaming room's entrance, and including RSG as an agenda item at monthly Board meetings;
- (b) Ms Tournier undertakes the duties of a "floorwalker", and gave evidence of an example of when she was able to identify when one patron was gambling higher denominations and more lines than usual and suggested to that patron to move to the coffee area. This was consistent with the training manual prepared by Mercury on behalf of the Applicant;

⁵⁸ Ms Tournier indicated in the Hearing that her work at Norlane Hotel was not for a significant amount of time. Transcript of Hearing, Day 2, p274.

⁵⁹ The VCGLR Report, p8.

⁶⁰ In the Hearing, Counsel on behalf of the Council explained that her reference to the term "floorwalker" meant: a *staff member dedicated to the gaming room at all times who walks the gaming room floors.*

⁶¹ Transcript of Hearing, Day 1, p17.



- (c) staff in the gaming room, and the Board, are trained by Mercury on behalf of the Applicant, which includes provision of training manuals and assessments. In addition, telephone assistance from Mercury is available as required. Ms Hutchison has conducted three training sessions with gaming room staff in the last 12 months;
- (d) the principles of RSG are the same whether there are 35 or 78 EGMs: know your customers, have sufficient staff to maintain scrutiny, stay vigilant for signs of problems, have appropriate materials ready, and stay friendly;
- (e) the Applicant intends to assess and adjust its RSG measures on a gradual basis after each tranche of the additional EGMs is completed; and
- (f) there will be an additional 3.75 EFT positions in the bar and gaming room as set out in the Mercury Financial Analysis.

Other factors

108. There are other factors applicable to this Application that the Commission considers relevant in assessing the potential risks associated with problem gambling.

109. First, the Commission notes that Mr Quick, with whom the Council disagreed, characterised the venue as a 'destination venue', in requiring a conscious decision on the part of a visitor to attend the Premises and enter the gaming area. While the Council submits that, based on the Framework,⁶² it does not consider that the Premises are a 'destination venue', given the Premises are set back from the Fellmongers Road in an Industrial 1 Zone, the Commission agrees with Mr Quick that it would require a conscious decision of patrons to attend, and, as such can be viewed as a 'destination venue'. The Commission further considers that because the Premises are away from major shopping centre precincts, this assists in mitigating the risk of an increase in problem gambling arising out of people attending the Premises to gamble in association with carrying out other activities at the shopping centre.

110. Second, the Commission has taken into account the submissions received from local community organisations and individual local residents mentioned in paragraphs 24 to 25 in relation to this Application. This is further considered below at paragraphs 144 to 150.

The Commission's view

111. Having regard to all of the evidence and circumstances, should this Application be granted, the

⁶² See paragraph 103(b) above.



Commission considers that there is a risk of increased problem gambling expenditure associated with this Application. That increased expenditure would come from the new expenditure the additional 43 EGMs would generate (approximately \$160,000 per annum of new expenditure in the LGA, following completion of all three tranches of the additional 43 EGMs).

112. The Commission also finds that the SEIFA indices indicate that the majority of the Premises' gaming room patrons as surveyed have a level of socio-economic disadvantage and financial vulnerability that would make them more susceptible to gambling-related harms. Specifically, the Commission notes from the Council Report that eight of the thirteen suburbs that are home to the Premises' gaming room patrons as surveyed are relatively disadvantaged with a SEIFA index below 1,000, and 54% of the surveyed patrons live in those areas.⁶³ Four of those eight suburbs are significantly disadvantaged with a SEIFA index below 970, and are in the bottom 20% of the most disadvantaged areas in the State.
113. Further, in relation to the potential risk of an increased incidence in problem gambling to the community of the City of Greater Geelong were the Application to be granted, the Commission does not consider that the impact would necessarily be sufficiently lessened by the Applicant having already removed the foyer signage regarding pokies, screening the gaming room, and installing a partition to provide barriers to the gaming room's entrance.
114. While the Applicant submits that irrespective of there being 35 or 78 EGMs the principles are the same (as discussed in paragraph 107(d) above), the Commission agrees with the Council that there are differences between venues with EGM numbers such as these, and the Applicant presented no evidence of a plan in place to address the additional risks arising from an uplift of EGMs from 35 to 78. Mr Szkuta gave evidence that the Board would continue to leave implementation of operational matters to Ms Tournier (in consultation with Mercury) were the Application approved, such as staff level changes to improve RSG practices. However, Ms Tournier gave evidence that she had not had any input as to what would be appropriate staffing levels were the Application approved. Therefore, it appears that the Board has given no consideration to any strategies that Ms Tournier could turn into a plan to address the increased risk of problem gambling that is inherent in operating a significantly larger gaming area with significantly more EGMs. Similarly, there is a lack of evidence as to when and how many of the additional 3.75 EFT positions in the bar and gaming room (as set out in the Mercury Financial Analysis) would be employed at each stage of the proposed development works. The

⁶³ Mr Quick submitted that 93% of the gaming room patrons come from within the LGA. The patron surveys also indicated that 44% of the gaming room patrons reside within the immediate 2.5km radius of the Premises: See paragraph 44 above.

Commission is also concerned as to a lack of detail as to the proposed layout of the gaming room over the course of the three tranches of additional EGM installation.

115. Accordingly, and having regard to all the circumstances and factors, the Commission considers with respect to this Application that the potential expenditure associated with problem gambling is a negative economic impact upon which it should place a low to moderate weight.
116. Issues relating to the negative social impacts associated with problem gambling regarding the Premises are considered further in paragraphs 139 to 143 below.

Diversion of trade from other gaming venues

117. Mr Hillier gave evidence that 80% of the gaming expenditure would be transferred from other gaming venues within the City of Greater Geelong. Given the close proximity of Buckley's, Mr Hillier suggested that Buckley's would likely be the venue to be impacted by the transferred expenditure if the Application were approved. In the Metro Report and at the Hearing, Mr Hillier gave evidence that Buckley's was a large, well-established venue with excellent facilities. In particular, he said that, in terms of gaming expenditure, it is:
- (a) the highest-ranking country club in the State;
 - (b) the third-highest-ranking venue in the LGA;
 - (c) the fourteenth-highest-ranking club in the State; and
 - (d) in the highest 20% of all venues in the State.
118. Mr Quick was of the view that, while it is expected other venues in the LGA (including Buckley's) would experience some loss in revenue, competition should not be unexpected and the estimated transferred expenditure of 80% would not likely affect the ability of other venues in the LGA (including Buckley's) to provide the same level of current service.
119. The Commission accepts that there may be some detrimental impact on other venues (in particular, the closest venue to the Premises, Buckley's) from the estimated transferred expenditure of 80%, but considers that the expected impact of a loss in revenue by Buckley's (and other gaming venues in the LGA) would not be significant. As such, the Commission gives no to marginal weight to this economic disbenefit.

Diversion of trade from non-gaming businesses

120. In the First Urbis Report, Mr Quick noted that a potential economic disbenefit as a result of

granting the Application might be less expenditure on trade at other non-gaming businesses, and therefore a potential decline in revenue for those businesses.

121. The Commission recognises that the impact that could be felt by local non-gaming businesses is potentially the value of the new expenditure from this Application, being an estimated figure of approximately \$160,000 per annum (following completion of all three tranches of the additional 43 EGMs) if this were to be expended on activities other than gaming. At the same time, there is the potential for other expenditure, such as meals and drinks, being diverted from other non-gaming businesses if people come to the Premises to gamble and spend on associated items.
122. The Commission finds that there is an economic disbenefit associated with any diversion of trade from retail facilities or other businesses in the City of Greater Geelong as a result of this Application, but notes that it is difficult to confirm whether the new expenditure from this Application would necessarily have been spent elsewhere in the LGA. As such, the Commission considers it appropriate to attribute no to marginal weight to this impact.

Conclusion on economic impacts

123. After considering the economic benefits of the Application and balanced against the disbenefits, the Commission considers that, on balance, the Application is likely to have a neutral economic impact if granted.

Social Impacts

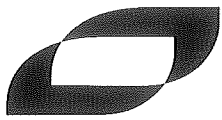
124. The materials before the Commission and the evidence adduced at the Hearing detailed a range of social benefits and disbenefits associated with this Application.

Increased gaming opportunities for those who enjoy gaming

125. Increased gaming opportunities is a positive impact if the Application will better serve the needs of gaming patrons through providing additional opportunities and choice for those who choose to play EGMs.
126. Mr Quick submitted that based on the Applicant's gaming room utilisation surveys,⁶⁴ the Premises' gaming room is at full utilisation on Thursday and Friday nights and also peaks during Sunday lunchtime. While indicating that these peak periods are limited (and that the remaining days of the week, gaming room usage is sparse),⁶⁵ Mr Quick considered that there are sufficient

⁶⁴ See paragraph 76 above.

⁶⁵ Mr Quick also indicated that gaming room peaks coincide with the days in which the Applicant hosts activities in other parts of the venue: First Urbis Report, p22.



peak hours to indicate a demand for additional EGMs.

127. In this matter, while the Commission accepts that granting approval of the Application would likely better serve the needs of gaming patrons at the Premises through providing additional EGMs, there are already 296 EGMs over five EGMs venues within the immediate surrounding 2.5km area from the Premises (including the existing 35 at the Premises). Specifically, the Commission notes that Buckley's (with 105 EGMs) is within 300 metres from the Premises. In addition, peak periods of gaming at the Premises are limited suggesting that the existing 35 EGMs at the Premises are not otherwise heavily utilised. Overall, the Commission considers it appropriate to attribute marginal weight to this social benefit.

Social benefit derived from increased community contributions

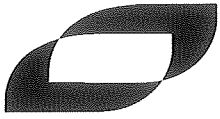
128. As noted in paragraph 74 above, the Commission has decided on this occasion to consider the economic and social benefits of increased community contributions together.

129. The evidence before the Commission was that if the Application is successful the Applicant will be in a position to maintain the considerable community contributions it already makes. However, for community contributions to be a positive benefit they must result as a consequence of the Application being granted. Therefore, maintaining existing community contributions cannot be considered as a benefit of the Application. The Applicant's proposed contributions, if the Application were granted, include no condition to increase its community contributions either in cash or in-kind.

130. The Applicant stated in its written closing submissions that it would be investing in sporting facilities by the proposed upgrades to the soccer change room facilities in the Warehouse and the enhancements to the surface of the Soccer Pitches' main pitch.

131. In its written closing submissions, the Applicant submitted that without an upgrade to the Premises' change room facilities and the surface of the Premises' main soccer pitch, the existing number of BESC players will not grow, and female players would not be attracted to playing for BESC. Based on the "State Football Facilities Strategy to 2026",⁶⁶ there is a projected growth in female and junior football participation, an existing lack of female-friendly change rooms, and a need for new and improved pitches in Greater Geelong. The Council's synthetic pitch is about a 20-minute drive from the Premises, and the cost for lighting is about \$100 an hour. The Applicant intends for electronic lighting on the Premises' synthetic pitch to be free of charge for its users. By upgrading the Premises' change room facilities and the surface

⁶⁶ See paragraph 26(a) above.

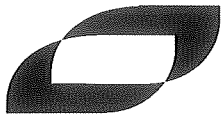


of the Premises' main soccer pitch, the Applicant will be otherwise investing in sporting social facilities (otherwise termed as "social infrastructure").

132. In response, the Council submitted that completion of Stage 1 and Stage 3 of the development works does not necessarily elevate the Applicant to being an investor in sporting social infrastructure/facilities. In its reply to the Applicant's written closing submissions, the Council noted that there was a lack of evidence from the Applicant to demonstrate that the Premises' improved soccer pitch and the Premises' improved change room facilities (were the Application to be granted) would be used by persons other than the Applicant's members or the BESC members. For example, there was no direct evidence from schools or other like community organisations to confirm this. The Council said that, while Mr Skuta gave evidence in the Hearing that Geelong High School had indicated it would use the pitch, and three primary schools would use the improved soccer if a bus was offered, there was no reference to a courtesy bus in the revised proposed conditions or direct evidence from any schools in the materials.
133. By making available the improved change room facilities and the improved soccer pitch free of charge, the Commission considers that these are akin to in-kind contributions. While such contributions are important, the Commission is concerned about a lack of sufficient detail regarding use of the Premises' improved soccer pitch and change room facilities (were the Application to be granted) by persons other than the Applicant's members or the BESC members. The Commission accepts Mr Szkuta's evidence in the Hearing, but considered that there is a lack of sufficient detail to give either a complementary bus or interest from schools any weight. Overall, the Commission considers it is appropriate to attribute no to marginal weight to this factor. Further, the Commission is mindful that the benefits associated with the improved change room facilities and the improved soccer pitch should not be double-counted with the social impact that may result from the improved facilities as discussed in paragraphs 134 to 138 below.

Improved facilities enabling greater range of services

134. Separate from the economic benefit that may be associated with expenditure involved in capital works at the Premises, there are also potential social benefits to the community that may arise having regard to the nature of the development works that are intended to take place.
135. As noted at paragraph 59 above, the proposed development work at the Premises involves:
- (a) Stage 1 - upgrading the soccer change room facilities at the entrance of the Warehouse;



- (b) Stage 2 - moving the bistro area, installing a new expanded children's playroom, renovating the kitchen, installing new bars, installing a cool room, renovating the toilets, refurbishing and extending the gaming room, renovating the old bistro, and installing a new entrance, community rooms, and alfresco area;⁶⁷ and
- (c) Stage 3 - installing a synthetic soccer playing surface on the current main pitch of the Soccer Pitches.

136. Mr Quick submitted that moderate to high weight should be attributed to the proposed improved facilities arising from the development works. He explained that the proposed development works would improve the overall offer of the Premises to the wider community, rather than only the Applicant's members.

137. In contrast, Dr Kerkin, while accepting that the proposed improved facilities were a social benefit, was of the opinion this was a "low benefit" given that the Premises are privately owned (not unconditionally available for public use), and the proposed developments would not provide facilities that are not currently available in the City of Greater Geelong. In the Hearing, she gave evidence that, while the Applicant claims that the Premises are positioned to serve the Armstrong Creek growth area, separate sports infrastructure has already been planned, indicating that there could be a dilution in any need for the Premises' Soccer Pitches.

138. The Commission considers the community's access to and use of the proposed improved facilities at the Premises resulting from the granting of this Application will provide a social benefit to the community of the City of Greater Geelong for the purposes of the 'no detriment' test. However, the Commission recognises that Stages 1-3 of the proposed development works at the Premises would not provide facilities that are not currently available in the municipality. Further, the Commission is concerned about a lack of sufficient detail regarding use of the Premises' improved soccer pitch and change room facilities (were the Application to be granted) by persons other than the Applicant's members or the BESC members.⁶⁸ Therefore, the Commission considers it is appropriate to attribute marginal to low weight to this factor.

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

139. Wherever accessibility to EGMs is increased, there is a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, family breakdowns and other

⁶⁷ Stage 2 proposed development works are detailed in paragraph 59(b) above.

⁶⁸ See paragraph 133 above.

social costs. Accordingly, the Commission accepts that there is potential for a negative social impact through possible increased problem gambling expenditure.

140. The Commission refers to and relies upon the evidence set out in paragraphs 97 to 116 with respect to the economic impact of problem gambling on the community, which equally applies to the social impact of problem gambling. As is concluded there, the Commission considers that there is potential for increased risk in gambling related harms as a result of this Application. This gives rise to a negative social impact. The Commission accepts (as outlined in paragraph 97 above) that harms associated with gambling are wide-ranging and attributable to all categories of gamblers ('low-risk', 'moderate-risk' and 'problem gamblers') and across the community more broadly.
141. Mr Quick gave evidence that if the Application was granted he considered the risk of adverse impacts associated with problem gambling is unlikely. His reasons included the fact that there was a range of other entertainment options for patrons besides gaming including a bar, a bistro and an alfresco area, as well as the gaming room being recently screened to reduce external visibility, and staff in the gaming room being experienced in RSG.⁶⁹
142. In the Council Report, the Council set out a number of adverse physical and mental health and wellbeing issues (including family violence and financial hardship) that exist within the City of Greater Geelong.⁷⁰ However, the Council otherwise provided no evidence as to how such impacts will result from or be exacerbated by this Application.
143. Having regard to all of the evidence and circumstances, for the reasons discussed in relation to the economic impact of problem gambling at paragraphs 97 to 116 above, particularly given both the location of the Premises within the City of Greater Geelong and 44% (almost half) of the surveyed patronage of the gaming room residing within the immediate 2.5km radius which the Applicant accepts has an elevated level of disadvantage, the Commission considers it appropriate to attribute moderate weight to this negative social impact.

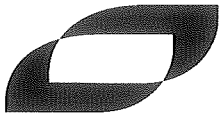
Community attitude

144. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,⁷¹ the Commission recognises that while community apprehension is not an over-riding factor (in the

⁶⁹ See paragraph 102 above.

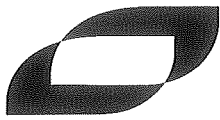
⁷⁰ See Council's Response to the Application, p48.

⁷¹ The *Romsey* case (2008) 19 VR 422, [44] per Warren CJ, Maxwell P and Osborn AJA. See also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [73] per Dwyer DP.



sense that the Application is not a referendum on gaming), it is certainly a relevant factor in the consideration of the particular social impact within, and as part of, the '*no net detriment*' test.

145. The evidence before the Commission with respect to community attitude towards this Application has been mixed, and includes:
- (a) the Council's submissions in opposition to the Application (and appearance at the Hearing);
 - (b) the community attitudinal survey: a random survey conducted by the Council of 263 members of the public indicating both positive and negative sentiment, yet slightly more positive than negative;
 - (c) witness statements in support of the Application from members or associates of the Applicant, including the BESC president and the BESC secretary;
 - (d) correspondence in opposition to the Application from four local community organisations; and
 - (e) correspondence in opposition to the Application from local residents and persons residing in neighbouring LGAs.
146. In the Second Urbis Report, Mr Quick stated that while there was mixed sentiment to the Application as indicated in the community attitudinal survey, the majority of the respondents to the survey supported the Application.
147. In relation to the submission in support of the Application from members or associates of the Applicant, including the BESC president and the BESC secretary, they largely indicate the Applicant as being supportive of the community and were favourable in respect to the Application.
148. In relation to the submissions against the granting of the Application from individuals, they seem largely directed towards the impact of gambling in the community at large and the concern that this Application might increase the risk of problem gambling and a range of gambling related harms. In particular, the submissions of the local community organisations detailed in paragraph 24 above indicate a level of concern regarding the potential impact of the Application on the local community. Specifically, Barwon Health took issue with aspects of the Application, saying that Greater Geelong has an extensive range of soccer pitches that already exist, and was concerned that if the main pitch was improved (were the Application to be granted) it would potentially provide space for school children in close proximity to a gaming venue. Barwon



Health, Encompass Community Services and Diversitat Aged Support indicated that they were concerned with the extremely low SEIFA deciles recorded within the community immediately surrounding the Premises.

149. Overall, the Commission is satisfied from all evidence before it with respect to community attitude that, while there are some portions of the community in support of the Application, there is a negative attitude in other portions of the City of Greater Geelong towards this Application. In determining this impact, the Commission also recognises that the Council, as the representative body of the relevant community and charged with statutory duties under various pieces of legislation, has objected to the Application, and provided evidence in support of its objection.⁷²
150. In all of these circumstances, and taking into account the Council's position and evidence in relation to the Application, the Commission considers it appropriate to attribute marginal to low weight to this negative social impact.

Conclusion on social impacts

151. After considering the social benefits of the Application and balanced against the disbenefits, the Commission considers that, on balance, there is likely to be a negative social impact if the Application were granted.

Net economic and social impact

152. The '*no net detriment*' test in section 3.4.20(c) of the GR Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. This test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impact of approval on the well-being of a relevant community will be either neutral or positive.⁷³
153. After consideration of the material before it, including the evidence provided at the Hearing (and weighted as outlined above and summarised in tabular form at Appendix 1 of these Reasons for Decision), the Commission is not satisfied that the social and economic impact to the well-being of the community of the municipal district in which the Premises are located will not be detrimental to the well-being of the community of the City of Greater Geelong. Accordingly, the pre-condition set out in section 3.4.20(1) of the GR Act is not satisfied, and the Commission must not amend the venue operator's licence.

⁷² See *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT at 2606 at [42]; *Romsey No. 2* [2009] VCAT 2275 at [249] and [288]-[321].

⁷³ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 at [52] per Dwyer DP.



D. Independence from other gaming venues

154. Section 3.4.20(1)(d) of the GR Act required the Commission to be satisfied that, if the Premises are proposed to be added to the Applicant's licence as an approved venue and the Applicant (or an associate of the Applicant) operated an approved venue within 100 metres of the Premises, that the management and operation of the Premises and other approved venues are genuinely independent of each other.
155. The Commission finds that the Application is not proposing to add the Premises to the Applicant's venue operator's licence (as it already exists on the licence), nor does the Applicant (or an associate) operate an approved venue within 100 metres of the Premises.
156. On this basis, the Commission considers that the mandatory pre-condition set out in section 3.4.20(1)(d) is not applicable to this Application.

CONCLUSION

157. On the material that has been put before it, the Commission has determined that the '*no net detriment*' test has not been satisfied⁷⁴ and, pursuant to section 3.4.20(1) of the GR Act, the Commission must not grant the Application. Accordingly, the Commission cannot go on to consider the general discretion referred to in paragraph 16 above.
158. The Application is therefore refused.

The preceding 158 paragraphs and the following Appendix are a true copy of the Reasons for Decision of Ms Deirdre O'Donnell, Deputy Chair, and Ms Helen Versey, Deputy Chair.

⁷⁴ See paragraphs above.



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Appendix One

Summary of economic and social impacts

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

Economic impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	Expenditure on development works	58 to 66	<p>The Applicant proposes to undertake development works at the Premises in three stages. Stage 1 is estimated to cost \$170,000. Stage 2 is estimated to cost \$2.75 million. Stage 3 is estimated to cost \$1.75 million. There is a lack of sufficient detail as to what proportion of the development works expenditure would occur within the City of Greater Geelong. The amount of the development works expenditure is not inconsequential. The Commission is also mindful not to double count the benefits associated with the development works expenditure in relation to the social impact that may result from the proposed development works at the Premises.</p> <p>Positive impact, low weight.</p>



	Impact	Paragraph numbers	Comment relevant to weight
	Additional employment	67 to 73	<p><i>Short-term employment</i> In relation to the short term benefits associated with renovation activities, there is a lack of evidence regarding the short term employment benefit associated with the proposed development works at the Premises.</p> <p>Positive impact, no weight</p> <p><i>Long-term employment</i> In relation to the longer term benefits following the introduction of the proposed 43 EGMS, while the employment of additional EFT positions at the Premises is a positive impact, there is a lack of sufficient detail as to when and how many additional staff will be employed at which stage of the works.</p> <p>Positive impact, no to marginal weight.</p>
	Community contributions	74	In relation to the community contributions, see 'social benefit derived from increased community contributions' below.
	Increased gaming competition in the City of Greater Geelong	75 to 82	<p>The existing EGM density would not likely result in a substantive increase in gaming competition in the municipal district.</p> <p>Positive impact, no to marginal weight.</p>
	Supply contracts and complementary expenditure	83 to 87	<p>No evidence relied on in relation to the economic benefit associated with supply contracts or complementary expenditure.</p> <p>Even if increased patronage at the Premises is anticipated following any approval of the Application, and such increased patronage could result in increased supply contracts and/or complementary expenditure, there is significant uncertainty as to the extent that any such increase would generate increased economic activity within the local area as opposed to transferred activity within Greater Geelong.</p> <p>Positive impact, no weight.</p>



	Impact	Paragraph numbers	Comment relevant to weight
Disbenefits	Gaming expenditure not associated with problem gambling	88 to 96	<p>The portion of new expenditure not attributable to problem gambling is an economic benefit. The Commission accepts Mr Hillier's analysis. Having regard to the evidence with respect to the gambling expenditure associated with problem gambling and the factors outlined therein, the Commission considers that it is likely that portions of the new expenditure will be associated with problem gambling, but the expected quantum is small.</p> <p>Positive impact, no to marginal weight.</p>
	Gambling expenditure associated with problem gambling	97 to 116	<p>SEIFA indices indicate a highly disadvantaged socio-economic profile in the immediate 2.5km radius of the Premises, plus 21% of residents within the 5km radius of the Premises being recorded in the top two most disadvantaged SEIFA deciles. The majority of the Premises' gaming room patrons as surveyed have a level of socio-economic disadvantage and financial vulnerability that would make them more susceptible to gambling-related harms. In relation to the risk of an increased incidence in problem gambling to the local community were the Application to be granted, there is a lack of evidence from the Applicant to demonstrate that an actual plan has been put in place to address the additional risks arising from the additional 43 EGMs. There is also a lack of evidence as to when and how many additional gaming staff members would be employed, and the proposed gaming room layout over the course of the three tranches to address the additional risks arising from installation of the additional 43 EGMs.</p> <p>Negative impact, low to moderate weight.</p>



	Impact	Paragraph numbers	Comment relevant to weight
	Diversion of trade from other gaming venues	117 to 119	<p>In relation to the expenditure resulting from the 43 additional EGMs, Mr Hillier estimated 80% of expenditure would be transferred from other gaming venues within the City of Greater Geelong. Buckley's, in particular, is likely to be impacted from the transferred expenditure given its close proximity to the Premises. However, given that Buckley's is a large, well-established venue with excellent facilities, it would not be significantly impacted by such transferred expenditure.</p> <p>Negative impact, no to marginal weight.</p>
	Diversion of trade from non-gaming businesses	120 to 122	<p>The impact that could be felt by local non-gaming businesses is the value of the new expenditure from this Application, which is estimated to be \$160,000 per annum (following completion of all three tranches of the additional 43 EGMs). The amount diverted from non-gaming businesses is difficult to determine.</p> <p>Negative impact, no to marginal weight.</p>



Social impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	Increased gaming opportunities for those who enjoy gaming	125 to 127	Granting the Application will better serve the needs of gaming patrons through providing additional opportunities and choice for those who choose to play EGMs. Given the current number of EGMs in the immediate 2.5km radius, the Commission considers this to be a negligible positive social impact to the City of Greater Geelong. Positive impact, marginal weight.
	Social benefit derived from increased community contributions	128 to 133	The positive social impact of community contributions is by improving the social fabric of the community in which they are made. The Commission considers that the Applicant's intention to make available the improved change room facilities and the improved soccer pitch, free of charge, is akin to in-kind contributions. Positive impact, no to marginal weight.
	Improved facilities enabling greater range of services	134 to 138	There are social benefits arising from the community's access to and use of improved facilities resulting from granting the Application, but the Commission accepts that the refurbished Premises would not provide facilities that are not currently available in the municipality. There is also a lack of sufficient detail regarding use of the Premises' improved soccer pitch and change room facilities (were the Application to be granted) by persons other than the Applicant's members or the BESC members. Positive impact, marginal to low weight.



	Impact	Paragraph numbers	Comment relevant to weight
Disbenefits	Possibility of an increased incidence and potential impact of problem gambling on the community	139 to 143	The Commission refers to and relies on its findings in relation to the economic impact of gambling expenditure associated with problem gambling. Negative impact, moderate weight.
	Community attitude	144 to 150	Overall, the Commission is satisfied that the submissions received by the Commission suggest that, while some portions of the community are in support of the Application, there is a negative attitude in other portions of the City of Greater Geelong to this Application. Submissions of local community organisations indicate a level of concern regarding the potential impact of the Application on the local community. In determining this impact, the Commission also recognises that the Council, as the representative body of the relevant community is charged with statutory duties under various pieces of legislation, and has objected to the Application and provided evidence in support of its objection. Negative impact, marginal to low weight.