

Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by the Stawell Harness Racing Club Inc for amendment of its venue operator's licence to vary the number of electronic gaming machines at the approved premises, the Stawell Harness Racing Club, located at Laidlaw Park, 78 Patrick Street, Stawell, from thirty (30) to forty-five (45).

Commission:

Ms Helen Versey, Deputy Chair
Mr Des Powell, Commissioner

Appearances:

Mr John Larkins of Counsel for the Applicant (instructed by LGS Legal)

Mr Justin Ghattas as Counsel Assisting the Commission

Date of Hearing:

5 July 2016

Date of Decision:

8 August 2016

Date of Reasons:

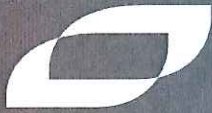
8 August 2016

Decision:

The application is granted subject to the conditions outlined at Paragraph 143 of this Decision and Reasons for Decision.

Signed:

Helen Versey
Deputy Chair



REASONS FOR DECISION

INTRODUCTION

1. On 8 April 2016, the Stawell Harness Racing Club Inc (**the Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) to amend its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Stawell Harness Racing Club, located at Laidlaw Park, 78 Patrick Street, Stawell (**the Premises**), from 30 to 45 (**the Application**).
2. The relevant municipal authority is the Northern Grampians Shire Council (**the Council**). By correspondence dated 1 June 2016 to the Commission, the Council stated that they had considered the social and economic impact on the Shire of Northern Grampians (**Northern Grampians**) and provided a letter of support to the Applicant in relation to the Application.
3. The Commission considered the Application at a public inquiry conducted on 5 July 2016. The Applicant was represented by Mr John Larkins of Counsel, instructed by LGS Legal. The Council did not appear and was not represented at the hearing.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

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

...

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

- (a) *to foster responsible gambling in order to-*
 - (i) *minimise harm caused by problem gambling; and*
 - (ii) *accommodate those who gamble without harming themselves or others;*
- (ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*
- (b) *to ensure that gaming on gaming machines is conducted honestly;*



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

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

- (1) *The purpose of this Chapter is to establish a system for the regulation, supervision and control of gaming equipment and monitoring equipment with the aims of—*
 - (a) *ensuring that gaming on gaming machines is conducted honestly; and*
 - (b) *ensuring that the management of gaming equipment and monitoring equipment is free from criminal influence or exploitation; and*
 - (c) *regulating the use of gaming machines in casinos and other approved venues where liquor is sold; and*
 - (d) *regulating the activities of persons in the gaming machine industry; and*
 - (e) *promoting tourism, employment and economic development generally in the State; and*
 - (f) *fostering responsible gambling in order to—*
 - (i) *minimise harm caused by problem gambling;*
 - (ii) *accommodate those who gamble without harming themselves or others.*
- (2) *The purpose of this Chapter is also to—*



- (a) *provide for the allocation of gaming machine entitlements in order to maximise the financial and social benefits to the Victorian community within the regulatory framework applying to the allocation of entitlements;*
 - (b) *promote a competitive gaming industry with the aim of providing financial and social benefits to the Victorian community.*
7. The Act outlines the process for which a venue operator can make application to the Commission to amend the conditions of their licence.¹ An applicant must provide such an application to the Commission in an approved form, with the required fee, and with a submission in relation to the net social and economic impact on the municipality in which the approved venue is located (and surrounding municipal districts).
8. An applicant must also give notice to the municipal council of the municipal district in which the approved venue is located (before submitting their application to the Commission).
9. After receiving notice of a proposed amendment, a municipal council may make a submission to the Commission within 60 days of receiving such notice. These submissions may address the social and economic impact of the proposed amendment on the municipal district in which the approved venue is located, as well as the impact on surrounding municipal districts.²
10. The relevant provision concerning this particular Application is found at s. 3.4.17(1)(b) of the Act, which states that variation of the numbers of EGMs permitted in an approved venue may be amended in accordance with this Division. Section 3.4.20 sets out matters that are for consideration before the Commission with respect to a proposed amendment. Relevantly for this Application that section provides, inter alia:
 - (1) *Without limiting the matters which the Commission may consider in deciding whether to make a proposed amendment the Commission must not amend a venue operator's licence unless—*

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

¹ The Act, section 3.4.18.

² The Act, section 3.4.19.



- (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;*

...

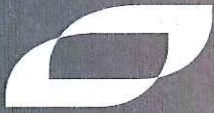
11. Section 3.4.20(1)(c) provides for what is now commonly described as the '*no net detriment*' test. It requires the Commission to be satisfied that there is no net detriment arising from the approval through positively and objectively establishing that the net economic and social impact will not be detrimental to the well-being of the community.³
12. The Act does not specify the matters which the Commission must consider in deciding whether this '*no net detriment*' test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:
 - a) the likely economic impacts of approval;
 - b) the likely social impacts of approval; and
 - c) the net effect of those impacts on the well-being of the relevant community.⁴
13. 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.
14. 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

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.

⁵ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275, [332], [348] per Bell J cited in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [58] per Dwyer DP.

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



the benefits of gaming consumption – it does not matter whether the impact is considered on the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.⁷

15. The Commission also notes that, on review, it has been indicated by VCAT that:

*A table of likely economic and social benefits and disbenefits, and with some comments relevant to the relative weight to be given to particular factors ... is a useful way of transparently dealing with the 'no net detriment' test, and might perhaps be considered for wider application.*⁸

This approach has been adopted in a number of VCAT decisions.⁹ To facilitate greater consistency between the Commission and VCAT, the Commission has adopted the same approach.

16. If the Commission is not satisfied that the 'no net detriment' test is met, that is clearly fatal to the application before it, given the opening words of section 3.4.20(1) of the Act. 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 cast in exhaustive terms. If the Commission is satisfied that the 'no net detriment' test is met, it still has an ultimate discretion as to whether or not to grant the approval.¹⁰ The Commission must decide whether to make the proposed amendment, with or without any changes from that proposed by the Applicant, even where there applicant has satisfied the minimum threshold of the 'no net detriment' test.¹¹

17. In considering the exercise of this discretion:

- it must be exercised having regard to the purposes of the Act and, in particular, the specific purposes of Chapter 3 of the Act dealing with the regulation, supervision and control of gaming machines;¹² and

⁷ See *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275, [352] per Bell J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [58] per Dwyer DP.

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

⁹ See, for example: *Darebin CC v Victorian Commission for Gambling and Liquor Regulation & Anor* [2013] VCAT 1389; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Monash CC v L'Unico Pty Ltd* [2013] VCAT 1545; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

¹⁰ See *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M; see also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [97] and following per Dwyer DP (with respect to s. 3.3.7).

¹¹ *Gambling Regulation Act 2003*, section 3.4.20(2).

¹² *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [98] per Dwyer DP.



- it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the Act as a whole.¹³

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*¹⁴ that, if all of the mandatory considerations under the Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval - other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.

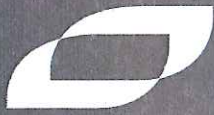
MATERIAL BEFORE THE COMMISSION

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

- (a) Social and Economic Impact Assessment, prepared by Harvest Strategy Pty Ltd (**Harvest**), dated 2 March 2016 (**the Harvest Report**). Dr Rohan Miller, a principal of Harvest, also appeared and provided oral submissions to the Commission in respect of his written evidence;
- (b) Expenditure Report, prepared by Mercury Group Victoria Inc. (**Mercury**), dated December 2015 (**the Mercury Report**). Mr David Baldi, General Manager of Mercury, also appeared and provided oral submissions to the Commission in respect of his written evidence;
- (c) Witness Statement of Geoffrey Leigh Sanderson, Club President at the Premises, dated 7 May 2016. Mr Sanderson also appeared and provided oral submissions to the Commission in respect of his written evidence;
- (d) Witness Statement of Lisa Anne McIlvride, Chief Executive Officer of the Applicant, dated 7 May 2016. Ms McIlvride also appeared and provided oral submissions to the Commission in respect of her written evidence;

¹³ *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M. As to policy principles identified for consideration, see *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

¹⁴ [2013] VCAT 101, [98].



- (e) Witness Statement of Kim Maree Mornane, Gaming Manager at the Premises, dated March 2016. Ms Mornane also appeared and provided oral submissions to the Commission in respect of her written evidence;
 - (f) Witness Statement of Jacqueline Anne Hutchison, Compliance Officer at Mercury, dated 10 March 2016. Ms Hutchison also appeared and provided oral submissions to the Commission in respect of her written evidence;
 - (g) Application for approval of modification to a gaming machine area in an approved venue, dated 8 April 2016; and
 - (h) Copy of the public notice as appearing in the Herald Sun newspaper, dated 15 April 2016.
20. The Council wrote to the Commission on 1 June 2016 stating that it had considered the social and economic impact of the Application on the municipality and supported the granting of the Application.
21. The following material, prepared by Commission officers, was provided to the Applicant and considered by the Commission:
- (a) a report titled *Economic and Social Impact Report*, dated July 2016 (**the VCGLR Report**); and
 - (b) a report titled *Pre-Hearing Inspection and Compliance Report*, dated 16 June 2016 (**the Pre-Hearing Report**).
22. Prior to the hearing, Commissioner Powell undertook a site visit of the Premises.
23. On 12 July 2016, the Applicant provided the Commission with the following further material in relation to the Application –
- a) Correspondence dated 12 July 2016;
 - b) Email and attachments from Mr John Anderson, CEO, Harness Racing Victoria, dated 7 July 2016;
 - c) Supplementary Report titled 'Summary Table' from Harvest Strategy, dated 12 July 2016;
 - d) Historical extracts of Community Benefits Statements submitted by the Applicant to



the Commission between 2011 and 2015 of various dates;

- e) Submission in relation to In-Kind Contributions, dated 7 July 2016; and
- f) Table of local beneficiaries from prize-money, undated.

24. Further, on 20 July 2016, the Applicant provided the Commission with the following additional material in relation to the Application –

- a) Correspondence dated 20 July 2016;
- b) Two (2) emails from Debbie Bach, Manager Economic Growth at Council, both dated 19 July 2016; and
- c) Four (4) REMPLAN reports in relation to tourism within the municipality, as attachments to the above emails.

DECISION AND REASONS FOR DECISION

Background

25. The Premises are located at Laidlaw Park, 78 Patrick Street, Stawell.

26. The Premises currently comprise –

- (a) A 200 seat bistro (available for functions and community meetings);
- (b) Bar facilities;
- (c) TAB wagering lounge;
- (d) Committee room (available for functions and community meetings);
- (e) Two outdoor lunch areas for use on race days; and
- (f) Gaming room operating 30 EGMs.

27. The Premises primarily operate as a harness racing club, with a harness racing track (**the Race Track**) attached. The Applicant hosts nine (9) race meetings per year. Each meeting consists of eight (8) races throughout the day, and the Applicant does not charge an entry fee for attendees to observe the races that take place.

28. Northern Grampians is a rural Local Government Area (**LGA**) located approximately 230



kilometres north-west of Melbourne and covers approximately 5728 square kilometres. Major centres in Northern Grampians include Stawell, St Arnaud and Halls Gap. Northern Grampians has an estimated adult population of 11,700 and the annual rate of population growth was projected by the then Victorian Department of Transport, Planning and Local Infrastructure to be -0.2% for the period 2016 to 2021, as compared with the Victorian average of 1.7%.

29. Northern Grampians is subject to a municipal limit of 95 EGMs.¹⁵ Currently, there are two gaming venues operating within the municipality with approvals to operate a total of 65 EGMs.
30. Northern Grampians has an EGM density of 7.0 EGMs per 1000 adults, which is 31% higher than the rural average (5.3) and 22.5% higher than the State average (5.7). This ranks Northern Grampians as the 9th highest of 26 rural municipalities in terms of EGM density per 1000 adults. If the Application is approved, this would rise by 23.1% to 8.6 EGMs per 1000 adults.
31. Northern Grampians has an average gaming expenditure of \$514 per adult, which is 53.2% higher than the rural average (\$335) and 7.2% less than the State average (\$553). Applying the estimate of increased gaming expenditure as received from the Applicant, approval of this Application would result in an increase in average gaming expenditure per adult of 6.5%. Overall gaming expenditure within Northern Grampians has decreased 28.3% in real terms over the past five years, which is a greater decrease than the rural average of 27.11%.
32. In relation to the area immediately surrounding the Premises (i.e. within five kilometres), approximately 77.3% of SA1s¹⁶ within five kilometres of the Premises are in the two most disadvantaged quintiles of the SEIFA¹⁷ index of relative socio-economic disadvantage scores, with approximately 22.7% of SA1s being in the third quintiles (indicating neither relative advantage or disadvantage). There are no SA1s within the immediate area that fall within the relatively advantaged fourth and fifth quintiles.
33. The unemployment rate in Northern Grampians is 6.3%, which is above the rural Victorian unemployment rate of 5.1%. From March 2015 to March 2016, the unemployment rate increased from 5.35% to 6.26% over the same period.

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

¹⁶ Statistical Area Level 1 (SA1) have been designed by the Australian Bureau of Statistics (ABS) as the smallest unit for the release of Census data.

¹⁷ Socio-Economic Indexes for Areas (SEIFA) is a product developed by the ABS that ranks areas in Australia according to relative socio-economic advantage and disadvantage. It consists of four different indexes, including the Index of Relative Socio-economic Disadvantage.



Decision-making framework

34. Pursuant to section 3.4.20 of the Act, the Commission must be satisfied of the following two matters before it can grant the Application –
- (a) That the regional or municipal limit for EGMs in Northern Grampians will not be exceeded by the making of the amendment the subject of the Application; and
 - (b) That the net social and economic impact of the increase in EGMs will not be detrimental to the well-being of the community of Northern Grampians (**the ‘no net detriment test’**).

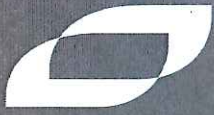
A. Municipal limit

35. A municipal limit of 95 EGMs applies for Northern Grampians.¹⁸
36. At the time of determining the Application, the Commission notes that there is one other operational gaming venue in Northern Grampians – the St Arnaud Sporting Club, operating 35 EGMs. In total, the two clubs operate 65 EGMs.
37. Approval of the Application will result in the total number of EGMs in Northern Grampians increasing to 80.
38. On that basis, the Commission is satisfied that granting the Application would not cause the number of EGMs in Northern Grampians to exceed the municipal limit and, therefore, is satisfied as to the first part of the statutory test under section 3.4.20 of the Act.

B. ‘No net detriment’ test

39. 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.

¹⁸ Pursuant to section 3.4A.5(3A)(b) of the Act, the Commission determined, in accordance with the criteria specified in the Minister for Gaming’s order dated 15 August 2012, the maximum permissible number of gaming machine entitlements under which gaming may be conducted in a given region or municipality. While the number of entitlements operating within a particular region or municipality is capped, the Commission notes that there is nothing to preclude the aggregate number of EGMs for which approved venues may be licensed from exceeding that cap.



Social Impacts

Financial viability of the Applicant

40. Ms McIlvride, in her written statement, attached the financial reports of the Applicant for the financial years 2011 – 2015. The reports showed large losses for the years 2011 – 2013 and modest profits for the years 2014 and 15. Ms McIlvride explained that in October 2015 the only other venue in Stawell operating EGMs – the Town Hall Hotel – had ceased operating its EGMs and that as a result the Premises had had an increase in patronage and expenditure in gaming.
41. Ms McIlvride emphasised in written and oral evidence the benefit to the community of the Applicant being financially viable. She pointed out that even when it was undergoing financial difficulties the Applicant continued to provide in-kind benefits to the community such as free or reduced charges for room hire to community groups such as Probus. She stated that the Bistro is used as a function room for conferences, weddings, wakes and group bookings. The Applicant stages regular entertainment events for the community to enjoy. It participates in a senior's scheme and offers a range of discount on food and drink. It is hoped if the Application is granted the increased revenue will enable it to extend its hospitality services.
42. Ms McIlvride told the Commission that if the Application was not granted it was unlikely the Applicant could carry out improvement works to the Race Track (detailed in the Calibre Consulting Report attached to her witness statement). In that event it is likely the Applicant could lose harness racing meetings. This would impact on its financial viability which in turn would impact on its ability to provide improved services and facilities to the community.
43. The Mercury Report confirmed that the Premises had already experienced a substantial increase in patronage and revenue following the closure of the Town Hall Hotel as a gaming venue. It estimated that all of the increased net machine profit has transferred from the Town Hall Hotel to the Premises, due to the Town Hall Hotel selling its entitlements outside of the LGA.
44. The Mercury Report stated that the small taxation benefit derived from the increased number of EGMs at the Premises will assist the Applicant to proceed with the proposed facility upgrades and increased support to harness racing.
45. The Harvest Report summarised the history of the Applicant and the Race Track. It stated that it was recognised that the Premises required enhanced social facilities in order to viably contribute to the local community.



46. In oral evidence Dr Miller pointed out that, in spite of the adverse circumstances facing the Applicant in recent years, the Applicant had still provided free (or at a reduced fee) use of the Premises and surrounding areas to an extensive and diverse range of community organisations.
47. Dr Miller confirmed that in his opinion the Applicant is committed to reinvigorating their funding program based on the increase in revenue derived from gaming and non-gaming offerings as a result of the removal of EGMs from the Town Hall Hotel.
48. Dr Miller considered that the success of the Premises is fundamental to the social and economic wellbeing of the Northern Grampians community. Dr Miller stated that in order to ensure that the Premises continues to be an effective harness racing facility, as well as a venue for the community to attend for gaming and non-gaming activities, there must be some level of investment that occurs.
49. Dr Miller believed that the increase in the number of EGMs would make the Applicant more economically viable now and into the future. He considered that the ability for the Applicant to contribute by way of employment, facilities, services and donations would be significantly handicapped if the Application was not granted.
50. The Commission also received a letter from Council, dated 27 October 2015. The letter stated Council support for the Application, particularly in relation to the ongoing viability of the Applicant, as well as the additional funds available for community contributions if the Application is granted.
51. The Commission accepts the evidence that the removal of EGMs from the Town Hall Hotel has already driven the growth in revenue at the Premises. The Commission believes this has resulted in the strengthening of the financial position of the Applicant.
52. The Commission agrees that the introduction of additional EGMs at the Premises will further enable the Applicant to remain viable and retain and develop the existing facilities and services to the community. The Commission accepts that the Premises and the Race Track are regarded as being important to the Northern Grampians community as evidenced by Council's support for the Application. The Commission regards the Applicants ongoing financial viability will be enhanced as a result of the increase in EGMs at the Premises and that has a positive social impact to which it assigns marginal weight.



Community contributions

53. The Applicant submitted that, in addition to the current level of in-kind contributions that are made, it would make cash contributions in the amount of \$15,000 per annum (indexed to CPI) if the Application is granted.
54. Ms McIlvride described the in-kind services that are provided to the Northern Grampians community. She conceded that the Applicant does not formally document the in-kind contributions that are made to the community. However, Ms McIlvride provided the Commission with an indication of the type and size of organisations that use the facilities at the Premises, as well as the usual cost to hire the function area (\$220), which is not charged to these community groups.
55. Ms McIlvride said it was the intention of the Applicant to begin a formal relationship with Council to distribute proposed cash contributions of \$15,000 by having a representative of Council as a member of the Applicant's committee that decides on the recipients of cash benefits, if the Application is granted.
56. Dr Miller outlined the historical contribution that the Applicant has made to the community. Dr Miller submitted that the Applicant had provided financial assistance, stake-money to the harness racing industry and donations to the community of the amount of \$673,992 over some years, but had been unable to make contributions since approximately 2012, due to financial hardship.
57. Dr Miller stated that, in addition to the racing contributions that would result, the Applicant would be in a position to resume making formal financial contributions to the community, as well as continuing and developing the in-kind contributions that are made.
58. In his oral evidence, Mr Sanderson stated that if the Application was not granted, it would be unlikely that the Applicant would be able to deliver the proposed "package" of community contributions, additional employment, and investment in the Race Track as proposed. Mr Sanderson acknowledged that whilst the Applicant has "been lucky enough to get this extra cash flow" as a result of the removal of EGMs from the Town Hall Hotel and would "give some money back to the community regardless", it would be unlikely that the quantum of those contributions would be significant, having regard to the underlying financial difficulties that the Applicant has experienced.
59. The Commission had regard to the submission from the Applicant in relation to in-kind contributions that was provided to the Commission on 12 July 2016. This document estimates approximately \$25,570 worth of in-kind community contributions are made to community groups

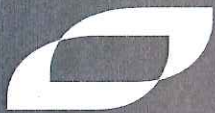


within Northern Grampians on an annual basis by the Applicant, in addition to other cash contributions that are made from time to time.

60. With reference to the Schedule attached to the written evidence of Ms McIlvride, the Commission notes and acknowledges the level of commitment that the Applicant has displayed in ensuring that a variety of sporting, health, education and community organisations have been the recipients of contributions from the Applicant since 2002.
61. The Commission accepts that additional in-kind contributions have a social benefit to Northern Grampians, and acknowledges the enhanced in-kind contributions that are likely to be derived from the Application if it is granted.
62. The Commission recognises that the continued in-kind contributions, as well as the additional \$15,000 in cash contributions, may have both an economic and social impact. The social impact from such contributions is often positive, as the funds can be used to improve the social capital of the community for which they are made. In assessing the weight to be placed on such a benefit, it is important that the Commission does not conflate this benefit with the economic benefit associated with such contributions.
63. The Commission accepts that it is likely that the additional community contributions will not occur if the Application is refused.
64. The Commission considers that the additional community contributions, and the impact they will have on local community organisations, is a social benefit which it gives marginal weight.

Increased gaming opportunities for those who enjoy gaming

65. Dr Miller considered that, given the increase in demand resulting from the removal of EGMs from the Town Hall Hotel, the Application is warranted. Dr Miller considered that for those who play gaming machines in a responsible manner, an increase in the number of EGMs at the Premises will cater for increased demand, improve variety and, therefore, represent a social benefit.
66. Dr Miller also indicated that the Premises is relatively isolated in relation to other gaming venues, as the nearest venues to the Premises are located in Ararat (approximately 30 kilometres away) and St Arnaud (approximately 60 kilometres away).
67. The Mercury Report provided detailed patron information – measured in increments as small as 15-minute blocks – to provide an indication to the Commission of the level of demand that exists at the Premises. Mr Baldi, in his evidence, said that the utilisation during peak periods on the



afternoons and evenings of Friday, Saturday and Sunday indicate there are too few EGMs at the Premises to service patron demand. Mr Baldi submitted that if the Premises had additional EGMs available, the increased demand that has been created since the removal of EGMs from the Town Hall Hotel would, to some extent, be serviced.

68. Mr Baldi considered the use of EGMs as “an enjoyable pastime” is a positive social outcome for those that choose to utilise EGMs as part of a broader social offering, such as the hospitality facilities at the Premises.
69. The Commission accepts the evidence from Mr Baldi and Dr Miller in relation to the demand at the Premises, and the likely impact if the Application was not granted. Given the relatively significant distance between the Premises and other ‘nearby’ gaming venues, the Commission considers that the demand that exists at the Premises is likely to remain unmet if the Application was not granted.
70. On that basis, and to the extent that this increased demand exists, the Commission considers the increased gaming opportunities available to those who enjoy gaming, and do not engage in problem gambling, to be a social benefit and one to which it assigns marginal weight.

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

71. 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 social costs. Accordingly, the Commission accepts that there is potential for negative social costs through possible increased problem gambling expenditure.
72. In the summary table provided in addition to the Harvest Report, Dr Miller noted that –

There may be some heightened risk that a proportion of gaming expenditure associated with 15 new EGMs could be associated with problem gambling.

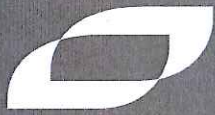
There is evidence of a sustained decline in problem gambling over time, in Victoria and elsewhere.

There is some evidence of problem gambling in the NGS [Northern Grampians Shire], as there is in many areas of Victoria. The area is a mature gaming market and much of the new EGM expenditure at the SHRC is likely to be drawn from existing gaming customers who would



likely have played EGMs at the Town Hall Hotel, a venue that has ceased trading. The NGS and surrounding areas do not present as a particularly vulnerable to problem gambling [sic]. There is evidence the applicant employs appropriate RSG practices at the premises & a working relationship with local help services.

73. Dr Miller referred to the information contained in the VCGLR Report in relation to SEIFA data, which indicated that there were areas in the immediate surrounding area of the Premises that were relatively disadvantaged. Dr Miller contended that the SEIFA metric was not a perfect tool to measure the extent of advantage or disadvantage, as it did not take into account the relative affordability of property, the age of residents, and the practical differences between rural and metropolitan LGAs, such as travel time to venues. Dr Miller stated he did not consider the low income levels, and generally low SEIFA ratings across a variety of metrics in the Northern Grampians community, to be indicative of a community that is particularly susceptible or vulnerable to an increased risk of problem gambling.
74. More particularly, Dr Miller considered that the basis for the relatively low socio-economic status, and subsequent SEIFA data derived from those measurements, was the age demographic in Northern Grampians being higher than usual and, therefore, contributing to a greater rate of welfare/pension payments in the community. He considered the SEIFA measurement was deficient as it did not consider attributable reasons for low-scoring statistical areas, and there was an inherent bias against an older population by virtue of some of the metrics being measured – such as education, income and health – being categories that an older demographic are less likely to perform well in.
75. Dr Miller suggested that a significant number of patrons attending the Premises are likely to be older, have a relatively low income, but also have a relatively low level of debt, due to the affordability of housing in Northern Grampians.
76. Dr Miller submitted that the Commission ought to consider the maturity of the market into which it is proposed the additional EGMs will be introduced as a mitigating factor. In particular, Dr Miller considered that it was likely that potential EGM users in Northern Grampians were familiar with EGMs, have utilised EGMs previously, and are cognisant of the risks involved in utilising EGMs as a 'repeat purchase'. On that basis, Dr Miller considered that such a user was likely to have mechanisms in place to recognise and prevent the risk of harm by way of problem gambling.
77. Dr Miller conceded that while the general age demographic of patrons at the Premises was a



mitigating factor, alone it would not prevent patrons developing problem gambling behaviours. However, whilst problem gambling almost certainly exists both at the Premises and in Northern Grampians, he considered that the risk of a portion of gaming expenditure being derived from problem gambling was relatively low, given the protective factors (as listed above) that Dr Miller considered was prevalent amongst the patronage likely to attend the Premises.

78. Mr Sanderson stated that he was surprised to learn of the SEIFA data published in the VCGLR Report. Whilst not disputing the data itself, Mr Sanderson agreed with the conclusions of Dr Miller and considered that Stawell was “quite robust and quite viable”.

A. *Responsible Service of Gaming practices at the Premises*

79. The Harvest Report acknowledged the impact that problem gambling has on individuals and the community, and the responsibility to consider the harm that can result if an increased number of EGMs are available in a particular area. The Harvest Report outlined the Responsible Service of Gaming framework in place at the Premises to address and assist patrons who may be showing signs of problem gambling and need assistance in relation to this.

80. The Harvest Report noted that staff at the Premises recognise the need to become familiar with new patrons who have migrated to the Premises from the Town Hall Hotel, and that such a measure is effective in assisting staff to identify at-risk patrons in relation to problem gambling. However, the Commission notes that Dr Miller did not visit the Premises or speak to staff directly.

81. The Harvest Report confirmed that the Applicant is a member of Mercury and subscribes to its RSG initiative. Dr Miller considers that the Mercury RSG policy provides an appropriate level of support for staff at the Premises to identify, address and manage any problem gambling that may occur at the Premises.

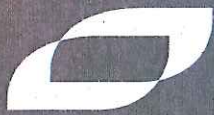
82. Dr Miller outlined the RSG practices at the Premises, and acknowledged the level of engagement that the Applicant has with the local Gamblers Help. Dr Miller considered that the involvement of venues with gambling assistance organisations in the local community was an important factor in considering the measures in place to protect the community in the area in which the additional EGMs are to be introduced.

83. The Commission heard evidence from Mr Sanderson in relation to problem gambling. Mr Sanderson stated that, in his role with an assistance organisation located in Stawell, he has noted a significant decrease in the number of persons within the local community that are seeking assistance in the way of basic welfare. Mr Sanderson also indicated that a significant portion of



assistance sought has been by persons from outside of Stawell.

84. The Commission heard evidence from Ms Mornane, the Gaming Manager at the Premises, in relation to RSG practices in place at the Premises. Particularly, Ms Mornane was able to describe the strategies in place at the Premises to identify and intervene if staff consider that a patron is displaying problem gambling behaviours or precursors.
85. Ms Mornane confirmed that the Premises operates under the Mercury RSG policy, and that all gaming room staff have completed RSG courses and additional refresher training where applicable. As a result, Ms Mornane considered that staff at the Premises were highly skilled in identifying and resolving issues that may arise with patrons in relation to problem gambling incidents, and on that basis, the level of risk attributable to expenditure derived as a result of problem gambling would be extremely limited.
86. In both written and oral evidence provided to the Commission, Ms Mornane outlined the intended operation of the Premises, and the emphasis the Applicant has on providing a place of recreation for local community members by providing a varied offering where gaming is not the main focus. Ms Mornane stated that communication and interaction with patrons was a key measure used by staff to ascertain whether a patron requires further assistance.
87. The Commission heard oral evidence from Ms Hutchison (Compliance Officer at Mercury) about the approach taken by the Applicant in relation to problem gambling at the Premises. Ms Hutchison confirmed that the level of interaction by staff at the Premises was a crucial measure to ensure that patrons are engaged, and that the Premises exhibited high levels of compliance in relation to RSG training, incident recording, and self-exclusion support.
88. In particular, Ms Hutchison considered club venues, such as the Premises, could be contrasted against hotel venues. Firstly, club venues were not – or, alternatively, to a lesser extent – motivated by profit surplus derived from increased expenditure on EGMs. Secondly, the anonymity often prevalent at hotel venues was less so at club venues, such as the Premises. Ms Hutchison considered that staff at the Premises were more likely to recognise customers and locals in the community, as opposed to hotel venues where there is less sense of community.
89. Ms Hutchison believed that the Applicant exceeds its mandatory responsibilities in relation to the delivery of responsible gambling. In particular, Ms Hutchison noted that the Board of the Applicant has shown an interest in the compliance framework, as well as completing the relevant RSG training. Ms Hutchison also noted the dedicated area on the website of the Premises that provides



information and links to external websites to assist in managing problem gambling.

90. Ms Hutchison indicated that Ms McIlvride has undertaken additional training so she can conduct self-exclusion interviews with patrons that choose to do so.
91. The Commission has considered the evidence provided in relation to problem gambling in Northern Grampians, and the likely impact that a grant of the Application will have in relation to this disbenefit. The Commission finds that a proportion of total gaming expenditure in Northern Grampians and at the Premises will be associated with problem gambling.
92. The Commission is concerned about the particularly high levels of gaming machine density and expenditure, both of which far exceed the rural Victorian averages. Dr Miller was unable to provide the Commission – beyond reference to the maturity of the gaming market in Northern Grampians, and the age of that community – with evidence that supported his conclusions.
93. In relation to the age demographic surrounding the Premises, the Commission notes the concession made by Dr Miller that this alone will not be sufficient to mitigate problem gambling risks.
94. However, the Commission also notes a number of factors that may mitigate the risk of an increase in problem gambling if the Application is granted. In particular, the Commission is satisfied that the Applicant's approach to Responsible Service of Gambling as outlined in paragraphs 79 to 90 reduces the risk of problem gambling at the Premises.
95. The Commission also notes the low percentage of problem gamblers that were identified in the Grampians region as part of the study undertaken by the Department of Justice in 2009,¹⁹ with only 0.05% of gamblers considered to be problem gamblers in this region. This level was significantly lower than any other region in Victoria, as well as the Victorian average itself.
96. The Commission finds that whilst the area surrounding the Premises presents as vulnerable to problem gambling on the SEIFA index of disadvantage, the Commission is satisfied that the potential for an increase in problem gambling at this particular venue is low, on the basis of the age demographic of customers at the Premises and in Northern Grampians, and the Applicant's approach to problem gambling.
97. Consequently, the Commission finds that the social disbenefit associated with problem as a result

¹⁹ Department of Justice (Vic), "A Study of Gambling in Victoria – Problem Gambling from a Public Health Perspective", September 2009, page 58.



of this Application is a risk, on which it places low weight.

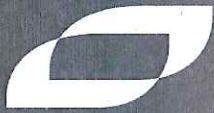
Economic Impacts

Gaming expenditure not associated with problem gambling

98. 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.²⁰ 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.²¹
99. Mr Baldi provided his expert opinion by way of adopting the written evidence in the Mercury Report, as well as providing oral evidence at the hearing in relation to the anticipated expenditure arising from the introduction of an additional 15 EGMs at the Premises. In summary, Mr Baldi's evidence was that –
- a) There has been a decline in gaming expenditure in Northern Grampians of approximately 14.6% since 2011/12;
 - b) Based on anecdotal evidence and analysis of recent trends in gaming expenditure, Mr Baldi estimates that the additional gross gaming expenditure generated from an increase of 15 EGMs at the Premises would be approximately \$311,118 per annum in the first 12 months of trade; and
 - c) The Applicant has experienced a significant increase in the level of patronage, demand for EGMs and expenditure within the Premises as a result of the ceasing of operation of the Town Hall Hotel as a gaming venue in October 2015. In the Mercury Report, Mr Baldi estimated that the increase in annual expenditure at the Premises would increase from \$1,794,377 in 2014-15 (whilst the Town Hall Hotel had gaming facilities) to \$2,576,474 in 2015-16 (when the Town Hall Hotel did not have gaming facilities from October 2015).
100. Dr Miller submitted that the addition of 15 EGMs at the Premises, and subsequent increased gaming expenditure in Northern Grampians in the quantum described by Mr Baldi, is an economic

²⁰ *Romsey No. 2* at [351] per Bell J.

²¹ *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.



benefit like any other entertainment and discretionary spending.

101. Dr Miller expected any increase in problem gambling as a result of granting the Application to likely be minimal and, therefore, the majority of the increased expenditure will be an economic benefit.
102. In assessing the extent of this economic benefit, the Commission has had regard to the evidence outlined at paragraphs 72 to 90 above in relation to problem gambling.
103. The Commission finds that the portion of new expenditure not attributable to problem gambling represents an economic benefit. However, the amount of new expenditure is not estimated to be significantly high. Having regard to the evidence before it in relation to this factor, the Commission assigns this benefit marginal weight.

Community contributions

104. In determining the net economic and social impact of applications of this nature, both the Commission²² and VCAT²³ have regularly treated community contributions as a benefit in both economic and social terms. For the purpose of avoiding conflation of this benefit, it should be noted that the assessment of this benefit in this section is undertaken in relation to the level of community contributions, and the extent of that benefit, in purely economic terms. An assessment of the social impact of these community contributions is undertaken separately at paragraphs 59 to 64.
105. In his written statement, Mr Sanderson submitted that the Applicant – as it functions as a club – has ensured that all profits have remained either within the local community, or reinvested in the Premises. He said that since 2002, the Applicant has given approximately \$600,000 in grants to the local community.
106. Mr Sanderson confirmed that, should the Application be granted, the Applicant would make community contributions of \$15,000 per annum, with a view to reassessing that amount upward, should there be additional funds available. Mr Sanderson stated that it was the intention of the Applicant to involve a Council representative in the distribution of the funds to the community.
107. In her written statement, Ms McIlvride confirmed the information provided by Mr Sanderson in relation to community contributions. Additionally, Ms McIlvride stated in oral evidence that prior to

²² See, for example, Application by Richmond Football Club [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

²³ See, for example, *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms Hotel*.

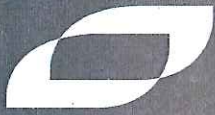


the financial difficulties that the Applicant encountered at or around 2012, its cash contributions were estimated at \$8,000 per annum. Ms McIlvride also confirmed that, to date in the 2015/16 financial year, the Applicant had made approximately \$4,000 in community contributions.

108. Ms McIlvride also referred to the Schedule appended to her statement. She acknowledged that a significant portion of the contributions listed in the Schedule were attributable to two sources – trophies and prizemoney – in connection with harness racing. Ms McIlvride acknowledged that, whilst some portion of prizemoney and trophies will remain within the Stawell or Northern Grampians community (such as to winning local trainers and drivers that participate in race meetings), there was also a portion that may not stay within the community and, to that extent, cannot be attributed as a benefit to Northern Grampians in terms of community contributions.
109. The Commission accepts that the additional community contributions proposed by the Applicant are an economic as well as social benefit to the community. In determining weight to be assigned to this benefit, the Commission has had regard to the relatively small amount of the additional contribution that is proposed by the Applicant.
110. The Commission accepts that there is potential for an increase to the existing in-kind and ad-hoc community contributions, but these are as yet unquantified.
111. Accordingly, the Commission assigns this benefit a marginal weight.

Employment creation

112. The Applicant currently employs 32 staff, seven of which are full-time staff, and 25 of which are part-time staff.
113. In her oral evidence, Ms McIlvride stated that all of the staff employed at the Premises are locals that, mostly, have been employed by the Applicant for a considerable period of time. In addition to the recent employment of a new staff member, Ms McIlvride considered that if the Application were granted, it would create the need for an additional full-time equivalent member of staff to be employed to manage the increased demand.
114. The Commission accepts the evidence that, if the Application were granted, the likely result is an increase of employment opportunities at the Premises by approximately one full-time equivalent position. The Commission also accepts that, given the location and relative isolation of the Premises, it is likely that additional staff will be derived from the local Northern Grampians area.
115. Accordingly, the Commission regards the additional employment as a positive economic benefit



to which it assigns marginal weight.

Capital improvements

116. Dr Miller gave evidence that the capital improvements proposed at the Premises will be an economic benefit to the community. Particularly, Dr Miller considered that the complementary expenditure resulting from the proposed capital improvements to the Race Track, as well as the construction of a staff room at the Premises, will create employment and revenue for businesses and contractors within Northern Grampians.

117. Dr Miller referred to the immediate refurbishment plans that the Applicant proposes will occur should the Application be granted. Firstly, Dr Miller referred to the review of the Race Track undertaken by Calibre Consulting in August 2015, which recommended cost-effective upgrade options that could occur to improve the state of the track. These recommendations are estimated at approximately \$600,000. Secondly, Dr Miller indicated that, in addition to the track works proposed, the Applicant intends to construct a dedicated staff room at the Premises. The cost of the staff room is estimated at approximately \$17,000.

A. Works proposed in relation to the Race Track

118. Mr Sanderson said, in his oral evidence, that the role of harness racing in the community is very important. He outlined the economic importance to the area, including the trainers and the range of other industries associated with harness racing. He confirmed that the improvements to the Race Track were necessary to remain competitive in harness racing.

119. Ms McIlvride said if the Applicant failed to undertake improvement works at the Race Track, there was a risk that fewer meetings would be held there. She stated that the harness racing industry is very competitive and clubs need to meet strict criteria with regard to the track and associated facilities.

120. Dr Miller submitted that the opportunity for the Applicant to invest a substantial sum of money to improve the Race Track will provide the Applicant with ongoing financial stability, as well as stimulating employment and economic growth in the local area, both initially and in subsequent years. In particular, Dr Miller considered that the employment benefits resulting in the short-term, such as supply contracts and employment connected with the improvement works to take place at the Race Track, is an economic benefit to the Northern Grampians community. Dr Miller also had regard to the economic benefit derived from retaining race meetings at the Race Track, particularly in relation to the impact that race meetings have on the Northern Grampians economy



during the times at which those meetings occur.

121. The Commission received four (4) documents from Council in relation to tourism in the Northern Grampians during times at which race meetings were held. Two of those documents were in relation to the total race meets held in 2015, and two were in relation to the most recent meet held on 22 June 2016.
122. Supporting correspondence from Council indicated that the extent of the tourism benefit to Northern Grampians was approximately \$30,000 as a result of the June 2016 meeting, and approximately \$514,300 total benefit to the community for the race meets held in 2015 (\$356,208 was a direct economic benefit).
123. The Commission considered that, to some extent, an economic benefit will be derived by the short-term supply contracts and complementary expenditure that will occur as a result of the Application being granted.
124. However, the Commission does not consider that the proposed capital improvements to the Race Track, of itself, is an additional economic benefit to Northern Grampians as a result of the Application. The Commission considers that the economic benefit of the capital improvements is derived from the requirement to undertake the works, and that the decision of the Applicant to invest in an improved Race Track is as a result of its increased financial viability to which a benefit has been assigned in paragraph 52 above.

B. Works proposed in relation to the staff room

125. In her oral evidence, Ms McIlvride said that currently, staff do not have a staff room to store belongings or take breaks. The construction of the staff room, in Ms McIlvride's view, would assist morale.
126. Whilst the Commission accepts the importance and value of a staff room in relation to maintaining and increasing staff morale, the Commission finds that the economic impact of such a measure is negligible, when considered in the context of the community of Northern Grampians and any benefit that could reasonably be derived from that measure by the community.
127. The Commission considered the extent of the complementary expenditure that will be derived from the capital improvements that will occur at the Premises if the Application is granted. The Commission accepts that, as a result of the proposed track works and construction of the staff room, it is likely that some level of complementary expenditure and supply contracts will result,



and it is likely that they will be sourced locally. The Commission was not provided with estimates in relation to the extent of this impact, but accepts that it is a flow-on effect of the proposed works, and will likely contribute to a short-term increase in employment in the local area.

128. Accordingly, the Commission places marginal weight upon the economic benefit on the capital works proposed at the Premises.

New gaming expenditure attributable to problem gambling

129. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an economic disbenefit.²⁴ In assessing the extent of this disbenefit, the Commission recognises that it does not include transferred expenditure because such expenditure cannot exacerbate problem gambling.²⁵

130. In assessing the extent of this disbenefit, the Commission accepts the expenditure evidence of Mr Baldi as set out at paragraph 99 above.

131. The Commission refers to evidence provided above at paragraphs 72 to 90 in relation to the social impact of problem gambling, and the mitigating factors to reduce the likelihood of problem gambling at the Premises.

132. The Commission has considered the evidence provided in relation to the likelihood of new gaming expenditure being derived from, or attributable to, problem gambling. The Commission accepts the evidence set out in paragraphs 79 to 90 in relation to the broad compliance that the Applicant appears to exhibit in relation to RSG and, in particular, the focus on interaction and engagement with patrons as a method to detect whether a patron may be exhibiting signs of an increased risk of problem gambling.

133. The Commission finds that the grant of this Application will result in new expenditure of approximately \$311,118 in the first 12 months of operation following installation of the additional 15 EGMs. It accepts that a proportion of this new expenditure may be associated with problem gambling. However, a significant proportion of this is also transferred as a result of the removal

²⁴ 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* 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.

²⁵ See *Bakers Arms Hotel* 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.



of EGMs from the Town Hall Hotel.

134. In considering the extent to which any new expenditure may give rise to problem gambling, the manner in which gambling is conducted at the Premises is a relevant factor. It was evident to the Commission from the evidence of Mr Sanderson, Ms Mornane, Ms McIlvride and Ms Hutchison that the Applicant understands the requirements of the RSG, the gaming industry, and the regulatory framework that operates therein.
135. The Commission is satisfied that the Applicant has appropriate practices and procedures in place in relation to complying with RSG obligations. As such, the Commission finds that, whilst there is an economic disbenefit associated with problem gambling as a result of this Application, it places a low weight on this factor.

Net economic and social impact

136. The '*no net detriment test*' in section 3.4.20(c) of the Act requires the Commission to weight 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.²⁶
137. After consideration of the material before it, including the evidence provided at the public hearing (and weighted as outlined above and in tabular form at Appendix 1 of this Decision and Reasons for Decision), the Commission has concluded that there is likely to be a neutral social and economic impact to the well-being of the community and the municipal district in which the Premises are located if the Application is approved.

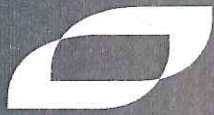
OTHER RELEVANT CONSIDERATIONS

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

Reduction in taxation payable to the Government

139. The Commission heard evidence from Mr Baldi in relation to the likelihood of a reduction in the

²⁶ *Mount Alexander Shire Council* at [52] per Dwyer DP.



level of taxation payable to the Government if the Commission were to grant the Application.

140. With reference to the projections in the Mercury Report, Mr Baldi confirmed in his oral evidence that the likely outcome in relation to taxation would be an approximate reduction of \$50,000 (which, conversely, will be an increase in revenue available to the Applicant).
141. The Commission accepts the evidence of Mr Baldi in relation to this matter. However, the Commission considers this reduction in taxation to be negligible in the context of the Application and the impact on the Northern Grampians community.
142. On the material that has been put before it, the Commission is satisfied of the other matters in section 3.4.20(1). The Commission is also satisfied that the Applicant understands and will continue to act in accordance with its obligations to, so far as is reasonable, take measures to prevent problem gambling. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the Application.
143. In granting approval, the Commission believes it is appropriate that its approval should be subject to conditions relating to the proposed community contribution of \$15,000 given Council's reference to this in its letter of support. The conditions are as follows:
- (1) *The operator of the Premises (**the Venue Operator**) will establish the Stawell Harness Racing Club Community Contributions Fund (**the Fund**) and undertake to do the following:*
- (i) *Make cash contributions annually in the sum of at least \$15,000 (increased each year by the increase in CPI) (**the Contribution**) from the commencement of the operation of the additional 15 EGMs at the Stawell Harness Racing Club for the life of the entitlements;*
 - (ii) *Distribute the Contribution in accordance with the determination of the committee established by the Venue Operator and comprising at least one (1) representative of Council (**the Committee**) and;*
 - (iii) *Ensure the Committee provides to the Shire of Northern Grampians each year an account confirming the payment of the Contribution as set out above.*

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

Appendix One

Summary of social and economic impacts

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.

Social impacts

	Impact	Paragraph number	Comment relevant to weight
Benefit	Financial viability of the Applicant	52	Increased revenue ensures financial viability of Applicant, which provides benefit to the community. Marginal weight.
	Community contributions	60-64	Additional \$15,000 to be distributed by committee (involving Council representative). Marginal weight.
	Increased gaming opportunities for those who enjoy gaming	69-70	Increased demand as a result of removal of EGMs from Town Hall Hotel, leaving Premises as the only local gaming venue, which is at present not meeting demand. Low weight.
<hr/>			
Disbenefit	Possibility of an increased incidence and potential impact of problem gambling on the community	91-97	SEIFA statistics suggest elements of disadvantage; however, mitigation measures in place by way of RSG practices. Low weight.



Economic impacts

	Impact	Paragraph number	Comment relevant to weight
Benefit	Gaming expenditure not associated with problem gambling	103	Approximately \$311,000 increase in the first 12 months of trade following installation of additional EGMs at the Premises; not considered significant in the context of the Application. Marginal weight.
	Community contributions	109-111	Potential resumption of previous levels of community contributions, and addition of further \$15k per annum for life of EGMs, subject to conditions. Marginal weight.
	Employment creation	114-115	One (1) full-time equivalent increase in employment at the Premises. Marginal weight.
	Capital improvements	126-128	Complementary expenditure and supply contracts derived from the proposed works to Race Track and construction of staff room. Marginal weight.
Disbenefit	New gaming expenditure attributable to problem gambling.	131-135	Not significant given relatively low expenditure which largely transferred from Town Hall Hotel; good RSG practices and mitigating measures in place. Marginal to low weight.