



# Victorian Commission for Gambling and Liquor Regulation

## DECISION AND REASONS FOR DECISION

In the matter of an application by APD Group Pty Ltd under section 3.3.4(1) of the *Gambling Regulation Act 2003* for approval of the premises, the Valley Inn Hotel, located at 120 Fyans Street, South Geelong, as suitable for gaming with twenty nine (29) electronic gaming machines.

**Commission:**

Dr Bruce Cohen, Chair  
Mr Ross Kennedy, Deputy Chair

**Appearances:**

Mr John Larkins of Counsel for the Applicant (instructed by Hall & Thompson)

Mr Cameron Warfe as Counsel Assisting the Commission

**Date of Hearing:**

10 February 2016

**Date of Decision:**

23 March 2016

**Date of Reasons:**

23 March 2016

**Decision:**

The Application is granted subject to the conditions outlined at paragraphs 105 and 106 of these Reasons for Decision.

**Signed:**

**Bruce Cohen**  
Chair



## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by APD Group Pty Ltd (**Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**Commission**) for approval of the Valley Inn Hotel, located at 120 Fyans Street, South Geelong (**Premises**), as suitable for gaming with twenty nine (29) electronic gaming machines (**EGMs**) (**Application**).
2. The relevant municipal authority is the City of Greater Geelong (**the Council**). On 25 January 2016 the Council provided the Commission and the Applicant with a written submission in opposition to the Application. However, the Council was not represented at the hearing of the Application.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (**Act**). The Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities. For this reason the Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some, and a potentially harmful activity for others.
4. The objectives of the Act are set out in section 1.1, which provides, inter alia:  
...  
(2) *The main objectives of this Act are—*
  - (a) *to foster responsible gambling in order to-*
    - (i) *minimise harm caused by problem gambling; and*
    - (ii) *accommodate those who gamble without harming themselves or others;*
  - (ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*
  - (b) *to ensure that gaming on gaming machines is conducted honestly;*
  - (c) *to ensure that the management of gaming equipment and monitoring equipment is free from criminal influence and exploitation;*
  - (d) *to ensure that other forms of gambling permitted under this or any other Act are conducted honestly and that their management is free from criminal influence and exploitation;*
  - (e) *to ensure that-*



- (i) *community and charitable gaming benefits the community or charitable organisation concerned;*
- (ii) *practices that could undermine public confidence in community and charitable gaming are eliminated;*
- (iii) *bingo centre operators do not act unfairly in providing commercial services to community or charitable organisations;*
- (f) *to promote tourism, employment and economic development generally in the State.*

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

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

6. Section 9(3) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)* provides, inter alia:

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



7. The relevant provisions concerning this Application are to be found in sections 3.3.7 and 3.3.8 of the Act:

(a) section 3.3.7 provides:

- (1) *The Commission must not grant an application for approval of premises as suitable for gaming unless satisfied that—*
  - (a) *the applicant has authority to make the application in respect of the premises; and*
  - (b) *the premises are or, on the completion of building works will be, suitable for the management and operation of gaming machines; and*
  - (c) *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.*
- (2) *In particular, the Commission must consider whether the size, layout and facilities of the premises are or will be suitable.*
- (3) *The Commission must also consider any submission made by the relevant responsible authority under section 3.3.6.<sup>1</sup>*
- ...
- (5) *The Commission cannot approve an area as a gaming machine area unless that area is wholly indoors.*

(b) section 3.3.8 provides, inter alia:

- (1) *The Commission must determine an application by either granting or refusing to grant—*
  - (a) *approval of the premises as suitable for gaming; and*
  - (b) *if applicable, approval for 24 hour gaming on the premises on any one or more days.*
- ...
- (2) *An approval must specify—*
  - (a) *the number of gaming machines permitted; and*
  - (b) *the gaming machine areas approved for the premises; and*
  - (c) *if applicable, the days on which 24 hour gaming is permitted on the premises.*
- ...

8. Section 3.3.7(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

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<sup>1</sup> Section 3.3.6 of the Act allows the Council to make a submission addressing the economic and social impact of the proposal for approval on the well-being of the community of the municipal district in which the premises are located; and taking into account the impact of the proposal on surrounding municipal districts.



approval through positively and objectively establishing that the net economic and social impact will not be detrimental to the well-being of the community.<sup>2</sup>

9. The Act does not specify the matters which the Commission must consider in deciding whether this '*no net detriment*' test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:
- the likely economic impacts of approval;
  - the likely social impacts of approval; and
  - the net effect of those impacts on the well-being of the relevant community.<sup>3</sup>
10. As such, the '*no net detriment*' test is a composite test requiring consideration of a single net impact in economic and social terms on the well-being of the community.<sup>4</sup> The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.
11. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues, and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.<sup>5</sup> On review, decisions in the Victorian Civil and Administrative Tribunal (VCAT) have held that for impacts that may be both economic and social – for example the benefits of gaming consumption – it does not matter whether the impact is considered on the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.<sup>6</sup>
12. The Commission also accepts the position expressed by Morris J in *Branbeau Pty Ltd v Victorian Commission for Gaming Regulation* [2005] VCAT 2606 at [51] that:

*“Although the [no net detriment] test requires consideration of the impact of approval on the well-being of the community of the municipal district in which the premises are located, logic*

<sup>2</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.

<sup>3</sup> *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [42]-[43] per Warren CJ, Maxwell P and Osborn AJA.

<sup>4</sup> *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275, [332], [348] per Bell J cited in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [58] per Dwyer DP.

<sup>5</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [57] per Dwyer DP.

<sup>6</sup> See *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275, [352] per Bell J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [58] per Dwyer DP.



*and common sense require this to be considered in the context of the spatial impact of the gaming machines to be installed in the venue concerned.*<sup>7</sup>

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

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

This approach has been adopted in a number of VCAT decisions.<sup>9</sup> To facilitate greater consistency between the Commission and VCAT, the Commission has adopted the same approach in this instance.

14. If the Commission is not satisfied that the 'no net detriment' test is met, that is clearly fatal to the application given the opening words of s 3.3.7(1) of the Act. The test is a mandatory precondition to approval. However, although s 3.3.7(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.<sup>10</sup> The Commission must decide whether to grant the approval, even where an applicant has satisfied the minimum threshold of the 'no net detriment' test.<sup>11</sup>
15. In considering the exercise of this discretion:
- (a) it must be exercised having regard to the purposes of the Act and, in particular, the specific purposes of Chapter 3 of the Act dealing with the regulation, supervision and control of gaming machines;<sup>12</sup> and
  - (b) it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the Act as a whole.<sup>13</sup>

<sup>7</sup> See also *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation & Anor* [2009] VCAT 2275, [274] per Bell J.

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

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

<sup>10</sup> See *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [97] and following per Dwyer DP; see also *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.

<sup>11</sup> *Gambling Regulation Act 2003*, section 3.4.20(2).

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

<sup>13</sup> *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126]



16. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*<sup>14</sup> that if all of the mandatory considerations under the Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval – other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.

#### **MATERIAL BEFORE THE COMMISSION**

17. The Applicant provided the Commission with the following material in support of its Application:
- (a) Approval of Premises for Gaming application form dated 27 October 2015;
  - (b) Social and Economic Impact Assessment, prepared by NBA Group (**NBA**), dated 13 October 2015 (**NBA Report**);
  - (c) Addendum Report to the NBA Report, dated February 2016 (**NBA Report Addendum**);
  - (d) Expert's Report in Respect of Application for 29 Electronic Gaming Machines, prepared by ShineWing Australia Pty Ltd (**ShineWing**), dated 21 October 2015 (**Expenditure Report**);
  - (e) Addendum to the Expenditure Report, dated 8 February 2016;
  - (f) Second Addendum to Expenditure Report, dated 16 February 2016;
  - (g) Witness Statement of Anthony Eastmure, Director of the Applicant, dated 5 October 2015;
  - (h) Witness Statement of Hayley Ann Wakeling, General Manager of the Barwon Heads Hotel, dated 5 October 2015;
  - (i) Witness Statement of Robyn Taylor, Gaming Manager of the Barwon Heads Hotel, dated 5 October 2015;
  - (j) Witness Statement of Leigh James Barrett, Director and Principal Consultant of Leigh Barrett and Associates Pty Ltd, dated 14 September 2015;
  - (k) A3 Plans – Proposed Alterations (2) / Proposed Plan & Zones / Red Line Plan & Green Line Plan;
  - (l) Suite of other plans (13);

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per Code PM and Nelthorpe M. As to policy principles identified for consideration, see *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

<sup>14</sup> [2013] VCAT 101, [98].





- (m) Application for Planning Permit to the City of Greater Geelong with respect to the Valley Inn Hotel – 120 Fyans Street, South Geelong prepared by NBA Group, dated 25 September 2015;
  - (n) Consent of the Owner of the Valley Inn Hotel dated 11 June 2015;
  - (o) Land Title Plan from LANDATA;
  - (p) Powerpoint presentation of Valley Inn Development;
  - (q) Proposed roster for the Gaming Room at the Valley Inn Hotel;
  - (r) overview of refurbishment and costings prepared by Schiavello Construction (Vic) Pty Ltd (**Schiavello**), dated 30 September 2015;
  - (s) video of Geelong FC CEO with respect to the announcement of the closure of Club Cats; and
  - (t) draft Venue Management Plan, Valley Inn Hotel.
18. The Council provided the following material in opposition to the Application:
- (a) Economic and Social Impact Submission Form – City of Greater Geelong; and
  - (b) Social and Economic Impact Assessment (SEIA) Report (**Council SEIA**).
19. The following material, prepared by Commission officers, was provided to the Applicant and the Council and was considered by the Commission:
- (a) a report titled *Economic and Social Impact Report*, originally dated January 2016, and revised on 9 February 2016;<sup>15</sup>
  - (b) a report titled *Pre-Hearing Size, Layout and Facilities Report*, dated 29 January 2016; and
  - (c) a report titled *Pre-Hearing Inspection and Compliance Report*, dated February 2016.
20. In addition, the Commission received correspondence from BazzaniScullyPriddle Lawyers, acting on behalf of Taylor Hotel Nominees Pty Ltd, the freehold owner of the Barwon Heads Hotel:
- (a) Letter to the Commission dated 7 December 2015, including an email from John Taylor, director of Taylor Hotel Nominees Pty Ltd; and
  - (b) Letter to the Council dated 7 December 2015, including an email from John Taylor, director of Taylor Hotel Nominees Pty Ltd.

<sup>15</sup> It is noted that, due to the timing and indication of the Council's proposed involvement at the hearing of the Application, the revised version of the VCGLR Economic and Social Impact Report was not provided to the Council.





21. The Commission also had before it two media clippings:
  - (a) Geelong Advertiser – “Pub owners in pokies punt”, dated 20 January 2016; and
  - (b) Geelong Advertiser – “Odds stacked against community with pokies”, dated 4 February 2016.
22. The Commission was also provided with two written submissions by Counsel on behalf of the Applicant, dated 10 February 2016 and 19 February 2016 respectively.
23. Commissioner Cohen visited the Premises following the public hearing.

## DECISION AND REASONS FOR DECISION

### *Background*

24. The City of Greater Geelong<sup>16</sup> is a regional municipality located approximately 75 kilometres south-west of Melbourne. Major centres include Geelong, Ocean Grove, Lara and Leopold. The City of Greater Geelong has an estimated adult population of 178,508, which ranks it 1 out of 13 among Victoria’s regional municipalities. The City of Greater Geelong’s estimated annual rate of population growth of 1.6% for the period 2016-21 is projected by the (then) Victorian Department of Transport, Planning and Local Infrastructure to be slightly lower than the Victorian average of 1.7%. It is estimated that 37.7% of the population will be over 50 by 2021.
25. The Premises are situated at 120 Fyans Street in South Geelong. They are located on the north side of the Barwon River, east of the Princes Highway and in an industrial area within the southern sector of the suburb of South Geelong on the south side of Fyans Street. On the north side of the street are residential premises. Fyans Street is a busy main road under the control of VicRoads. The Premises are located 800 metres from Simonds Stadium, which was previously the site of the Club Cats venue, operated by the Geelong Football Club. The Premises currently comprises a 142 seat bistro open daily for meals, and a TAB and Sports bar.
26. A regional cap of 1,421 EGMs applies for the combined municipalities of the City of Greater Geelong and the Borough of Queenscliff.<sup>17</sup> At the time of this decision, there are 26 gaming venues within the municipality with approvals to operate a total of 1,391 EGMs (and a further venue operating 30 EGMs within the Borough of Queenscliff, bringing the total licensed EGMs

<sup>16</sup> Where reference is made in these reasons to the City of Greater Geelong, this is a reference to the local government area.

<sup>17</sup> Pursuant to section 3.4A.5(3A)(b) of the Act, the Commission determined, in accordance with the criteria specified in the Minister for Gaming’s Order on 15 August 2012, the maximum permissible number of gaming machine entitlements under which gaming may be conducted in a given region or municipality. While the number of entitlements operating within a particular region or municipality is capped, the Commission notes that there is nothing to preclude the aggregate number of EGMs for which approved venues may be licensed from exceeding that cap.



within the region to 1,421 EGMs). However, the number of EGMs actually in operation in these venues, as opposed to the number permitted to be operated, is 1,395 EGMs. In addition, there is a further discrepancy between the permitted numbers of venues and EGMs, and those actually operating, which relates primarily to the closure of the Club Cats venue in 2015 as part of the redevelopment of Simonds Stadium. As a result of this closure, a further 100 EGMs are not currently operating. This impacts on the estimates of EGM density in the City of Greater Geelong, and in the area surrounding the Premises.

27. If density calculations incorporate the EGMs permitted to operate at the Club Cats venue, the City of Greater Geelong has an EGM density of 7.6 EGMs per 1000 adults, which is 2.8% lower than the regional average (7.9) and 33.6% higher than the State average (5.82). If, however, the EGMs which were operated at the Club Cats venue are excluded, the density figure is 7.1 EGMs per 1000 adults. In the case of the postcode in which the Premises are situated, if the Club Cats venue is included, according to the NBA Group the estimated current EGM density is 21.24 per 1000 adults. If the Club Cats venue EGM are excluded, and the proposed 29 EGMs at the Premises are included, it is estimated by Mr Anderson that the EGM density would be 15.67 per 1000 adults.
28. The City of Greater Geelong has an average gaming expenditure of \$625 per adult, which is 2.2% higher than the regional average (\$612) and 13.0% higher than the State average (\$553). Applying the estimate of increased gaming expenditure as received from the Applicant, approval of this application would result in an increase in average gaming expenditure per adult of 0.2%. Overall gaming expenditure within the City of Greater Geelong has decreased by 10.4% in real terms over the past five years, which is a greater decrease than the regional average of 8.4% over the same period.

### ***Reasons for Decision***

29. Pursuant to section 3.3.7, there are three elements that the Commission must be satisfied before it can grant the Application:

#### **AUTHORITY TO MAKE APPLICATION**

30. The first element in relation to which the Commission is required to be satisfied is that the Applicant has authority to make the Application in respect of the Premises.
31. Evidence was provided to the Commission in the form of letter signed by Alan Andrew Clark, Director of Frothy Beer Properties Pty Ltd being the freehold owner of the Premises authorising the Applicant to apply for "*premises approval to operate thirty (30) electronic gaming machines*



*at the premises.”*

32. Based on the evidence above, the Commission is satisfied that this first element has been met.

### SUITABILITY OF PREMISES FOR THE MANAGEMENT AND OPERATION OF GAMING MACHINES

33. The second element in relation to which the Commission is required to be satisfied is that the Premises are or, on the completion of building works will be, suitable for the management and operation of gaming machines.

34. The Commission was provided with a Pre-Hearing Size, Layout and Facilities report prepared by staff at the Commission. This report has been prepared based on plans provided by the Applicant in relation to the Premises and the gaming machine area (GMA), and which form part of the materials before the Commission in this Application. According to the Pre-Hearing Size, Layout and Facilities report, the refurbishment of the venue and the GMA has been assessed by Commission Licence Management and Audit Inspectors against standards and guidelines in relation to the size, location and layout of the GMA, type and height of perimeter barriers, floor numbering and layout of gaming machines, windows, proximity of the GMA to other facilities within the venue (e.g. children's play areas) and any liquor or statutory authority conditions imposed. Based on the plans submitted, and subject to any planning issues, the report concluded that the size, layout and facilities of the Premises will be suitable for gaming.

35. During the hearing, the Commission also heard evidence from Mr Barrett in relation to the suitability of the Premises for the management and operation of EGMs. Mr Barrett agreed with the conclusions contained in the Pre-Hearing Size, Layout and Facilities report.<sup>18</sup> Based on the PowerPoint presentation provided by the Applicant, an issue was raised during the hearing as to whether the glass separating the GMA from other parts of the Premises was transparent or opaque. It was clarified by both Mr Barrett<sup>19</sup> and Mr Eastmure<sup>20</sup> that this glass would be opaque.

36. Based on the evidence above, the Commission is satisfied that this second element has been met.

### 'NO NET DETRIMENT' TEST

37. The third element in relation to which the Commission is required to be satisfied is that the net economic and social impact of approval will not be detrimental to the well-being of the

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<sup>18</sup> See Transcript, pp.75-76.

<sup>19</sup> See Transcript, p.78 line 25.

<sup>20</sup> See Transcript, p.78, lines 1-12.



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 benefits and disbenefits and social benefits and disbenefits associated with this Application, including the weighting given to each of these impacts.

38. The Commission notes that in considering the matters in relation to this test the Council was not represented at the hearing, and as a result the Applicant did not have the opportunity to cross-examine the author of the Council SEIA. Further, whereas matters contained in the Council SEIA were put to various witnesses for the Applicant, an equivalent opportunity did not exist with Council in relation to materials and evidence provided by the Applicant. While the Commission has considered all of the materials before it, including the evidence given during the public hearing, these factors affect the weight that may be placed on the materials provided by the Council.

#### Economic Impacts

39. The materials before the Commission, including the evidence adduced at the public hearing, either referred specifically to, or provided the evidentiary basis for, a range of economic benefits and disbenefits associated with this Application:

#### Expenditure on capital works

40. A potentially key economic benefit associated with this Application is that arising from the expenditure on the proposed refurbishment of the Premises.
41. According to Mr Anderson, the Applicant is proposing to redevelop the Premises at an estimated cost of around \$3 million. The refurbishment of the Premises will include:
- (a) an 84 seat bistro open daily for meals;
  - (b) a stage area for entertainment;
  - (c) a lounge breakout area;
  - (d) outdoor smoking areas;
  - (e) upgraded Sports and TAB bar;
  - (f) offices;
  - (g) gaming room to accommodate 29 EGMs, with obscured glass walls to restrict visibility from other areas of the Premises;
  - (h) upgraded kitchen; and



(i) external upgrade to the façade.

42. In the NBA Report, Mr Anderson also set out further information with respect to the proposed scope of works associated with the refurbishment. According to Mr Anderson, the capital works are a positive supporting factor in relation to the Application. The Commission was also provided with a range of supporting materials which set out further detail with respect to the proposed refurbishment, including plans and mock up pictures of the proposed completed works. Further, the Commission was provided with detailed costings prepared by Schiavello, which estimated the cost of works at just over \$3.15 million (exclusive of GST). It is proposed that the work is to be undertaken by Schiavello. It was submitted on behalf of the Applicant that it was not sure that Schiavello has a base in Geelong, but that it does work in the area.
43. Mr Eastmure provided evidence that the purchase of the Premises was conditional on the Application being granted. If the Application is not granted, the purchase will not proceed, and the Applicant would seek another suitable hotel for the conduct of gaming.
44. The Council SEIA did not directly address the impact of the expenditure on capital works, but rather considered issues related to capital works in the context of recreational and social opportunities (see further below).
45. The Commission finds that the expenditure of capital works is a positive economic benefit. The Commission also recognises that this expenditure is dependent upon the Application being granted, in that if this is not the case, the Applicant will not proceed with the purchase of the Premises. The Commission further notes that in considering the extent of this benefit, it is important not to double count other related benefits, such as short term employment created during the refurbishment process. The Commission also notes that the work will be done by Schiavello, and as it is not clear whether this company has a base in the City of Greater Geelong, it is not certain to what extent this expenditure will benefit the municipality in which the Premises is based. Overall, the Commission considers that the extent of the expenditure on capital works that are intended is of a sizeable nature but there is some uncertainty as to the extent to which the expenditure will be retained in the relevant municipal district in which the Premises are located, and as such a low weight is given to this benefit.

#### Short term employment creation

46. Related to the economic benefit associated with the expenditure on capital works are the short term employment benefits that arise during the refurbishment of the Premises.



47. The extent of the works have been described generally in paragraphs [41] to [42]. It is not clear, however, to what extent this work will be undertaken by individuals who live in the relevant municipality. It is proposed that the work is to be undertaken by Schiavello. In the NBA Report, Mr Anderson stated the "*employment will be increased in the area considerably during the expansion and redevelopment of the Hotel*".<sup>21</sup> However, during the hearing Mr Anderson stated that he didn't put any weight on the number of people that would be employed for the construction phase.<sup>22</sup> Rather, he put weight just on the general economic and ancillary expenditure on the \$3 million refurbishment, though also noting that "*it wouldn't employ as many people as a knockdown and rebuild, but it would employ a significant number of people.*" The Council SEIA made no reference to jobs created during the refurbishment phase.
48. Based on the evidence presented, the Commission concludes that it should not place any weight on this economic benefit. To the extent that it arises in relation to this Application, the Commission considers that the value of this benefit has been captured in that generally associated with the expenditure on capital works considered in paragraphs [40] to [45] above.

#### Longer term employment creation

49. Separate from the short term economic benefits associated with the capital works is the potential benefit associated with longer term employment arising from the Application.
50. In relation to this benefit, Mr Anderson stated in the NBA Report that "*[o]nce completed, new staff will be required for the daily running of the gaming room in addition to the bistro, bar and TAB areas.*" During the hearing, Mr Anderson noted that while the NBA Report (at section 2.4) details that following the proposed development, the Premises will employ three (3) staff on a full time basis, up to 45 staff on a casual basis, and casual entertainers on a regular basis, he did not have knowledge of the current employment levels at the Premises.<sup>23</sup>
51. Mr Eastmure also provided evidence with respect to employment numbers arising from the refurbishment, and the introduction of gaming at the Premises. Mr Eastmure stated that it would lead to the creation of twelve (12) full time positions, of which seven (7) would be in the gaming room and gaming administration. In support, Mr Eastmure provided the Commission with a proposed roster detailing the number of employees that will be required. This roster set out the hours for five full time positions, and five casual staff who, based on the rostered hours proposed, equated to two full time staff. During the hearing, Mr Eastmure stated that a number of the staff currently employed at the Barwon Heads Hotel have indicated that they would come

<sup>21</sup> See NBA Report section 10.

<sup>22</sup> See Transcript, p.22, lines 37-44.



and work at the Premises if the Application was granted.<sup>24</sup> Both Ms Taylor<sup>25</sup> and Ms Wakeling<sup>26</sup> stated that they intended to move from the Barwon Heads Hotel to the Premises should the Application be granted. Mr Eastmure also gave evidence during the hearing that during the refurbishment works, there would be no employment for the current staff as the Premises would not be operating. He further stated that he was happy to interview all existing staff and hopefully re-employ them, but because the Premises would be shut down for six months, couldn't guarantee them continued employment.

52. According to the Council SEIA, Council stated that consideration of employment impacts at the Premises should be limited to those that relate specifically to gaming activity, citing *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534. The Council noted that modest employment benefits may be attributed to the gaming activities, though questioned whether it would generate employment at the levels specified by the Applicant. It stated further that given the reduction in bistro seats (from 142 to 84), it is unknown whether this Application, if granted, will adversely affect current employment conditions at the Premises.
53. According to Mr Anderson, the employment effects are a positive supporting factor in relation to the Application. According to the Council SEIA, the Council considers that there were both positive and negative impacts related to employment.
54. The Commission accepts the evidence given on behalf of the Applicant that if the Application is granted, this will result in the creation of the equivalent of seven new full time positions at the Premises in respect of its gaming operations. In the first instance, the Commission considers that these gaming employment opportunities would be transferred from within the municipality (i.e. from the Barwon Heads Hotel) and as such would not constitute an additional benefit of this Application. However, this would not be the case if gaming continues at the Barwon Heads Hotel. The freehold owners of the Barwon Heads Hotel have stated that it will not cease to be a gaming venue at the expiration of its current lease with the Applicant. They have also stated that the Barwon Heads Hotel will "*avail itself of market opportunities to acquire .. further entitlements*". As at the date of this decision, the Commission is not certain whether this will occur. In such circumstances, there is uncertainty as to whether the employment associated with gaming at the Premises constitutes an additional benefit of the Application. Further, while evidence has been provided as to additional employment arising from the proposed enhanced facilities, as the Commission was not provided evidence as to the current employment numbers,

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<sup>23</sup> See Transcript, p.20, lines 28-34.

<sup>24</sup> See Transcript, pp.92-93.

<sup>25</sup> See Transcript, p.97.

<sup>26</sup> See Transcript, p.101.





it is not possible to conclude that this constitutes additional employment.<sup>27</sup> Having regard to these factors, the Commission regards the additional employment as positive but subject to some uncertainty, and having regard to the anticipated numbers of employees associated with gaming, gives this benefit a low weight.

#### Complementary expenditure

55. Related to the impact of the Application on long term employment is the complementary expenditure that may arise from improvements in facilities, which results in more clientele to the Premises and hence increased economic activity.
56. According to the NBA Report (at section 9.3), it is stated that the updated building and improved facilities will encourage an increased local patronage to the non-gaming activities. As a consequence, there will be complementary expenditure which is a positive economic benefit
57. As noted in paragraph [54], it was not possible for the Commission to assess the impact of the proposed refurbishment of the Premises on long term employment other than with respect to gaming activities as evidence is not available with respect to the current performance of the Premises. For the same reason, the Commission does not place any weight on the benefit associated with complementary expenditure as the basis for its decision in relation to the no net detriment test.

#### Community contributions of \$30,000 per annum

58. In determining the net economic and social impact of applications of this nature, both the Commission<sup>28</sup> and VCAT<sup>29</sup> have regularly treated community contributions as a positive benefit.
59. According to Mr Eastmure, it is proposed that the Applicant will establish a Community Support Fund consisting of \$30,000 per annum for local welfare agencies, the local gamblers help and sporting groups. The Committee that would distribute and allocate funds would consist of one (1) Council representative, one (1) Venue representative and one (1) representative being a Responsible Gambling Consultant who will advertise and call for submissions each year from

<sup>27</sup> The Commission notes further that the factual situation in *Whittlesea CC v George Adams Pty Ltd* differed from that which applies in this Application (in that it related to the construction of an entirely new venue), and if relevant evidence were available, it may have been appropriate to consider the non-gaming employment effect. This approach, which has previously been adopted by the Commission, found support from Dwyer DP in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 at [190].

<sup>28</sup> See, for example, Application by Richmond Football Club [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

<sup>29</sup> See, for example, *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.



local agencies and sporting groups. An annual amount from this fund would be donated to the Bethany Gamblers Help services.

60. Mr Anderson gave evidence that it was not always the case that Council wished to have a representative on such a body. He detailed that in the first year of operations the funds were intended to be distributed equally between Bethany Community Support; Geelong Mums; Lifeline Geelong; Thomson Football and Netball Club; Mental Illness Fellowship Victoria and St Mary's Sporting Club.<sup>30</sup> He further stated that the Applicant had proposed that it be a condition of approval that the proposed contributions would be made, and distributed to the most appropriate community groups and diversified to ensure a net community benefit. He also detailed that since 2008, the Applicant, as venue operator of the Barwon Heads Hotel, had distributed a total of \$80,511.10 to local community organisations in the Barwon Heads area. Mr Eastmure confirmed that the proposed contributions were intended to be made to community groups operating in South Geelong, being the location in which the Premises are situated.
61. According to the Council SEIA, the proposed annual community contribution is a positive impact which is of notable benefit to the local community. The Council SEIA estimated that it represented the equivalent of 2.6% of annual player losses at the Premises, which it stated was similar to the average expenditure on gaming machines that is attributed to community benefits in Victoria generally (2.4%).
62. According to Mr Anderson, the community contributions of \$30,000 per annum are a positive supporting factor in relation to the Application. Mr Anderson also noted that the contributions will be made in South Geelong, which while an advantaged area,<sup>31</sup> was not as advantaged as the area surrounding the Barwon Heads Hotel, which is the location that the Applicant currently makes its community contributions. According to the Council SEIA, at the time of writing, the specific detail of the proposed community contributions remained unclear. As such, at that time, it was difficult for Council to definitively assess any benefits associated with the proposal without further certainty about how it may be utilised.
63. The Commission accepts the proposed community contributions will have a positive economic impact. It notes that the proposed contributions represent an increase of approximately \$20,000 per annum on the amount currently being given by the Applicant as venue operator of the Barwon Heads Hotel. The Commission is further satisfied that the contributions will only occur if the Application is granted, as the purchase and refurbishment of the Premises is dependent on

<sup>30</sup> NBA Report Addendum, para 27.

<sup>31</sup> As to the demographic and socio-economic characteristics of the area in which the Premises are located, see below at paragraphs [74] to [77].



that being the case. Having regard to the increased amount of community contributions that will occur, and that these contributions will be made to community groups operating in South Geelong, the Commission considers these contributions to be a positive benefit to which it accords a low weight.

Gaming expenditure not associated with problem gambling

64. As the economic category includes consumption, then to the extent that gaming expenditure is not associated with problem gaming, it has been recognised that such expenditure can be treated as an economic positive.<sup>32</sup> As Bell J further notes, this approach also brings to account the benefit obtained from pure consumption by the lone gambler who does not use machines for social reasons.<sup>33</sup>
65. The Commission was provided with a range of evidence from Mr Stillwell of ShineWing in relation to the anticipated expenditure arising from the introduction of 29 EGMs at the Premises. In summary, Mr Stilwell's evidence was that:
- (a) on the assumption that the Club Cats venue was operating:
    - (i) overall, it was anticipated that estimated gross gaming expenditure at the Premises would be \$1.321 million per annum. In the first twelve months of trade, the estimated gross gaming expenditure would be \$1.123 million;
    - (ii) of the estimated gross gaming expenditure, it was estimated that 50% – approximately \$660,500 (\$561,500 in the first 12 months) – would be transferred expenditure, and the remainder would be new expenditure.
  - (b) on the assumption that the Club Cats venue was not operating:
    - (i) overall, it was anticipated that estimated gross gaming expenditure would be \$1.560 million per annum. In the first twelve months of trade, the estimated gross gaming expenditure would be \$1.326 million;
    - (ii) of the estimated gross gaming expenditure, it was estimated that 57.5% – approximately \$897,250 per annum (\$762,660 in the first 12 months) – would be transferred expenditure. Overall, the estimated new expenditure was just over \$663,000 per annum, and just over \$563,700 in the first 12 months.

<sup>32</sup> See *Romsey #2* at [351] per Bell J.

<sup>33</sup> See *Romsey #2* at [351]. Bell J notes further at [352] that the other approach is to say, as did Morris J in *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [79] that gaming extends 'substantial economic and social benefits' to gaming machine users, which treats consumption as a benefit without saying whether it is economic



66. In assessing the extent of this benefit, the Commission has had regard to the evidence outlined in paragraphs [78] to [81] below with respect to the incidence of problem gambling. The Commission finds that the portion of new expenditure not attributable to problem gambling is an economic benefit. Various factors suggest that the extent of problem gambling is likely to be low, including that the venue is a small one, with a relatively low level of EGMs. Generally, it is located in an area of low relative socio-economic disadvantage, and one that is anticipated to experience ongoing population growth and gentrification. Further, while there are areas of high relative socio-economic disadvantage within 2.5 kilometres of the Premises,<sup>34</sup> residents in those communities already have access to EGMs that are more proximate than those which would be located at the Premises if the Application is granted. Nevertheless, as the number of EGMs to be located at the Premises is only 29, the anticipated extent of the new expenditure at the Premises is not expected to be high. As such, a low weight is given to this benefit.

Increased gaming competition in the City of Greater Geelong

67. Increasing competition in gaming in the City of Greater Geelong is an important factor in light of the statutory purposes of the Act and the consumer benefits that derive from competition.
68. According to Mr Anderson, whilst the Premises is not a current gaming venue, there are existing gaming venues in the area surrounding where it is situated, *"one of which is understood to be closing down the EGMs, suggesting a gap in the market for local residents who would usually use that venue for gaming."* In this regard, the Commission refers to and has reliance to the evidence set out in paragraph [65] in relation to the anticipated changes in the gaming market in the City of Greater Geelong upon which anticipated expenditures have been based. In the NBA Report, Mr Anderson describes the existing mature EGM market as neutral negative detrimental factor associated with this Application.
69. In assessing this economic benefit, the Commission considers that it is appropriate to regard the Club Cats venue as no longer operational. As such, it is to be treated as a venue that is closed. Further, in respect of the 100 EGMs that were permitted to operate at the Club Cats venue, it is not possible for the Commission to consider that those EGMs will operate in the area surrounding the Premises as it has no evidence as to the Club Cats venue operator's intention with respect to those EGMs. As a result, the Commission considers that this Application will:
- (a) increase the number of approved venues within the municipality by one;

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or social. While Bell J states both approaches are correct, for the purposes of this Application this benefit is treated as an economic benefit.

<sup>34</sup> This is the area that both the Applicant and the Council indicated was the appropriate catchment for the Premises that was the subject of this Application.



- (b) not increase the overall number of EGMs or EGM density within the municipality on the basis that the required EGMs are intended to be transferred from the Barwon Heads Hotel to the Premises;
- (c) increase the EGM density of the postcode in which the Premises is situated from 13.40 EGMs per 1,000 people to 15.67 EGMs per 1,000 people (compared with the City of Greater Geelong average of 7.65 EGMs per 1,000 people and the regional average of 7.9 EGMs per 1,000 people); and
- (d) result in new gaming expenditure in the municipality in the amount of approximately \$663,000 per annum, and just over \$563,700 in the first 12 months.

70. As such, the Commission finds that granting approval of the Application will increase gaming competition in the City of Greater Geelong by providing an additional venue at which patrons may choose to play EGMs. However, having regard to the number of EGMs intended to operate at the Premises, the current number of EGMs and the number and location of other gaming venues in the City of Greater Geelong (and more particularly in the area surrounding the Premises), the Commission considers this to be an economic benefit and gives it low weight.

Possibility of increased incidence and impact of problem gambling

71. To the extent that a portion of new expenditure is attributable to problem gambling, this represents an economic disbenefit<sup>35</sup> In assessing the extent of this disbenefit, the Commission recognises that it does not include transferred expenditure because such expenditure cannot exacerbate problem gambling.<sup>36</sup>
72. In assessing the extent of this disbenefit, the Commission has regard to the expenditure evidence set out in paragraphs [65] to [66].
73. 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 of the community in the area surrounding the Premises.

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<sup>35</sup> The Commission recognises that on review, the key likely disbenefit of 'problem gambling' has for convenience been treated under the heading of 'social impacts' in various instances: see *Mount Dandenong Tourist Hotel Pty Ltd v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted: see, for example: *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [178] and following per Dwyer DP. For completeness the Commission considers both the economic and social impacts of problem gambling in its assessment of this Application.



74. According to the NBA Report and NBA Report Addendum prepared by Mr Anderson, features of the socio-economic characteristics of the surrounding area are that:
- (a) the postcode of South Geelong had a SEIFA score of 1048 and ranked in the 8<sup>th</sup> decile. This equates to a relatively low level of socio-economic disadvantage within Victoria, being only slightly lower than Barwon Heads, which was in the 9<sup>th</sup> decile;
  - (b) based on the 2011 Census, people aged 25-34 (being the higher risk gambling age) made up 16.2% of the population of Geelong (SA2), 12% of Greater Geelong and 14.3% of Victoria. Of that 16% roughly half are male;
  - (c) the median weekly household income for people in Geelong (SA2) in 2011 was \$1,077 (compared with \$1,049 in the City of Greater Geelong and \$1,216 for Victoria respectively);
  - (d) Geelong had 12.2% of households experiencing rental housing stress (compared to the City of Greater Geelong – 9.3% and Victoria – 9.1%) but only 6.6% experiencing mortgage housing stress (compared to the City of Greater Geelong – 8.1% and Victoria – 10.1%). According to Mr Anderson, this suggests that Geelong has a greater proportion of households that can comfortably afford the mortgage repayments every month; and
  - (e) the continuing development of the City of Greater Geelong and the gentrification of South Geelong in particular, means the subject site is well positioned for the proposed redevelopment. The projected growth rates see a potential population increase in the City of Greater Geelong in the order of 40% over the next 25 years.
75. According to the Council SEIA, the Council noted that:
- (a) based on an analysis of SA1 areas, there are suburbs within the venue catchment area, being that area within a 2.5 kilometre radius of the Premises, that are characterised by high levels of relative disadvantage, including the suburbs of Thomson and Breakwater. Reference was also made to Whittington, which is just outside the 2.5 kilometre radius;
  - (b) the catchment for the Premises contains suburbs with a larger proportion of one parent families relative to the Victoria and City of Greater Geelong averages – notably these include the suburbs of Newcomb/Moolap and Thomson/Breakwater;

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<sup>36</sup> See *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [113] per Code PM and Nelthorpe M; *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J.



- (c) the areas of Thomson/Breakwater (36.4%), Newcomb/Moolap (29.4%) and Belmont (25.5%) have a higher proportion of low income households than the Victoria and City of Greater Geelong averages;
- (d) the areas of Newcomb/Moolap (36.3%) and Belmont (28.9%) have a higher level of rental stress than that for the City of Greater Geelong and rural Victoria; and
- (e) communities characterised by socio-economic disadvantage are more vulnerable to problem gambling and the negative impacts of gambling.

76. The Council also noted that:

- (a) the Application has the potential to increase the incidence of problem gambling within the catchment area by decreasing the non-gambling options available to vulnerable persons in the community;
- (b) the Premises will decreasingly be characterised as a 'destination venue' due to future residential development proximate to the Premises; and
- (c) the installation of EGMs was likely to increase problem gambling vulnerability amongst existing and new staff members.

77. According to the NBA Addendum Report and at the public hearing, Mr Anderson stated while there may be areas outside the 2.5 kilometre radius of the Premises that are disadvantaged, so too there are many areas of similar proximity that are significantly advantaged compared to the core 2.5 kilometre catchment area. Mr Anderson also expressed doubt as to the extent to which residents would access the Premises, given the location of other, nearer venues.<sup>37</sup> He also provided evidence as to the number of venues in the area surrounding the Premises at which EGMs were not located.

78. In considering the extent to which any new expenditure may give rise to problem gambling, the manner in which gaming is to be conducted at the Premises is also a relevant factor. The Applicant is an experienced operator, and the Commission was provided evidence of no breaches with respect to gaming operations at Barwon Heads Hotel. The Applicant's approach to the responsible service of gaming was supported by the evidence of Ms Taylor, Ms Wakeling, Mr Eastmure and Mr Barrett. Ms Taylor and Ms Wakeling detailed how these practices were implemented on a day-to-day basis, while Mr Eastmure and Mr Barrett provided more general evidence regarding the approach taken by the Applicant to the responsible service of gambling,

<sup>37</sup> See Transcript p 18, lines 10-39.





and its compliance with relevant industry practices. Evidence was also provided with respect to the Applicant's engagement and training with Gambler's Help at the Barwon Heads Hotel.

79. Evidence was also put before the Commission regarded future gaming at the Premises. Mr Barrett stated that it was intended that he would continue to be involved in providing services to the Applicant should the Application be granted. This was confirmed by Mr Eastmure. Further, the Commission was provided with the draft Venue Management Plan, which sets out the manner in which the Premises are to be operated should the Application be granted, and which is consistent with requirements associated with the responsible service of gambling.
80. Mr Anderson concluded that problem gambling was a detrimental factor that would have neutral negative impact. In the NBA Report, he stated that *"there is no evidence to suggest that problem gambling is a major problem in this area. It is not anticipated that the introduction of 29 EGMs will cause this to become a problem in the future."* In contrast, the Council SEIA (at p. 36) indicated that problem gambling would have a negative impact and stated:

*:"The majority of the general catchment of the venue is not particularly disadvantaged. However, significant portions of the catchment (Thomson/Breakwater and Newcomb/Moolap) are characterised by low SEIFA scores. These areas also lack access to alternative recreational and social opportunities without EGMs during night hours. These factors will combine to increase the risk of problem gambling in this area of the catchment. There are also concerns regarding future residential development surrounding the Hotel, which may transform the character of the venue into more of a convenience venue."*

81. The Commission finds that this Application will result in a new venue being established with 29 EGMs, and that this will be associated with new expenditure of approximately \$663,000 per annum, and just over \$563,700 in the first 12 months. It accepts that a proportion of this expenditure will be associated with problem gambling. Further, the Commission finds that the area surrounding the Premises does not present as particularly vulnerable to problem gambling and is satisfied that the potential for an increase in problem gambling is low. The Commission is also satisfied that the Applicant is an experienced gaming operator with robust responsible service of gambling practices. As such, while the Commission finds that there is an economic disbenefit associated with problem gambling as a result of this Application, it places a low weight on this factor. Issues associated with the negative social impacts associated with problem gambling are considered further in paragraphs [91] to [93] below.
82. After considering the economic benefits of the proposal and balanced against the detriments, the Commission considers that, on balance, the proposal is likely to have a small positive economic impact.



### Social Impacts

83. The materials before the Commission, together with the evidence adduced at the public hearing, detailed a range of social benefits and disbenefits associated with the Application.

#### Improved facilities enabling greater range of services

84. Ancillary to the capital works expenditure that will occur if this Application is granted, the refurbishment will result in improved facilities being available to be patronised by the community. Access to such improved facilities is an outcome which the Commission<sup>38</sup> and VCAT<sup>39</sup> have regularly determined is a positive social impact associated with applications of this nature.

85. The nature of these improved facilities has been described in detail in paragraphs [41] to [42]. According to Mr Eastmure, the proposed refurbishment will result in a modernised venue with better service and a much better model for hospitality, including table services for both food and alcohol, as well as an expanded entertainment offering. The Council SEIA stated that there are some modest benefits of improved facilities available at the Premises, noting that they represented expansion and improved facilities rather than the introduction of new facilities. However, the report also details Council's concern regarding the lack of access to alternative venues and activities which do not incorporate EGMs if the Application was granted. Mr Anderson gave evidence and provided a map which detailed venues in the area surrounding the Premises that were non-gaming venues, the most proximate of which were the Little Creatures Brewery, the Commun Na Feinne Hotel and the Elephant and Castle Hotel.

86. The Commission finds that the introduction of EGMs at the Premises will enable the Applicant to renovate and improve facilities at the Premises, enabling a greater range of services. The Commission regards access to such improved facilities and greater range of services as a positive social impact, upon which it places a low weight.

#### Increased gaming opportunities for those who enjoy gaming

87. Related to the economic benefit of increased competition is the social benefit that arises from there being increased gaming opportunities for those who enjoy gaming.

88. Having regard to the evidence and submissions made with respect to increased gaming competition in the City of Greater Geelong and more generally that contained in paragraph [65]

<sup>38</sup> See, for example, *Application by Glenroy RSL* [2015] VCGLR (22 October 2015) (Commissioners Cohen and Versey).

<sup>39</sup> See, for example, *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.



in relation to the basis upon which expenditure figures have been calculated, the Commission finds that granting approval of the Application will better serve the needs of gaming patrons through providing an additional venue at which they may choose to play EGMs. However, given the current number of EGMs and venues in the City of Greater Geelong, the Commission considers this to be a negligible social benefit and hence one on which it places marginal weight. This is consistent with the Council SEIA, which states that the recreational and social benefits of the EGMs themselves will be negligible.

Increased community contributions

89. Related to the financial impact associated with increased community contributions, such contributions can also have a positive social impact by improving the social fabric of the community in which they are made. In assessing the weight to be placed on such a benefit, it is important that the Commission does not conflate this benefit with the economic benefit associated with such contributions.
90. Having regard to the evidence and submissions made with respect to these community contributions that are set out in paragraphs [58] to [63], the Commission considers the community contributions and the impact they will have on local community organisations to be a social benefit which is given low weight.

Possibility of increased incidence and impact of problem gambling on community

91. Wherever accessibility to EGMs is increased there is always 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 there is potential for negative social costs through possible increased problem gambling expenditure.
92. The Commission refers to and relies upon the evidence set out in paragraphs [71] to [81] with respect to the economic impact of problem gambling on the community.
93. The Commission finds that this Application will result in a new venue being established with 29 EGMs, and that this is estimated will be associated with new expenditure of approximately \$663,000 per annum, and just over \$563,700 in the first 12 months. It accepts that a proportion of this expenditure will be associated with problem gambling. Further, the Commission finds that the area surrounding the Premises does not present as particularly vulnerable to problem gambling and is satisfied that the potential for an increase in problem gambling is low. As such, while the Commission finds that the social disbenefit associated with problem gambling as a



result of this Application is a low risk, and as such is a negative social impact upon which it places a low weight in this Application.

Community attitude

94. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,<sup>40</sup> the Commission recognises that whilst community apprehension is not an over-riding factor (in the sense that the Application is not a referendum on gaming), it is certainly a relevant factor in the consideration of particular social impact *within*, and as part of, the 'no net detriment' test.
95. The Council SEIA details the local policy framework with respect to gaming. Relevant documents cited in the Council SEIA are the Greater Geelong Planning Scheme Clause 22.57; the Greater Geelong Gaming Policy Framework (2007) and the Greater Geelong Strategic Gaming Policy.<sup>41</sup> This policy framework notes that the City of Greater Geelong "*has a high overall density of gaming machines and a level exceeding the Melbourne and State averages*" and states that, inter alia, that EGMs should be located in areas "*where the community has a choice of non-gaming entertainment and recreation activities and established social infrastructure*" and "*where the EGM density of the locality and its catchment is equal to or below the overall municipal average.*". According to the Council SEIA (at p.9) "*the [Strategic Gaming] policy articulates when Council will and will not support applications for gaming machines, based on socio-economic status of the local population. Each part of the municipality is allocated a colour grade based on the local socio-economic profile of the area, using Socio-Economic Index of Areas (SEIFA) Index of Relative Socio-Economic Disadvantage (IRSD) data.*" In this instance, the Premises falls within an area shaded green, in relation to which the policy states that Council will "*After appropriate assessment, allow any machines to be transferred into this area from areas shaded red and pink, but only to the extent that the transfers do not have the effect of changing the relative weight of the category from green to yellow or pink or red as determined by this policy.*"
96. According to the NBA Report (at section 5.2.1), there are a number of alternative non-gaming entertainment and recreation activities in the local area surrounding the Premises. Further, if the Application is granted, the impact on EGM density in the City of Greater Geelong generally, and in the area surrounding the Premises will be small due to the number of EGMs that are intended to be located at the Premises. Finally, Mr Anderson stated during the hearing that his assessment of the impact of the Application was not dependent on whether or not gaming was

<sup>40</sup> (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.

<sup>41</sup> The NBA Report also references the Council Planning Policy Clause 52.28 - Gaming.



continuing at the Barwon Heads Hotel.<sup>42</sup> In this regard, the Commission notes the correspondence from BazzaniScullyPriddle Lawyers, acting on behalf of Taylor Hotel Nominees Pty Ltd, in which it is stated that *"the Barwon Heads Hotel will not cease to be a gaming venue at the expiration of the current lease term, which expires on 2 November 2017."* Mr Anderson did agree, however, that to the extent that it may be considered that EGMs may be being moved from the Barwon Heads Hotel to the Valley Inn Hotel, the effect would be that they are being moved from *"a very advantaged area into just an advantaged area"* based on SEIFA data.<sup>43</sup>

97. The Commission considers that the Application, if approved, will result in a venue being approved in an area which the Council's policy indicates is one of the more suitable ones for gaming activity in the City of Greater Geelong. While the EGM density is higher than the municipal average, the closure of the Club Cats venue has ameliorated the extent to which it exceeds this average. Further, unlike the case in Romsey, there was not any community survey evidence which detailed particular community concerns with this Application. In all of these circumstances, the Commission considers it appropriate to attribute a low weight to this impact.
98. After considering the social benefits of the proposal and balanced against the detriments, the Commission considers that, on balance, there is likely to be a small positive social impact of the proposal.

#### NET ECONOMIC AND SOCIAL IMPACT

99. The no net detriment test in section 3.3.7(1)(c) of the Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.<sup>44</sup>
100. According to Mr Anderson, the *"introduction of the relocated 29 gaming machines to the Valley Inn Hotel will have a slightly positive net effect on the local economy"* <sup>45</sup> and that the *"developments to the Hotel and community contributions in the Community Chest Program, funded in part by the forecast EGM revenue, will result in an overall increase in the social benefit in the local community."*<sup>46</sup> In summary, Mr Anderson concludes that *"there will be a*

<sup>42</sup> See Transcript p.28 lines 13-14.

<sup>43</sup> See Transcript p.34 lines 26-27.

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

<sup>45</sup> See NBA Report section 8.5.

<sup>46</sup> See NBA Report section 11.



*positive socio-economic impact on the wellbeing of Geelong and the City of Greater Geelong*” if the Application is granted.<sup>47</sup>

101. According to the Council SEIA, the Council considers that the Application would have a negative impact on the local community. While there are positive benefits to the proposal (predominantly employment and community funding benefits) these could be seen as modest in comparison to the negative impacts associated with the Application. While these may not be as significant as some other venues, they still outweigh the modest benefits. In particular, there is concern with the potential for the Premises to increase the incidence of problem gambling in some sections of the community (Thomson/Breakwater and Newcomb/Moolap).
102. After consideration of the material before it, including the evidence provided at the public hearing, and weighted as outlined above and summarised in tabular form at Appendix One of these Reasons for Decision, the Commission has concluded that there is likely to be a net positive social and economic impact to the well-being of the community in the municipal district in which the Premises is located if the Application is approved.

#### **OTHER RELEVANT CONSIDERATIONS**

103. On the material that has been put before it, the Commission has determined that the ‘*no net detriment*’ test has been satisfied and is also satisfied of the other matters in section 3.3.7(1). However, there remains a discretion in the Commission to determine whether or not to approve the Application.
104. The Commission is 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. Further, the Commission is not aware of any other matter that would warrant it to refuse to grant this Application. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the Application.
105. The Commission was told during the hearing that the Applicant would be prepared to accept conditions with respect to the payment of community contributions should the Application be approved. In granting approval, the Commission believes it is appropriate that its approval should be subject to conditions relating to this matter. In the circumstances, the Commission considers the following condition should apply with respect to its approval:

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<sup>47</sup> See NBA Report section 8.6.



### **Community Contributions**

- (a) *The Venue Operator undertakes to:*
- (i) *make annual community contributions in the amount of \$30,000 (indexed each year by CPI, all groups Melbourne) (the Contribution) for so long as any electronic gaming machines operate at the Hotel (up to 15 August 2022);*
  - (ii) *the Contribution will be allocated each year to not-for-profit community groups and sporting organisations providing services and facilities to residents in the City of Greater Geelong.*
- (b) *The distribution of the Contribution will be determined by a committee (the Committee) established by the Venue Operator comprising:*
- (i) *one representative nominated by the Venue Operator;*
  - (ii) *one representative nominated by Council or, if Council fails to nominate a representative, a community representative nominated by the Venue Operator; and*
  - (iii) *one representative nominated by a local problem gambling support group or, if no local problem gambling support group nominates a representative, a community representative nominated by the Venue Operator.*
- (c) *The Committee will advertise annually in a newspaper circulating in the City of Greater Geelong for submissions for funding from not-for-profit community and sporting organisations providing services and facilities to residents of the City of Greater Geelong. The Committee will assess requests for funding in accordance with guidelines to be established by the Committee.*

106. The Commission also recognises that the Premises are still to undergo substantial refurbishment before they will be in a position to operate as a gaming venue. As such, it is a further condition of the approval that the approval does not take effect until the Commission has notified the Applicant, in writing, that the Premises has been inspected for the purpose of section 3.3.7(1)(c) and the Commission is satisfied at that time that the Premises are suitable for the management and operation of EGMs.

***The preceding paragraphs are a true copy of the Reasons for Decision of Dr Bruce Cohen, Chair, and Mr Ross Kennedy, Deputy Chair.***



## Appendix One

### Summary of social and economic impacts

#### *Economic impacts*

<b>Benefit</b>	<b>Impact</b>	<b>Paragraph Reference</b>	<b>Comments relevant to weight</b>
	Expenditure on capital works	[40] to [45]	<p>The extent of the expenditure on capital works that are intended is of a sizeable nature but there is some uncertainty as to the extent to which the expenditure will be retained in the relevant municipal district in which the Premises are located;</p> <p>Low weight.</p>
	Short term employment creation	[46] to [48]	<p>To the extent that it arises in relation to this Application, the value of this benefit has been captured in that generally associated with the expenditure on capital works considered above;</p> <p>No weight</p>
	Longer term employment creation	[49] to [54]	<p>The Application will result in the creation of the equivalent of seven new full time positions at the Premises in respect of its gaming operations, however there is likely to be transferred employment from the Barwon Heads Hotel.</p> <p>The additional employment is positive but uncertain;</p> <p>Low weight.</p>
	Complementary expenditure	[55] to [57]	<p>Not possible to assess the impact of the proposed refurbishment of the Premises as evidence is not available with respect to the current performance of the Premises;</p> <p>No weight.</p>
	Community contributions of \$30,000 per annum	[58] to [63]	<p>The proposed community contributions represents an increase of approximately \$20,000 per annum on the amount currently being given by the Applicant as venue operator of the Barwon Heads Hotel.</p> <p>These contributions will result in positive economic impact on community groups operating in South Geelong;</p> <p>Low weight.</p>



		[64] to [66]	<p><i>Gaming expenditure not associated with problem gambling</i></p>	<p><i>The portion of new expenditure not attributable to problem gambling is an economic benefit.</i></p> <p><i>The Premises is located in an area of low relative socio-economic disadvantage, which is anticipated to experience ongoing population growth and gentrification.</i></p> <p><i>While there are areas of high relative socio-economic disadvantage within 2.5 kilometres of the Premises, residents in those communities already have access to gaming machines that are more proximate than those which would be located at the Premises.</i></p> <p><i>The anticipated extent of the new expenditure at the Premises is not expected to be high;</i></p> <p><i>Low weight.</i></p>
		[67] to [70]	<p><i>Increased gaming competition in the City of Greater Geelong</i></p>	<p><i>The Application will increase gaming competition in the City of Greater Geelong by providing an additional venue at which patrons may choose to play EGMs.</i></p> <p><i>High existing numbers of EGMs and premises in surrounding area;</i></p> <p><i>Marginal weight.</i></p>
<b>Disbenefit</b>	<b>Possibility of increased incidence and impact of problem gambling.</b>	[71] to [81]		<p><i>Expected to be a low risk given the low number of EGM numbers at the venue, the level of anticipated new expenditure and the socio-economic characteristics of the community in the area surrounding the Premises.</i></p> <p><i>Low weight.</i></p>



**Social impacts**

	Impact	Paragraph Reference	Comment relevant to weight
<b>Benefit</b>	Improved facilities enabling greater access to function space	[84] to [86]	The introduction of EGMs at the Premises will enable the Applicant to renovate and improve facilities at the Premises, enabling a greater range of services;  Low weight.
	Increased gaming opportunities for those who enjoy gaming	[87] to [88]	The Application will better serve the needs of gaming patrons through providing an additional venue at which they may choose to play EGMs.  High existing numbers of EGMs and premises in surrounding area;  Low weight.
	Increased community contributions	[89] to [90]	Level of community contributions and the impact on local community organisations to be a small social benefit.  Low weight.
<b>Disbenefit</b>	Possibility of increased incidence and impact of problem gambling on community	[91] to [93]	A proportion of total gaming expenditure at the Premises will be associated with problem gambling.  The area surrounding the Premises does not present as particularly vulnerable to problem gambling and is satisfied that the potential for an increase in problem gambling is low;  Low weight.
	Community attitude	[94] to [97]	The Application will result in a venue being approved in an area which the Council's policy indicates is one of the more suitable ones for gaming activity in the City of Greater Geelong.  While the EGM density is higher than the municipal average, the closure of the Club Cats



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			<p>venue has ameliorated the extent to which it exceeds this average.</p> <p><i>There was not any community survey evidence which detailed particular concerns with this Application;</i></p> <p><i>Low weight.</i></p>
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