



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 Warragul Country Club Inc for amendment of its venue operator's licence to vary the number of electronic gaming machines at the approved premises, the Warragul Country Club, located at 41 Sutton Street, Warragul from sixty (60) to eighty (80).

Commission:

Ms Helen Versey, Deputy Chair
Mr Des Powell, Commissioner

Appearances:

Ms Sarah Porritt of Counsel for the Applicant (instructed by Bazzani Scully Priddle)

Mr Justin Ghattas as Counsel Assisting the Commission

Date of Hearing:

17 June 2016

Date of Decision:

18 July 2016

Date of Reasons:

18 July 2016

Decision:

The application is granted subject to the conditions outlined at Paragraph 114 of these Reasons for Decision.

Signed:

A handwritten signature in black ink, appearing to read "Helen Versey".

Helen Versey
Deputy Chair



REASONS FOR DECISION

INTRODUCTION

1. This is an application by the Warragul Country Club Inc (**the Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Warragul Country Club, located at 41 Sutton Street, Warragul (**the Premises**), from 60 to 80 (**the Application**).
2. The relevant municipal authority is the Baw Baw Shire Council (**the Council**). By a letter dated 19 May 2016 to the Commission, the Council stated that although it did not support more EGM's being installed in the Shire of Baw Baw it would not make a social and economic submission to the Commission in relation to the Application.
3. The Commission considered the Application at a public inquiry conducted on 17 June 2016. The Applicant was represented by Ms Sarah Porritt of Counsel instructed by Bazzani Scully & Priddle. Council did not appear and was not represented at the hearing.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. 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* (**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 In addition to providing such 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), 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).
8. 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
9. 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*
 - (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;*
 - ...

¹ The Act, section 3.4.18.

² The Act, section 3.4.19.



10. 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
11. 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
12. As such, the '*no net detriment*' test is a composite test requiring consideration of a single net impact in economic and social terms on well-being of the community.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.
13. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues, and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.⁶ On review, decisions in the Victorian Civil and Administrative Tribunal (**VCAT**) have held that for impacts that may be both economic and social – for example the benefits of gaming consumption – it does not matter whether the impact is considered on 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
14. The Commission also notes that, on review, it has been indicated by VCAT that:

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.

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.



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 in this instance.

15. 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
16. 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
 - 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

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.

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.



17. 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

18. The Applicant provided the Commission with the following material in support of its Application:
- (a) Social and Economic Impact Assessment, prepared by Urbis Pty Ltd (**Urbis**), dated March 2016 (**the Urbis Report**). Mr Rhys Quick, a Director of Urbis, also appeared and provided oral submissions to the Commission in respect of his written evidence;
 - (b) Expenditure Report, prepared by ShineWing Australia Pty Ltd (**ShineWing**), dated 23 March 2016 (**the ShineWing Report**). Mr Timothy Stillwell, a Director of ShineWing, also appeared and provided oral submissions to the Commission in respect of his written evidence;
 - (c) Witness Statement of Michael James Smairl, General Manager of the Premises, dated March 2016. Mr Smairl also appeared and provided oral submissions to the Commission in respect of his written evidence;
 - (d) Application for approval of modification to a gaming machine area in an approved venue, dated 24 February 2016; and
 - (e) Copy of the public notice as appearing in the Herald Sun newspaper, dated 5 April 2016
19. Council wrote to the Commission on 19 May 2016 stating that it had resolved at a meeting on 11 May 2016 that, although it did not support more EGMs being installed in Baw Baw, it would not make a Social and Economic impact statement. It requested that if the Commission determined to approve the Application, a condition be placed on the licence relating to the Applicant's commitment to provide an additional \$25,000 cash community contributions.
20. The following material, prepared by Commission officers, was provided to the Applicant and considered by the Commission:

¹⁴ [2013] VCAT 101, [98].



- (a) a report titled *Economic and Social Impact Report*, dated June 2016 (**the VCGLR Report**) ; and
 - (b) a report titled *Pre-Hearing Inspection and Compliance Report*, dated 26 May 2016 (**the Pre-Hearing Report**).
21. Prior to the hearing, the Commissioners undertook a site visit of the Premises.
22. On the day of the hearing, the Commission was provided with the following documents:
- a) Council's Public Health and Wellbeing Plan 2013 – 2017;
 - b) Newspaper article titled '*Golf course restructure will not cost ratepayers*', Warragul & Drouin Gazette, dated February 23 2016;
 - c) Copy letter Victorian SES, Warragul Unit to Mr Michael Smairl, dated 7 June 2016;
 - d) Copy letter La Trobe Community Health to Mr Michael Smairl, dated 6 June 2016; and
 - e) Written submissions on behalf of the Applicant prepared by Ms Sarah Porritt of Counsel.

DECISION AND REASONS FOR DECISION

Background

23. The Premises are located at 41 Sutton Street, Warragul, within a primarily residential neighbourhood close to the north-western edge of the town's built-up urban area. The Premises are not proximate to retail and commercial facilities, and are not central to key activity areas, with negligible pedestrian activity in the vicinity of the Premises.
24. The Premises currently comprises –
- (a) 18-hole golf course;
 - (b) Golf retail store;
 - (c) Bistro with indoor and outdoor dining;
 - (d) All day café;
 - (e) Reception and conference centre, featuring two function rooms and boardroom;



- (f) Sports bar;
 - (g) Members lounge; and
 - (h) Gaming room with 60 EGMs.
25. The Shire of Baw Baw (Baw Baw) is a rural Local Government Area (**LGA**) located approximately 100 kilometres east of Melbourne and covers approximately 4031 square kilometres. Major centres in Baw Baw include Warragul, Drouin and Trafalgar. Baw Baw has an estimated adult population of 36,007 and the annual rate of population growth was projected by the then Victorian Department of Transport, Planning and Local Infrastructure to be 2.8% for the period 2016 to 2021, as compared with the Victorian average of 1.7%.
26. Baw Baw is subject to a municipal limit of 299 EGMs.¹⁵ Currently, there are four gaming venues within the municipality with approvals to operate a total of 198 EGMs.
27. Baw Baw has an EGM density of 5.5 EGMs per 1000 adults, which is 3.6% higher than the rural average (5.3) and 3.7% less than the State average (5.7). This ranks Baw Baw as the 14th highest of 26 rural municipalities in terms of EGM density per 1000 adults. If the Application is approved, this would rise by 10.1% to 6.1 EGMs per 1000 adults.
28. Baw Baw has an average gaming expenditure of \$369 per adult, which is 10.2% higher than the rural average average (\$335) and 33.7% 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 2.7%. Overall gaming expenditure within Baw Baw has decreased 28.3% in real terms over the past five years, which is a greater decrease than the rural average of 18.04% in real terms over the past five years.
29. In relation to the area immediately surrounding the Premises (i.e. within five kilometres), approximately 42.9% 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 over 38.1% of SA1s being in the most advantaged (fourth or fifth) quintiles. The remaining 19% of the population within the immediate areas falls within the third quintile,

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.



indicating neither advantage nor disadvantage.

30. The unemployment rate in Baw Baw is 4.2%, which is below the rural unemployment rate of 4.9%. From December 2014 to December 2015 the unemployment rate increased from 3.95% to 4.2%.

Decision-making framework

31. 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 Baw Baw 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 Baw Baw (**the ‘no net detriment test’**).

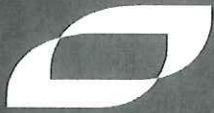
A. Municipal limit

32. A municipal limit of 299 EGMs applies for Baw Baw.¹⁸
33. At the time of determining the Application, the Commission notes that there are four other operational gaming venues in Baw Baw – two clubs operating a total of 140 EGMs, and two hotels operating a total of 58 EGMs, inclusive of the EGMs currently operated by the Applicant.
34. Approval of the Application will result in the total number of EGMs in Baw Baw increasing to 218.
35. On that basis, the Commission is satisfied that granting the Application would not cause the number of EGMs in Baw Baw 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

36. 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.



Economic Impacts

Gaming expenditure not associated with problem gambling

37. 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.¹⁹ 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.²⁰
38. The Commission was provided with written evidence from Mr Timothy Stillwell of ShineWing. Mr Stillwell is Director of ShineWing, an accounting and advisory firm. Mr Stillwell has 18 years' experience in the accounting industry and, during that time, has advised a broad cross section of industries including gaming and hospitality.
39. Mr Stillwell provided his expert opinion by way of adopting the written evidence in the ShineWing Report, as well as providing oral evidence at the hearing in relation to the anticipated expenditure arising from the introduction of an additional 20 EGMs at the Premises. In summary, Mr Stillwell's evidence was that –
- (a) Baw Baw has four active gaming venues with a total of 198 EGM's in operation against a municipal limit of 299 EGMs. There has been a decline in gaming expenditure per adult in Baw Baw of approximately 8% over the last four years, which indicates no adverse trends in Baw Baw relating to gaming expenditure;
 - (b) Based on anecdotal evidence and analysis of recent trends in gaming expenditure, Mr Stillwell estimates that the additional gross gaming expenditure generated from an increase of 20 EGMs at the Premises would be between \$535,927 and \$592,341 per annum in the first 12 months following installation of the additional EGMs;
 - (c) Of the additional expenditure predicted to result if the Application were granted, Mr Stillwell considers that the level of expenditure transferred from venues within Baw Baw would be approximately 40%. This estimate is based on the fact that there are two competitors in Warragul and the remaining competitor is within 7 kilometres of the premises. The remaining expenditure (between \$321,56 and \$355,404) would be new expenditure to Baw Baw;

¹⁹ *Romsey No. 2* at [351] per Bell J.

²⁰ *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.



- (d) Based upon the adult population published by the VCGLR for 2015, the average net amount of gaming expenditure per adult in Baw Baw if the application is granted will be \$379 (an increase of \$10 per adult). This remains considerably less than the State average of \$553. The gaming machine density will increase to 6.05 gaming machines per 1000 adults. However, Mr Stillwell pointed out that the annual rate of adult population growth in Baw Baw is higher than the state average, thus the gaming machine density may reduce over time; and
- (e) Considering these factors in combination, Baw Baw is not a concerning municipality in terms of gaming statistics or profile, and does not exhibit signs that cause concern or adverse trends.
40. The Commission was also provided with an expert opinion by Mr Quick of Urbis by way of him adopting the written evidence in the Urbis Report, as well as providing oral evidence at the hearing in relation to the anticipated social and economic impact that would arise from the introduction of an additional 20 EGMs at the Premises.
41. Mr Quick submitted that the addition of 20 EGMs at the Premises, and subsequent increased gaming expenditure in Baw Baw in the quantum described by Mr Stillwell, is an economic benefit. Expenditure by players who play for recreation, like other entertainment and discretionary spending, is an economic benefit.
42. Mr Quick expected any increase in problem gambling as a result of granting the Application to be minimal and, therefore, the majority of the increased expenditure will be an economic benefit.
43. In assessing the extent of this benefit, the Commission has had regard to the evidence outlined in paragraphs 66 to 71 below with respect to problem gambling. The Commission finds that the portion of new expenditure not attributable to problem gambling as assessed by Mr Stillwell is an economic benefit, but given the limited extent of the expenditure, it is given marginal weight.

Community contributions

44. In determining the net economic and social impact of applications of this nature, both the Commission²¹ and VCAT²² have regularly treated community contributions as a positive benefit.
45. In his written statement, Mr Smairl set out in detail the community contributions that the Applicant made for 2013/4 and 2014/15 financial years. These were largely in-kind contributions in the form

²¹ See, for example, Application by Richmond Football Club [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

²² See, for example, *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms Hotel*.



of free room hire, meal discounts and provision of venue vouchers for raffles.

46. Mr Smairl gave an example of the value of the provision of venue vouchers for raffles. The local volunteer State Emergency Service (**Warragul SES**) had lost all its Council funding. In response to a request for assistance, the Applicant assisted and continues to assist the Warragul SES to hold a raffle at the Premises every Tuesday night to raise funds. Mr Smairl estimated that approximately \$35,000 will be raised in 2016 for the Warragul SES.
47. In relation to other community contributions, Mr Smairl indicated that the Applicant sponsors every sporting organisation in Baw Baw that requests help, as well as providing ad-hoc support in response to particular fundraising requests that the Applicant receives, by way of provision of vouchers for use at the Premises. The Applicant believes this approach is beneficial in that it has less impact on the Applicant's financials than direct cash contributions, but enables the community organisation to get the maximum benefit of those contributions through raffles and auctions.
48. Mr Smairl gave evidence that, should the Application be granted, the Applicant will establish the Warragul Country Club Community Fund comprising of at least \$25,000 per year. A committee will be established by the Applicant, including one representative from Council. The contributions will be allocated to community groups and sporting organisations providing services and facilities for Baw Baw residents. A draft of the proposal was provided to the Commission at the hearing.
49. Mr Smairl told the Commission that in addition, the Applicant will continue to provide the in-kind and ad-hoc assistance to local community groups when requested. It is not proposed that these additional contributions be distributed through the committee process in order for the Applicant to be able to respond quickly to such requests without the need for a formal process.
50. Mr Quick confirmed that the Applicant intends to maintain the strong links that it has with the community currently by maintaining the current level of contributions (approximately \$50,000 per annum, mostly consisting of in-kind contributions), as well as contributing an additional \$25,000 per annum in cash contributions.
51. The Commission accepts that the additional community contributions proposed are an economic benefit to the community. The Commission also accepts that these additional contributions would not occur without the grant of the Application.
52. In determining weight to be assigned to this benefit, the Commission has had regard to the relatively small amount of the additional contribution. The Commission notes that it is proposed that the cash contribution will be distributed through a committee process. The Commission also accepts there is potential for an increase to the existing in-kind and ad-hoc community



contributions, but are as yet unquantified. Accordingly, the Commission has assigned this benefit a marginal to low weight.

Employment creation

53. The Premises currently employs 116 full time, part time and casual staff, including 113 staff from within Baw Baw.
54. Mr Stillwell provided written submissions in relation to this benefit. In particular, the ShineWing Report provided the projected financial position of the Applicant when operating both 60 EGMs and 80 EGMs.
55. Mr Stillwell indicated, at paragraph 17.10 of the ShineWing Report, that the financial projections made on the basis of an increase in EGMs at the Premises to 80 were predicated on the presumption that additional labour costs would increase by approximately \$110,000.
56. In his oral evidence, Mr Smairl stated that, if the Commission were to grant the Application, the Applicant would employ a further 2.3 FTE staff to manage the requirements of a gaming room with 20 additional EGMs.
57. Mr Smairl also submitted that there may also be indirect staffing increases, based on the prediction that increased patronage in the gaming room will potentially have the impact of increasing patronage and demand in other areas of the Premises, necessitating an increase of staffing.
58. Mr Smairl indicated that whilst any indirect staffing had not been budgeted for in the evidence of Mr Stillwell, it was a matter that the Applicant intended to address when the extent of demand was realised in the future.
59. In his oral evidence, Mr Quick stated that the Applicant is the fourth highest employer in Baw Baw. Mr Quick also submitted that the majority of employment opportunities at the Premises that will result are likely to be filled by residents within Warragul or Baw Baw.
60. 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 2.3 FTE positions.
61. The Commission notes the significant number of years that some staff have remained employed with the Applicant, as well as the standing of the Applicant in the local community as an employer of choice. On that basis, the Commission considers it is likely that any new employees will also predominantly reside in the local area.



62. Accordingly, the Commission regards the additional employment as a positive economic benefit to which it assigns low weight.

Possibility of increased incidence and impact of problem gambling

63. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an economic disbenefit.²³ In assessing the extent of this disbenefit, the Commission recognises that it does not include transferred expenditure because such expenditure cannot exacerbate problem gambling.²⁴
64. In assessing the extent of this disbenefit, the Commission accepts the expenditure evidence of Mr Stillwell set out at paragraph 39 above.
65. The extent to which it can be considered that the new expenditure will be associated with problem gambling, and thus regarded as a disbenefit associated with this Application, may be influenced by the socio-economic status of the community in the area surrounding the location of the Premises.
66. The Urbis Report notes that problem gambling does have an economic cost relating to the provision of services, the financial losses of gamblers and support services for problem gamblers and family. The Urbis Report outlines a number of factors that are likely to reduce the risk of problem gambling at the Premises. In his evidence, Mr Quick referred to the VCGLR Report and the demographic profile of Warragul and Baw Baw. He pointed out that Baw Baw is less disadvantaged than most non-metropolitan areas. Whilst there are areas of disadvantage just south of the Premises, there are also areas of low disadvantage, as well as a nearby aged care facility that impacts on the outputs derived from the SEIFA scale of disadvantage. It was the evidence of Mr Quick that, overall, the disadvantage in the area surrounding the Premises is low and should not give cause for concern.
67. Mr Quick stated that the nature of the Premises as a destination venue is not attracting customers who have high levels of disadvantage. In his evidence, Mr Stillwell also confirmed this, and pointed out that other gaming venues in Warragul are more centrally located near commercial precincts.

²³ 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.

²⁴ 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.



68. Mr Smairl stated that the Premises attracts people who are attending for activities other than gambling, and that the vast majority of gambling is by people “having a social flutter” on the machines with friends after a meal or social event. The majority of the customers are over 40 years of age and few children attend the Premises. In his written statement, Mr Smairl details the numerous non-gambling activities and events available at the Premises.
69. In his written and oral evidence, Mr Smairl outlined the Applicants approach to the responsible service of gambling (**RSG**). He confirmed that there are written policies and procedures in place regarding RSG and that the Applicant contracts La Trobe Community Health to provide training to all gaming staff, as well as information sessions for board members, management, administration and reception staff.
70. Mr Smairl described the gaming staff as long serving and mature, and that of the 116 staff employed at the Premises, 113 are locals. Therefore, the staff know the customers and interact more with them in the gaming room. He considered the gaming staff were good at communicating with customers and would be able to identify problem gambling.
71. Mr Smairl stated that any issue in relation to problem gambling must be referred to management. He informed the Commission that although only one person has self-excluded from the Premises in the time he has been General Manager, he is familiar with the process of self exclusion as he conducts self-exclusion interviews on behalf of Community Clubs Victoria.
72. The Commission finds that the grant of this Application will result in new expenditure of approximately \$535,927 and \$592,341 in the first 12 months of operation following installation of the additional 20 EGMs. It accepts that a proportion of this new expenditure may be associated with problem gambling.
73. 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 Smairl that the Applicant understands the requirements of the RSG, the gaming industry, and the regulatory framework that operates therein.
74. 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.
75. The Commission is satisfied that the Applicant has appropriate practices and procedures in place in relation to complying with RSG obligations. The Commission notes the Pre-Hearing Report found no issues of concern. The Commission is satisfied that the Premises have very substantial



non-gaming offerings and is a low risk venue for problem gambling. As such, the Commission finds that there is an economic disbenefit associated with problem gambling as a result of this Application, and places a marginal weight on this factor.

Diversion of trade from other venues

76. The Commission heard evidence from Mr Quick in relation to the likelihood that an increase in the number of EGMs at the Premises would cause a diversion of trade from other gaming venues within the municipality.
77. Mr Quick stated that the basis for weighting this disbenefit as a low impact is that, if the Commission were to grant the Application, it is unlikely that one individual business within the municipality would be affected so significantly that it would necessitate a reduction in employment or significant alteration in the way they operate their venue.
78. Mr Quick stated that the most likely venue to feel the impact of a grant of the Application would be the other club venue in the municipality, the Warragul Club. However, Mr Quick also indicated that the Warragul Club may undergo some redevelopment in the future to improve their competitive position in the market. Whilst acknowledging that some revenue may move to the Premises from the Warragul Club, Mr Quick did not consider that it would alter the way that premises operates and, therefore, suggested it was "a low weight or a very low weight".
79. The Commission accepts the evidence of Mr Quick in relation to the likelihood of diversion of trade from other venues. Having regard to the way in which the Premises has been represented by Mr Smairl as one that is a destination venue for regular patrons and which is particularly well established as the venue of choice for meals in the area, and the evidence of Mr Quick in relation to the likely impact on local retail facilities, the Commission does not consider this economic disbenefit to have a significant impact on the Baw Baw community and, therefore, assigns nil weight to this impact.

Reduction in taxation payable to the Government

80. The Commission heard evidence from Mr Stillwell in relation to the likelihood of a reduction in the level of taxation payable to the Government if the Commission were to grant the Application.
81. With reference to the projections in the ShineWing Report, Mr Stillwell confirmed in his oral evidence that the likely outcome in relation to taxation would be neutral. Mr Stillwell explained that the impact of increasing the number of EGMs at the Premises would likely reduce the aggregate rate of tax payable by the Applicant, but by virtue of the number of additional EGMs being added



to the Premises, the amount payable would be proximate to the amount currently payable to operate 60 EGMs.

82. The Commission accepts the evidence of Mr Stillwell in relation to this economic disbenefit. The Commission does not consider this matter to be a significant consideration in assessing the impact on the Baw Baw community and, therefore, is an economic disbenefit to which it assigns nil weight.

Social Impacts

Financial viability of the Applicant

83. The ShineWing Report at Appendix B provided a Financial Viability Analysis for the Premises, projecting the likely position of the Applicant if the additional EGM's are installed and operating and the situation if the Application is refused. The Report concluded that despite excellent growth and increase in revenue, a range of various financial pressures over the next three years is likely to mean that the Applicant will remain in a tenuous position.
84. Mr Stillwell in oral evidence stated that a number of factors had contributed to the Applicants present financial position. The major re-development of the premises over the last three years had to be split into two stages and as a result the capital works cost an additional \$600,000-\$700,000. There was an increase in state taxes and additional costs arising out of the Applicants success in terms of increased staff and enhanced security at the Premises. In 2017, the Applicant will have to commence repaying capital on its loan. Thus, if the Application is not granted, the Applicant will not have the capacity to meet unforeseen expenses and this will impact on its ability to service its customers to current standards or improve those services.
85. The Urbis Report outlined the benefit to the community of the additional EGMs to assist the Applicant in improving its cash-reserve position. The Urbis Report referred to a proposed compulsory acquisition of part of the golf course by Council in order to re-align a road and construct a new intersection. This would result in a potential capital cost to the Applicant of approximately \$650,000 to renovate the golf course in the future, which would add additional financial pressure. However, given that this matter will require further or ongoing negotiation, the precise financial impact is unknown at this stage. It is the Commission's view that the ongoing viability arising from the additional EGMs gives the Applicant the capacity to respond to this and other pressures that emerge over time.
86. Mr Smairl confirmed the evidence of Mr Stillwell and Mr Quick regarding the financial pressures on the Applicant. He confirmed that, without the revenue from additional EGMs, the Applicant



would have to consider cutting costs to meet future financial obligations, which would impact on the services the Applicant could provide to customers. The revenue from the additional EGMs would provide a financial buffer and enable the Applicant to continue to expand its non-gaming services at the Premises and many in-kind and cash community contributions.

87. Ms Porritt in her submissions for the Applicant emphasised the importance of ensuring the viability of not-for-profit clubs that are of importance to the community. She pointed to the decision of Portland RSL Memorial Bowling Club²⁵ in which the Commission accepted that the continued operation of the Club provided significant community benefits to the community who use it. Ms Porritt submitted that the improved trading position of the Applicant is of social benefit to the community in view of the very significant contribution it makes to the community.
88. The Commission accepts that unforeseen circumstances have resulted in the Applicant being in its present financial position, in spite of the considerable redevelopment of the Premises being highly successful. The Commission agrees with the submission on behalf of the Applicant that ensuring the viability of a not-for-profit club is an important consideration. The Commission regards the Premises as providing significant benefits to the community and that the Applicant is focussed on improving and increasing the services it provides.
89. The Commission agrees that the introduction of additional EGMs at the Premises will enable the Applicant to remain viable and retain and develop the existing facilities and services to the community of Baw Baw. The Commission regards this as a positive social impact upon which it places moderate weight.

Increased gaming opportunities for those who enjoy gaming

90. Mr Quick detailed in the Urbis Report that, for those who play gaming machines in a responsible manner, an increase in the number of EGMs at the Premises improves the variety of EGMs offered and, therefore, represents a social benefit.
91. Mr Quick considered that the number of EGMs at the Premises did not match the size of the other areas, such as the bistro and function facilities, and that an increase in the number of EGMs at the Premises would better service patrons, particularly at high demand times.
92. The ShineWing Report outlined patron surveys carried out at the Premises. The results supported the evidence provided by Mr Quick, that "there was 100 per cent usage of machines a couple of hours on a Friday night", as well as at other times such as the lunchtime period on Thursday and

²⁵ In the matter of an Application by the Portland RSL Memorial Bowling Club Inc [2012] VCGR (27 January 2012) (Commissioners King and Baragwanath).



Sunday.

93. The Commission accepts the evidence of Mr Quick and the ShineWing Report in relation to the demand for EGMs at the Premises. Particularly, the Commission notes the high periods of demand that regularly occurs at the Premises. To the extent that there is an unsatisfied demand for gaming that exists at the Premises, the Commission accepts that an increase in the number of EGMs at the Premises may cater to such demand.
94. The Commission considers this to be a small social benefit and, therefore, one to which it assigns marginal weight.

Increased community contributions

95. As outlined at paragraph 48 above, the Applicant has submitted that in addition to the current level of in-kind contributions that are made, it will make cash contributions in the amount of \$25,000 per annum, indexed to CPI.
96. The Commission recognises that the continued in-kind contributions in the order of \$50,000 as well as the additional \$25,000 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 fabric 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.
97. In the Urbis Report, Mr Quick notes, in relation to community contributions, that –
- Approval of the EGMs will enable the Club to enhance their community contributions. Whilst there is an economic value of those activities, undoubtedly, the social value created far exceeds a dollar value. The ability of a Club in a small country town to contribute to local community and sporting groups, promote social interaction and general well-being represents a very important social benefit of this application.*
98. As noted above in the economic benefits at paragraphs 45 to 47, Mr Smairl provided evidence in relation to the community contributions that the Applicant makes. Mr Smairl also gave evidence as noted at paragraphs 48 and 49 regarding the arrangements for the additional cash contributions.
99. With reference to Annexure Nine of the written evidence of Mr Smairl, 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 (such as the Warragul SES) have been the recipients of contributions from the Applicant.

100. The Commission accepts that the additional community contributions have a social benefit to Baw Baw. It also accepts that the additional community contributions will not occur if the Application is refused.
101. The Commission considers that the additional community contributions and the impact they will have on local community organisations to be a social as well as economic benefit, which is given low weight.

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

102. 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.
103. In the Urbis Report, Mr Quick notes, in relation to the increase in problem gambling and associated social impacts, that –

The key potential social disbenefit relates to problem gambling. Excessive gambling can have adverse impacts on people's health, jobs, finances, emotional states and relationships. The 'Productivity Commission Inquiry Report into Gambling 2010' detailed potential measures of harm caused by gambling across a range of social and economic indicators.

104. Mr Quick also submits that such an incremental change to problem gambling, and the negative social impacts arising as a result of the Application being approved, are expected to be negligible.
105. The Commission refers to and relies upon the evidence set out at paragraphs 66 to 71 in relation to the economic impact of problem gambling on the community.
106. 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 satisfied that the Applicant's approach to Responsible Service of Gambling as outlined in paragraphs 69 to 71 reduces the risk of problem gambling at the Premises. Consequently, the Commission finds that the social disbenefit associated with problem as a result of this Application is a low risk, on which it places marginal weight.



Net economic and social impact

107. 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
108. 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 net positive social and economic impact to the well-being of the community and the municipal district in which the Premises are located if the Application is approved.

OTHER RELEVANT CONSIDERATIONS

109. 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.
110. The Commission was informed in the written material and in oral evidence that at a previous hearing in 2011 to increase the number of EGMs at the Premises the Applicant proposed to build motel facilities as the second stage of its proposed renovations. The Commission at the time in granting the previous application placed weight on this proposal as a benefit because it fulfilled a community need. However, no condition to carry out the works was imposed on the Applicant. The evidence at the hearing of the present Application was that this development did not occur.
111. Failure to carry out renovations that had been regarded as a benefit in a previous application may be a matter of concern when the Commission is exercising its discretion to grant a new Application. However, the evidence of Mr Smairl was that within months of the grant of the previous application it was announced that a 48 room Mercure Hotel was to be built at Warragul. Based on a feasibility study carried out by the Applicant at the time, the demand for more hotel accommodation in Warragul had gone with the building of the Mercure Hotel and the project proposed by the Applicant was no longer financially viable.
112. The Commission accepts that the change in circumstances meant that it was no longer feasible

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



for the Applicant to continue with the motel project and does not consider the failure of the Applicant to do so impacts on its discretion to approve the Application.

113. 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.

114. The Commission was provided with draft conditions that the Applicant would be willing to accept should the Application be approved. In granting approval, the Commission believes it is appropriate that its approval should be subject to conditions of this nature. The conditions are as follows:

*(1) The operator of the Premises (**the Venue Operator**) will establish the Warragul Country Club Community Contributions Fund (**the Fund**) and undertake to do the following:*

- (i) Make cash contributions annually in the sum of \$25,000 (increased each year by the increase in CPI) (**the Contribution**) from the commencement of the operation of the additional 20 EGMs at the Warragul Country Club for the life of the entitlements;*
- (ii) Distribute the Contribution in accordance with the determination of a committee established by the Venue Operator and comprising one (1) representative of the Venue Operator, one (1) representative of Council, and one (1) community representative jointly nominated by the Venue Operator and Council (collectively, **the Committee**);*
- (iii) Ensure the Committee consult with the Baw Baw Public Health and Wellbeing Plan Committee annually, regarding the distribution of the Contribution to be made by the Venue Operator each year;*
- (iv) Ensure the Committee provide to the Shire of Baw Baw each year an account confirming the payment of the Contribution as set out above; and*
- (v) Continue making cash and in-kind contributions to a range of community and sporting groups (as the Venue Operator currently does) in the Shire of Baw Baw to the value of at least \$50,000 per annum (**the Existing Contributions**).*

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

Appendix One

Summary of social and economic impacts

Economic impacts

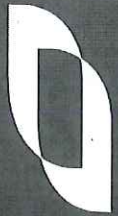
	Impact	Paragraph number	Comment relevant to weight
Benefit	Gaming expenditure not associated with problem gambling	43	The portion of new expenditure not attributable to problem gambling is an economic benefit. This amount is not estimated to be high. The Premises are not located in an area vulnerable to problem gambling. Marginal weight.
	Community contributions	51-52	The proposed contribution of \$25,000 per annum is a new initiative and will include a formal process and involve Council in elements of the process. It was also proposed to be a condition and increasing by CPI annually. Marginal-low weight.
	Employment creation	60-62	Proposed financial assumptions based on additional 2.3 FTE and evidence that Applicant invests in employees as financial position strengthens. Low weight.
Disbenefit	Possibility of increased incidence and impact of problem gambling	72-75	A portion of new expenditure is likely to result in problem gambling. However, the factors in this Application, including the surrounding area not presenting as particularly vulnerable to problem gambling, destination nature of the Premises, breadth of facilities at Premises, and the focus by the Applicant on RSG will mitigate the increase in risk. Marginal weight.



	Diversion of trade from other venues (and other retail and commercial facilities)	79	Given the Premises (as a result of previous renovations) has established itself as a pre-eminent dining facility, together with its breadth of offerings and being a destination venue, growth will be predominantly new. Nil weight.
	Reduction in taxation payable to the Government	82	Mr Stilwell's evidence indicated a likely neutral taxation consequence. Nil weight.

Social impacts

	Impact	Paragraph number	Comment relevant to weight
Benefit	Financial viability of the Applicant	88-89	The Applicant's financial position continues to be impacted on by a range of factors. The additional EGMs and likely financial benefit will enable the applicant to remain viable and to continue to develop the facilities and services for the benefit of the community. Financial viability of the Applicant is a social benefit to the community. Moderate weight.
	Increased community contributions	96, 99-101	The conduct of the Applicant (e.g. via the SES initiative) indicates a genuine level of commitment to ensuring community benefit. Low weight.



	Increased gaming opportunities for those who enjoy gaming	93-94	Addition of EGMs is more likely to cater to existing demand particularly in high periods of demand. Marginal weight.
Disbenefit	Possibility of increased incidence and impact of problem gambling on the community	105-106	A proportion of total gaming will be associated with problem gambling, but as stated when assessing the economic disbenefit, the limited vulnerability of the surrounding area, the destination nature of the venue, breadth of services offered and the focus of the applicant on RSG will mitigate the increase in risk. Marginal weight.