

DECISION AND REASONS FOR DECISION

In the matter of an application by the Romsey Football Netball Club Inc. under section 3.3.4(1) of the *Gambling Regulation Act 2003* for approval of the premises, the Romsey Community Hotel, 90 Main Street, Romsey, VIC, 3434 as suitable for gaming with fifty electronic gaming machines.

Commission: Fran Thorn, Chair
Andrew Scott, Deputy Chair
Claire Miller, Commissioner

Appearances: Michelle Sharpe of Counsel appeared to assist the Commission, instructed by Lilli Owens-Walton
Nick Tweedie SC appeared with Nicola Collingwood for the Applicant, instructed by BSP Lawyers
John Rantino appeared for the Responsible Authority (Macedon Ranges Shire Council)

Date of Hearing: 21, 22, 24, and 28 May 2024

Date of Decision: 21 June 2024

Date of Reasons: 18 July 2024

Decision: The Application is refused.



Signed:

Fran Thorn
Chair

REASONS FOR DECISION

Introduction

1. This is an application by the Romsey Football Netball Club Inc. (the **Applicant**) to the Victorian Gambling and Casino Control Commission (the **Commission**), under the *Gambling Regulation Act 2003 (GR Act)*,¹ for approval of the Romsey Community Hotel, 90 Main Street, Romsey, VIC, 3434 (the **Premises**) as suitable for gaming with fifty electronic gaming machines (**EGMs**) (the **Application**).
2. The responsible authority is the Macedon Ranges Shire Council (the **Council**). By letter dated 24 April 2024, the Council informed the Commission of its opposition to the Application and attached various documents by way of submission.
3. The Commission considered the Application by way of public inquiry.² A public hearing was conducted over three and a half days (the **Hearing**). A list of materials presented to the Commission is included in Annexure B to these reasons.
4. On 21 June 2024, the Commission decided to refuse the Application and notified the Applicant and the Council of its decision having found, for the reasons outlined below, that approval of the Application would result in a net detriment to the well-being of the community in the Macedon Ranges Shire.³

THE LEGISLATION AND THE COMMISSION'S TASK

The Commission's mandated objectives and the main objectives of the GR Act

5. The Commission's task is informed by, among other things, the stated objectives of the GR Act and the objectives of the Commission (as determined by the legislature).
6. The Commission is established under the *Victorian Gambling and Casino Control Commission Act 2011 (Vic)* (the **VGCCC Act**). The VGCCC Act provides that the objectives of the Commission relevantly include:
 - (a) to maintain and administer systems for the licensing, supervision, and control of gambling businesses for the purpose of fostering responsible gambling conducted or operated by the gambling business;⁴
 - (b) to minimise gambling harm and problem gambling.⁵
7. The objectives of the Commission expand upon the main objectives of the GR Act which include to foster responsible gambling in order to:
 - (a) minimise harm caused by problem gambling; and
 - (b) accommodate those who gamble without harming themselves or others.
8. The main objectives of the GR Act are reflected in the provisions that regulate gaming machines in Chapter 3 of the GR Act. Section 3.1.1 of the GR Act sets out the purpose of Chapter 3 which mirrors the main objectives of the GR Act, referred to above, with respect to fostering responsible gambling.
9. The Commission has also published a statement outlining the Commission's position on gambling harm.⁷

¹ GR Act, section 3.3.4(1).

² *Victorian Gambling and Casino Control Commission Act 2011 (Vic)* (**VGCCC Act**), section 28(2)(e).

³ GR Act, section 3.3.7(1)(c).

⁴ VGCCC Act, section 8A(a)(iii).

⁵ VGCCC Act, section 8A(b).

⁶ GR Act, section 1.1(2)(a).

⁷ https://www.vgccc.vic.gov.au/sites/default/files/our_position_on_gambling_harm.pdf

Matters the Commission must consider under the GR Act

10. The Application is made pursuant to section 3.3.4(1) of the GR Act.
11. Section 3.3.7(1) of the GR Act provides that the Commission *must not* grant the Application 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.
12. The third requirement, listed above, has been described as the ‘no net detriment’ test. The relevant legal principles regulating the application of the no net detriment test are settled and have been helpfully enunciated in several decisions by the Victorian Civil and Administrative Tribunal⁸ (**Tribunal**) and in a decision by the Victorian Court of Appeal.⁹
13. The authorities establish that the no net detriment test requires the Commission to be satisfied that there is no net detriment arising from the approval of the Application through positively and objectively establishing that the net economic and social impact, on the community of the municipal district in which the Premises are located, will not be detrimental. The municipal district here is the Council being the Macedon Ranges Shire.¹⁰
14. In determining the Application, the Commission must also consider:
 - (a) whether the size, layout, and facilities of the Premises are or will be suitable;¹¹
 - (b) any submission made by the relevant responsible authority (here, the Council);¹² and
 - (c) any Ministerial decision-making guidelines.¹³
15. Relevantly, on 16 October 2013, Ministerial decision-making guidelines were published in respect of premises that provide children’s play areas (the **Ministerial Play Area Guidelines**).¹⁴

Determination of the Application

16. The Commission must determine the Application by either granting or refusing to grant approval of the Premises with fifty EGMs as suitable for gaming.¹⁵
17. The Commission cannot approve the Application, or any application under section 3.3.7(1) of the GR Act, unless the gaming machine area is wholly indoors.¹⁶
18. If the Commission determines that the no net detriment test has not been met, this will be fatal to the Application. If, however, the Commission determines that the no net detriment test has been met, the Commission still has a discretion as to whether to grant approval.¹⁷

⁸ *Branbeau Pty Ltd v Victorian Commission for Gaming Regulation* [2005] VCAT 2606 at paragraph 51; *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275 at paragraph 352 and *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation* [2013] VCAT 101 at paragraph 52.

⁹ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2008] VSCA 45 at paragraph 43.

¹⁰ The GR Act section 1.3 states that municipal district has the same meaning as in the *Local Government Act 2020* (Vic), section 3 of which defines municipal district to mean “the district under the local government of a Council”.

¹¹ GR Act, section 3.3.7(2).

¹² GR Act, section 3.3.7(3).

¹³ VGCCC Act, section 9(4).

¹⁴ [Victoria Government Gazette, No. S 361, 16 October 2013](#).

¹⁵ GR Act, section 3.3.8(1)(a). Section 3.3.8(1)(b) also provides that the Commission must determine an application by either granting or refusing to grant approval for 24-hour gaming on the premises on any one or more days, which does not apply to this Application because the Application does not seek approval for 24-hour gaming on the Premises.

¹⁶ GR Act, section 3.3.7(5).

¹⁷ See *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation* [2013] VCAT 101 at paragraph 97, *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921 at

19. In exercising its discretion, the Commission must have regard to the purposes of the GR Act and the specific purposes of Chapter 3 of the GR Act dealing with the regulation, supervision and control of gaming machines.¹⁸ The Commission may also have regard to other factors, in the exercise of the Commission's discretion, such as broad policy considerations drawn from the GR Act as a whole.¹⁹ If all the mandatory considerations under the GR Act favour the grant of approval, however, it is ordinarily expected that the Commission's discretion would also favour approval, other than in rare or exceptional cases.²⁰

Conditions on approval

20. If the Commission grants the Application, section 3.3.9(1) of the GR Act provides for mandatory conditions of every approval of premises for gaming.
21. Section 3.3.9(1) of the GR Act also empowers the Commission to grant approval subject to any other conditions that the Commission thinks fit provided the condition is not inconsistent with a provision of the GR Act.²¹

RELEVANT BACKGROUND FACTS

The Applicant

22. The Applicant is a sporting club incorporated pursuant to the *Associations Incorporation Reform Act 2012* (Vic). The Applicant is one of the oldest sporting clubs in the area.²² The Applicant has a total of about 300 members and is staffed entirely by volunteers.²³
23. The Applicant competes in the Riddell District Football Netball League and operates out of the Romsey Park Recreation Reserve (**Romsey Reserve**) leased from the Council.²⁴
24. The Applicant has under 19, Reserve and Senior football teams and, in relation to netball, the Applicant has under 19 A, B, and C grade teams.²⁵ In 2023, the Applicant added an inaugural Senior Women's football team which currently has 23 players.²⁶ The Applicant has 32 contracted players.²⁷ There is also a junior football/netball club at Romsey Reserve which is a separate entity to the Applicant (although the Applicant says that the junior club will benefit under its proposal). The junior club fields teams in competitions for under 9, 11, 13, 15, and 17 years of age in both football and netball.
25. The Applicant holds a liquor licence and hosts meal nights, social events and functions at the club rooms at Romsey Reserve.²⁸

paragraph 32, and *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192 at paragraph 126.

¹⁸ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation* [2013] VCAT 101 at paragraph 98.

¹⁹ See *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation* [2013] VCAT 101 at paragraph 99, *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921 at paragraph 32, and *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192 at paragraph 126.

²⁰ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation* [2013] VCAT 101 at paragraph 98.

²¹ GR Act, section 3.3.8(4).

²² Witness Statement of Wayne Milburn ('Milburn Witness Statement'), paragraph 4.

²³ Witness Statement of Michael John Muir ('Muir Witness Statement'), paragraph 15.

²⁴ Applicant's Closing Submissions, paragraph 13. Muir Witness Statement, paragraph 20.

²⁵ Milburn Witness Statement, paragraph 4.

²⁶ Milburn Witness Statement, paragraph 5.

²⁷ Muir Witness Statement, paragraph 9.

²⁸ Muir Witness Statement, paragraphs 13 to 14.

26. The Applicant's purposes, as set out in the Applicant's rules,²⁹ can be summarised as being to promote the playing of sport, to provide facilities for the playing of sport, and provide recreational facilities for Applicant members, their guests, and visitors.³⁰ The Applicant is empowered, under the rules, to "do all things incidental or conducive to achieve its purposes"³¹ including acquiring approvals for conducting gaming.³²
27. The Applicant attracts annual sponsorship of around \$50,000 per year. The Applicant earns funds from bar sales at Romsey Reserve, subsidies from the football league, takings at the gate on match day while using the Romsey Reserve and membership fees. The Applicant's expenses comprise league fees, payments to players and coaches and general operating expenses. The Applicant pays a non-commercial rate of rent for Romsey Reserve from Council of about \$35 per week.³³ The Applicant's President gave evidence that, for the year ended 30 September 2022, the Applicant made an operational loss of \$7,000.³⁴ The Applicant's Treasurer gave evidence that, for the year ended 30 September 2023, the Applicant made a modest surplus of about \$15,000 following a loss of \$11,000 in the previous year.³⁵

Romsey

28. The township of Romsey is located approximately 65-kilometres north-west of central Melbourne in the Macedon Ranges. Main Street is the primary arterial road that runs north-south through the township. Most people driving to Romsey enter the township via Main Street.
29. The Romsey township roughly encompasses the area within a 5-kilometre radius of the Premises. In these reasons this area is referred to as the "Primary Catchment".
30. Other townships within the Macedon Ranges Shire that neighbour Romsey include: Lancefield, Riddell's Creek, Gisborne, Woodend and Kilmore.
31. The area within a 10-kilometre radius of the Premises includes the Romsey and Lancefield townships together with a few other small rural communities. In these reasons this area is referred to as the "Secondary Catchment". The Primary Catchment and the Secondary Catchment is referred to, collectively, as the "Catchment Area".

Population

32. As at the date of the Hearing, the Primary Catchment has a population of about 6,020 people.³⁶ The population in the Primary Catchment is expected to grow at about 2.0 per cent per year over the next decade.³⁷
33. The Primary Catchment is characterised by young family households.³⁸ There is a higher proportion of people aged between 0 to 4-years and 25 to 54-years living in the Primary Catchment compared to

²⁹ Rules of Romsey Football Netball Club Incorporated.

³⁰ Rule 2.

³¹ Rule 5(1).

³² Rule 5(2)(b).

³³ Transcript, page 23 lines 17 to 21 and page 25, lines 7 to 22.

³⁴ Milburn Witness Statement, paragraph 16, transcript, page 214, line 7 to page 215, line 5.

³⁵ Muir Witness Statement, paragraph 7.

³⁶ Social & Economic Assessment, dated October 2023, prepared by Urbis, and provided to the Commission by the Applicant ('Urbis Report'), at page 14. See also the population figures provided by the Council in the Social & Economic Assessment, dated 16 April 2023, prepared by SGS Economics & Planning, and provided to the Commission by the Council ('SGS Report'), at page 17.

³⁷ SGS Report at page 18.

³⁸ SGS Report at paragraph 51 and Urbis Report, at page 15.

the average for the Macedon Ranges Shire and regional (or non-metro) Victoria.³⁹ Many (about 57%) own their own homes and are paying off a mortgage.⁴⁰

34. Unemployment is low in the Catchment Area and below the regional Victorian average.⁴¹ The average household income in the Catchment Area is lower than the average in the Macedon Ranges Shire but higher than the average in regional Victoria.⁴² Proportionally more residents in the Catchment Area have completed Year 12 than in those living in regional Victoria, but the Catchment Area has a relatively low share of university-educated residents.⁴³

EGM municipal limit and density

35. The Macedon Ranges Shire has a municipal limit of 335 EGM entitlements.⁴⁴
36. There are 103 EGMs currently operating in the Macedon Ranges Shire.
37. For the year ending 30 June 2023, the number of EGMs in the Macedon Ranges Shire per 1,000 adults was 2.6.⁴⁵

The Premises

Location

38. The Premises is located on a corner site at the intersection of Main Street and Barry Street in Romsey. The Premises is within the Commercial 1 Zone.
39. Most of Romsey's commercial, medical, retail, hospitality, and postal services are on Main Street.⁴⁶ Several places of worship can also be found on Main Street.
40. The Romsey Community Hub (**Community Hub**) is located less than forty meters from the Premises. The Community Hub is a community facility that hosts a range of community services, including the municipal offices. These services include the Romsey Neighbourhood House (**RNH**), library, toy library and play group. Opposite the Community Hub, on the other side of Main Street, is a food bank providing free food.
41. A bus stop is located on Main Street outside the Community Hub. Another bus stop is located on the other side of Main Street, directly opposite. From this bus stop, commuters can access daily bus services including a local bus service,⁴⁷ school bus services⁴⁸ and a V/Line coach service.⁴⁹

Ownership and history of the Premises

42. The Premises was operated as a hotel until its closure in 2017.

³⁹ SGS Report at paragraph 51 and Urbis Report, at page 15.

⁴⁰ SGS Report at paragraph 56 and Urbis Report, at page 16.

⁴¹ SGS Report at paragraph 61 and Urbis Report, at page 17.

⁴² SGS Report at paragraph 59 and Urbis Report, at page 16.

⁴³ SGS Report at paragraph 60.

⁴⁴ GR Act, section 3.2.4.

⁴⁵ SGS Report at paragraph 39 and Urbis Report, at page 23.

⁴⁶ Urbis Report, at page 5. See also SGS Report at page 11 and a map identifying the services provided on Main Street included in the community submission of Sue Kirkegard.

⁴⁷ Lancefield – Gisborne (via Romsey, Monegeeta and Riddells Creek) and Lancefield – Sunbury – Clarkefield (via Romsey and Monegeeta): <https://www.ptv.vic.gov.au>.

⁴⁸ In several submissions received from the community, submitters identified the bus stop as a stop that was used by school buses for various schools in the area.

⁴⁹ Services include to Barham, Deniliquin, Echuca-Moama, Lancefield and Melbourne.

43. The registered proprietor of the Premises is the Romsey Hotel Pty Ltd⁵⁰ (the **Hotel Company**). Mr James Anthony Hogan agreed that the Hotel Company could be described as his corporate alter ego.⁵¹ In 2003 Mr Hogan caused the Hotel Company to purchase the Premises.⁵²
44. In 2005 the Hotel Company made an unsuccessful application to the Commission⁵³ to have the Premises approved for gaming with 50 EGMs (later amended to 30 EGMs).⁵⁴ The Hotel Company appealed to the Tribunal who set aside the Commission's decision.⁵⁵ The Council appealed to the Victorian Court of Appeal. The Court of Appeal allowed the appeal, set aside the Tribunal's decision and remitted the matter to the Tribunal for determination.⁵⁶ On the second occasion, the Tribunal affirmed the Commission's decision to refuse the Hotel Company's application.⁵⁷

The Application and the Applicant's proposal

45. The Applicant makes the Application as part of a planned redevelopment by the Hotel Company of the Premises to be a hotel (the **Hotel Business**). The Premises are proposed to include a bistro and a café/lounge with indoor and outdoor seated areas, a function room, a gaming room, a children's play area and a sports bar.⁵⁸ The estimated cost of the redevelopment is \$10 million.
46. The Applicant plans to engage Mr Hogan himself for an initial period of two years to manage the operation of the Hotel Business. The Applicant also proposes that, within this initial two-year period, Mr Hogan will have successfully taught the Applicant's directors how to manage the Hotel Business.⁵⁹ The Applicant intends, thereafter, to oversee the management of the Hotel Business itself with the ongoing assistance of a professional manager (either Mr Hogan or another manager).
47. The Applicant proposes that all net profits of the Hotel Business will benefit the Romsey community. The first \$200,000 in net profits, and 30% of the balance of net profits, will be retained by the Applicant to fund the Applicant's sporting and social activities.
48. The Applicant also proposes, as a condition of approval, to establish a "Community Chest" through which the Applicant will make donations from the net profits of the Hotel Business to a broad range of community and sporting organisations that benefit people within Romsey. The Applicant's view of the precise meaning of "net profit" in this context appeared to change at some point during the Hearing, although no explanation for this was offered. This is discussed in more detail later in these reasons.

Lease of the Premises

49. On 3 April 2023, the Applicant and the Hotel Company entered into two separate agreements in respect of the Premises: **Agreement for Lease** and a **Lease**.
50. The Agreement for Lease provides that the Lease does not commence until certain conditions are satisfied.⁶⁰ These conditions include (among other things):

⁵⁰ ACN 104 531 802.

⁵¹ Transcript page 345, lines 40 to 47. Mr Hogan and Christine Margaret Hogan are the registered directors of the Hotel Company. Mrs Hogan is also registered as the secretary of the Hotel Company.

⁵² Witness Statement of James Anthony Hogan, paragraph 7.

⁵³ That application was determined by the Commission's predecessor body, the Victorian Commission for Gambling Regulation, on 21 April 2006.

⁵⁴ Milburn Witness Statement, paragraph 4.

⁵⁵ *Romsey Hotel Pty Ltd v Victorian Commissioner for Gambling Regulation (Occupational and Business Regulation)* [2007] VCAT 1.

⁵⁶ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* [2008] VSCA 45.

⁵⁷ *Romsey Hotel Pty Ltd v Victorian Commissioner for Gambling Regulation (Occupational and Business Regulation)* [2009] VCAT 2275.

⁵⁸ A proposed floorplan is included in the Urbis Report, page 9.

⁵⁹ Hogan Witness Statement, paragraphs 28 and 19. Muir Witness Statement, paragraph 31.

⁶⁰ Agreement for Lease, clause 2.1.

- (a) approval of the Premises for gaming with fifty EGMs;
 - (b) practical completion by the Hotel Company of the redevelopment of the Premises (the **Lessor's Works**); and
 - (c) completion by the Applicant of the fit out of the Premises (the **Lessee's Works**).
51. The Agreement for Lease provides that these conditions must be fulfilled by a certain date (the **Final Approval Date**) and the Final Approval Date may be extended only once by agreement.⁶¹ Failure to fulfill the conditions before the Final Approval Date will result in a release of the parties from their contractual obligations.
52. The Agreement for Lease provides that the Applicant is to do all things necessary to obtain the approvals required for gaming at the Premises and acquire fifty gaming entitlements held by the Hotel Company.⁶²
53. The term of the Lease is ten years⁶³ with two options, being further terms of ten years each.⁶⁴ On termination of the Lease (for whatever reason) the Hotel Company has the first option to buy the gaming entitlements⁶⁵ and an option to buy the chattels used in the Hotel Business (including the EGMs).⁶⁶

Loans to the Applicant

54. Under the Agreement for Lease, the Hotel Company undertakes to pay all costs associated with obtaining approvals (the **Approval Costs**).⁶⁷ The Applicant is only required to reimburse the Hotel Company for the Approval Costs if the Premises is approved for gaming.⁶⁸ The Approval Costs can, at the Applicant's election, be rolled into the Hotel Company's loan to the Applicant.⁶⁹
55. The Hotel Company, under the Agreement for Lease, agrees to loan the Applicant an amount comprising the Approval Costs, the cost of Mr Hogan's gaming entitlements and an amount of up to \$3 million to fund the Lessor's Work (**Loan Amount**). The Hotel Company agrees to advance the Loan Amount for a term of ten years at an interest rate of 4% per year with interest only payments required during the ten-year term.⁷⁰
56. During the Hearing, Mr Hogan told the Commission that the Applicant had received an indication from the Commonwealth Bank of Australia (**CBA**) that the CBA would fund the fit-out of the Premises and repayment of the Approval Costs. Mr Hogan said that he would only lend the Applicant money if no loan was forthcoming from a financial institution, describing himself as the "lender of last resort".⁷¹ The Applicant subsequently provided an undated letter from Callum Cox, Relationship Manager at the CBA, which stated that the CBA understood that the Applicant may require about \$4 million and the CBA could provide funding but any formal offer would be subject to, among other things, a standard credit process.

⁶¹ Agreement for Lease, clauses 2.7 and 2.8.

⁶² Agreement for Lease, clause 2.2.

⁶³ Lease, Schedule, item 8.

⁶⁴ Lease, Schedule, item 15.

⁶⁵ Lease, Schedule, clause 17.11.

⁶⁶ Lease, Schedule, clause 17.12.

⁶⁷ Agreement for Lease, clauses 2.9(a) and 2.9(b).

⁶⁸ Agreement for Lease, clauses 2.9(c) and 2.9(d).

⁶⁹ Agreement for Lease, clause 2.9(e).

⁷⁰ Agreement for Lease, clause 7.

⁷¹ Transcript, page 284, lines 18 to 31.

Management of the Hotel Business

57. The Applicant undertakes, under the Agreement for Lease, to engage a manager nominated by the Lessor (the Hotel Company).⁷² The Lease itself also provides that, for the first two years, the Applicant will not terminate the manager or appoint a new manager without the Hotel Company's consent.⁷³
58. A draft management agreement, annexed to the Agreement for Lease, proposes that the management services will be provided by Hogan's Hotel Pty Ltd⁷⁴ (the **Management Company**) for an initial term of two years (**Management Agreement**). The Management Company, like the Hotel Company, was described by Mr Hogan as his corporate alter ego.⁷⁵
59. The Management Company must, at its own cost, engage Mr Hogan and a promotion and publicity manager to provide the management services (the **Key Employees**).⁷⁶
60. The Applicant must pay the Management Company an annual management fee of \$120,000 plus GST.⁷⁷ The management fee is reviewed annually, and the review must include the costs incurred by the Management Company in engaging the Key Employees.⁷⁸ Payment of the management fee is conditional on the Hotel Business achieving a net profit of \$750,000 per financial year.⁷⁹ A discount to the management fee otherwise applies.⁸⁰
61. The Management Company has a contractual obligation to manage the Hotel Business in a "proper and business-like manner"⁸¹ with the intent that the value of the Hotel Business will be enhanced.⁸² The Management Company also has certain specific duties in managing the Hotel Business.⁸³ These duties include (among other things) ensuring that the Applicant complies with its obligations under the Lease (including paying rent to the Hotel Company)⁸⁴ and making recommendations to the Applicant for any capital works required to enhance the Hotel Business.⁸⁵ The Management Agreement, however, does not require the Management Company to train the Applicant's office holders in how to oversee the management of the Hotel Business.

Final Approval Date

62. The Commission notes here that the Final Approval Date, and the date by which the Final Approval Date can be extended under the Agreement for Lease, has passed. The Commission has received notification on behalf of the Applicant that the Agreement for Lease has subsequently been extended and accepts that it therefore remains on foot.⁸⁶

⁷² Agreement for Lease, clause 8.

⁷³ Lease, Schedule, clause 17.19.

⁷⁴ ACN 005 741 882.

⁷⁵ Transcript, page 346, lines 12 to 22. Mr Hogan is registered as the sole director and Christine Margaret Hogan is registered as the sole secretary of the Management Company.

⁷⁶ Management Agreement, clause 4C) and clause 13B).

⁷⁷ Management Agreement, clause 8A) and Schedule.

⁷⁸ Management Agreement, clause 4C)iii) and clause 8C).

⁷⁹ Management Agreement, clause 9A).

⁸⁰ Management Agreement, clause 9B).

⁸¹ Management Agreement, clause 4A)i).

⁸² Management Agreement, clause 4A)ii).

⁸³ Management Agreement, clause 4B).

⁸⁴ Management Agreement, clause 4B)i).

⁸⁵ Management Agreement, clause 4B)v).

⁸⁶ By letter dated 31 May 2024, the Applicant's solicitors advised the Commission that the parties have "extended the dates" under the Agreement for Lease so that the agreement remains "on foot" pending finalisation of the relevant approvals.

Conditions that would have been imposed if the Application was granted

63. After the Hearing, the Applicant agreed to comply with various conditions if the Application was granted (the **Proposed Conditions**). The Proposed Conditions are set out in Annexure C to these reasons for decision.

REASONS FOR DECISION

64. As outlined above the Commission cannot grant the Application under the GR Act unless it is satisfied of three matters which can be relevantly summarised as follows:
- (a) the Applicant has authority to make the Application;
 - (b) the Premises will be suitable for gaming on completion of building works; and
 - (c) if the Application is approved, there will be no net detriment to the well-being of the community.
65. Each of these matters is addressed in turn below after the following overarching observations by the Commission on the evidence.

Evidence

66. The Commission recognises that it is the nature of an inquiry that new evidence will be produced during the inquiry. What the Commission expects, however, is that the parties will make every effort to furnish the Commission with as much relevant evidence as possible prior to the inquiry hearing and that this evidence is complete and accurate.
67. The Commission observes that it is increasingly the case in applications for premises approval, or increased numbers of EGMs, for the parties to provide incomplete or inaccurate evidence prior to commencement of the hearing of matters that are critical to the determination of the Application. In this inquiry, the Applicant's evidence of the projected profit and loss statements of the Hotel Business is one such example.
68. After all evidence had been heard, on the night before closing submissions, the Applicant submitted revised projected profit and loss statements for years 1, 2 and 4 of trade. These new figures (the **Revised Financials**) differed from the figures in the original profit and loss statement (**Original Profit and Loss Statement**) submitted⁸⁷ for year 1 only. The Revised Financials were not able to be examined at the Hearing, which was unhelpful. It is incumbent upon the parties, particularly the Applicant who bears the main responsibility of persuasion, to do better than this. It is important that all evidence presented at a hearing is timely and meets the standard of reliability necessary to enable the Commission to make the best-informed judgment in consideration of the no net detriment test. Due to the inherent difficulty in predicting reliably very far into the future, the Commission has focused on year 1 in its assessment, as has the Applicant in its letter to the Council dated 8 February 2024 (the **BSP Letter**). Nevertheless, the Commission examined the Revised Financials carefully.

A. Applicant has authority to make the application

69. The Commission is satisfied that the Applicant has authority to make the Application as the Hotel Company, as owner of the Premises, by notice dated 28 August 2023, has provided its consent to the Application.

⁸⁷ Prepared by Nigel Bird CPA and included as "Schedule No. 2" to the proposed Management Agreement.

B. Premises suitable for gaming after building works

70. In determining whether the Premises is suitable after the proposed building works, the Commission has been assisted by:
- (a) Social & Economic Assessment, dated October 2023, prepared by Urbis, and provided to the Commission by the Applicant (**Urbis Report**);
 - (b) Social & Economic Assessment, dated 16 April 2023, prepared by SGS Economics & Planning, and provided to the Commission by the Council (**SGS Report**);
 - (c) Economic and Social Impact Expert Witness Conclave report, dated 16 May 2024, (**Conclave Report**); and
 - (d) Pre-hearing Size, Layout, and Facilities Report prepared by Commission staff dated 3 May 2024 (**Commission Premises Report**).
71. The Commission considers that the Premises, on completion of the proposed building works, will be suitable for gaming, with one exception. The exception is that the proposed courtyard adjacent to the gaming room is only accessible from the gaming room.⁸⁸ During the Hearing, the Applicant agreed to remove the courtyard from the proposed plan of the Premises.
72. The Commission also considers that the design of the proposed children's play area complies with the Ministerial Play Area Guidelines.⁸⁹

C. Consideration of the no net detriment test

73. The Commission is required to be satisfied that there is no net detriment to the well-being of the Macedon Ranges Shire community arising from the approval of the Application. Logic dictates that the spatial effects of the EGMs to be introduced at the Premises should also be considered.⁹⁰ In other words, the primary impact of the approval will, most likely, be on persons living or working in the Primary Catchment with lesser impacts experienced by those living or working in the Secondary Catchment, or the wider Macedon Ranges Shire.
74. The Applicant contends that the impact on the well-being of the community, if the Application is approved, would not result in a net detriment to the Macedon Ranges Shire community. In support of its position, the Applicant primarily (but not exclusively) relies on:
- (a) the Urbis Report;
 - (b) the Romsey Hotel Social & Economic Impact Assessment Addendum Report, dated 15 May 2024, prepared by Urbis (**Urbis Addendum**);
 - (c) Report of SW Accountants & Advisors Pty Ltd on EGM expenditure dated 25 September 2023 (**SW Report**); and
 - (d) Community Survey 2023 Report, dated June 2023, prepared by the Taverner Research Group (**Taverner Survey Report**).
75. Conversely, the Council contends that, if the Application is approved, it would result in a net detriment to the Macedon Ranges Shire community. In support of its position, the Council primarily (but not exclusively) relies on:

⁸⁸ Commission Direction made under section 3.5.27 of the GR Act dated 13 July 2004 states that "*It must not be necessary for a patron of an approved venue to pass through a gaming machine area in order only to enter or leave the venue or gain access to a facility, such as toilets or a smoking area.*"

⁸⁹ The design meets each of the five requirements set out in the Ministerial Guidelines: the play area is located as far away as practicable from the gaming machine area; there is no line of sight from the play area into the gaming area (and vice versa); the location of the play area does not permit sounds of the gaming area to be heard in the play area; the play area is not directly accessible from the gaming machine area; the design of the play area is conducive to being monitored by Premises staff.

⁹⁰ *Branbeau Pty Ltd v Victorian Commission for Gaming Regulation* [2005] VCAT 2606 at paragraph 51.

- (a) the SGS Report; and
 - (b) the Summary of Community support for the Romsey VGCCC application, dated April 2024, prepared by Insync Surveys Pty Ltd (**Insync Survey Report**).
76. The Commission also received an Economic and Social Impact Report, dated 3 May 2024, prepared by Commission staff (**VGCCC Report**).
77. Each of the economic and social impacts identified and weighed by the Commission are summarised in Annexure A. The Commission has attributed these weightings having regard to, wherever possible, the economic amount or social extent of each impact and the importance of each. The Commission has, therefore, assessed the weight of various impacts, whether beneficial or detrimental, after factoring in both their inherent importance and their quantum or extent.
78. The Commission regards the following four impacts associated with this particular Application to be of the greatest consequence (in no order): the provision of new gaming and entertainment facilities, contributions to the community, community attitude to the Application, and gambling harm.

Social and economic benefits

New or additional facilities for EGM consumption and social interaction

79. If the Application was approved, the Urbis Report identifies the enhanced access to EGMs to be a social benefit to the community in the Primary Catchment. The Urbis Report describes this as being a medium social benefit to the community.⁹¹ The Urbis Report also identifies improved facilities available at a redeveloped Premises to be a social benefit to the community in the Primary Catchment and gives this a high weight.⁹²
80. The SGS Report assesses increased opportunities for recreational gaming to be a moderate benefit⁹³ and improved entertainment options to be a low benefit.⁹⁴ SGS considers that if the Application is not approved, given the projected growth of Romsey's population, another venue⁹⁵ like the proposed redeveloped Premises (but without EGMs) or broadly similar entertainment options will be developed (the **Base Case**).⁹⁶
81. The Applicant is critical of the Base Case.⁹⁷ One criticism raised by the Applicant, and accepted by the Commission, is that assessment of the Application, against a Base Case, is not a relevant consideration under the GR Act. The Commission is tasked to determine (among other things) whether, if the Application before it was approved, it will result in a net detriment to the well-being of the Macedon Ranges Shire community. The Commission is not tasked to speculate as to the possibility of other, less controversial, alternatives over time.
82. As to the redevelopment of the Premises itself, to provide these new facilities, Mr Hogan gave evidence that the total cost of the redevelopment to be about \$10 million⁹⁸ and will provide twenty short term construction jobs.⁹⁹ Urbis considered these works to be "sizeable" and "uncommon" for Romsey and gave high weight to this economic benefit.¹⁰⁰

⁹¹ Urbis Addendum, page 14. Note that Urbis initially assessed this benefit to be of low weight, Urbis Report, page 34.

⁹² Urbis Report, at page 34; Urbis Addendum, page 14.

⁹³ SGS Report, paragraphs 170 to 172.

⁹⁴ SGS Report, paragraphs 173 to 175.

⁹⁵ SGS Report, paragraphs 174.

⁹⁶ Transcript, page 408, line 35 to page 409, line 36.

⁹⁷ Applicant's Submissions, paragraphs 75 to 83.

⁹⁸ Hogan Witness Statement, paragraph 31.

⁹⁹ Hogan Witness Statement, paragraph 32.

¹⁰⁰ Urbis Report, page 32; Urbis Addendum, page 15.

83. The Council gave less weight to the economic impact of the redevelopment of the Premises. SGS, in a cost benefit analysis, estimated the net present value of the works to be \$0.32 million¹⁰¹ and, in its qualitative assessment, assessed the works to be of marginal benefit. SGS considered that the full construction cost of the Premises should not be directly considered as a benefit to the local community. SGS said it needed to be adjusted to include only the value-added component of the works,¹⁰² the portion of the works likely to be completed by local contractors¹⁰³ and the number of non-residential building construction workers who live and work in the Macedon Ranges Shire.¹⁰⁴
84. On its review of the evidence the Commission makes four observations relevant to assessing the benefits of the redeveloped Premises. First, the Commission notes the evidence that the total cost of the redevelopment, estimated at \$10 million, will not all be spent on demolition and construction. The estimated costs include, among other things, the cost of purchasing or leasing EGMs, furniture, kitchen equipment, bar equipment, audio-visual equipment, window furnishings, cutlery, crockery, and glassware.¹⁰⁵ When these costs are removed from the impact, the size of the development and resulting impact on the local economy is not as significant as the Applicant contends. Second, the Applicant has not committed to a policy of hiring local contractors. In any event, the Commission infers that such a policy would only draw local contractors away from other projects given the Catchment Area's low rate of unemployment. Third, the redevelopment of the Premises is a one-off event. Any positive impact associated with the redevelopment on the local economy will be short-lived. Fourth, the Catchment Area may not have a venue of the kind proposed by the Applicant, but it does have other entertainment venues including the Lancefield Hotel¹⁰⁶ and The 1860 Romsey.¹⁰⁷
85. Considering these four observations, the Commission assesses the benefits to the Macedon Ranges Shire community from the development of the Premises and increased opportunities for entertainment to be a low to moderate benefit.

Employment creation

86. Mr Hogan gave evidence that he estimates that the redeveloped Premises, on opening, will employ approximately seventy people on a casual, full time and part time basis. Mr Hogan estimates from this number, twelve full-time equivalent positions will be in the gaming room¹⁰⁸ and forty-six will be employed full time across the Premises as a whole.¹⁰⁹ Urbis asserts that it is "highly likely" that people living locally will be employed to work at the Premises and gave medium weight to this economic impact.¹¹⁰
87. Conversely, SGS qualitatively assessed the net impact on employment¹¹¹ to be of marginal benefit to the community in the long term.¹¹² In a cost benefit analysis, SGS assessed the net present value of

¹⁰¹ SGS Report, page 36, table 11.

¹⁰² That is the difference between the value of construction and the sum of labour and capital inputs: SGS Report, paragraph 136.

¹⁰³ SGS assumes 63% of workers will be completed by locally based contractors: SGS Report, paragraph 136.

¹⁰⁴ SGS Report, paragraph 82 and Table 6.

¹⁰⁵ Schedule of Development Costs provided by the Applicant on day 2 of the Hearing (22 May 2024) and evidence of Mr Hogan: transcript page 286, line 30. to page 289, line 23, page 291, line 1 to page 294, line 6 and page 299, line 15 to page 303, line 5.

¹⁰⁶ 2-4 High Street, Lancefield. Located about 8.2 kilometres from the Premises.

¹⁰⁷ 119 Main Street, Romsey. Located about 210 meters from the Premises.

¹⁰⁸ Transcript, page 274, line 42 to page 275, line 8: Mr Hogan corrected paragraph 32 of his witness statement.

¹⁰⁹ Hogan Witness Statement, paragraph 32.

¹¹⁰ Urbis Report, page 32. Urbis Addendum, page 16.

¹¹¹ SGS Report, paragraphs 191 and 192.

¹¹² SGS Report, paragraphs 197 to 199.

a net increase in employment as being \$1.59 million. SGS based its assessment on the number of food and beverage workers who live and work in the Macedon Ranges Shire.¹¹³

88. In the expert conclave both Urbis and SGS agreed that the value of the refurbishment works, which is a key input into estimating employment and economic impacts, will be in the order of \$10 million¹¹⁴ and that jobs would be created that could be filled by some people living locally. Although, as the Commission has observed above at paragraph 84, the \$10 million estimate includes more than the redevelopment of the Premises.
89. Again, the Commission notes that the Applicant has not committed to a policy of hiring staff from people living locally and, even if it did the Commission infers that, the Applicant may draw people away from other workplaces given the Catchment Area's low unemployment rate. The Commission considers, if the Application is approved, the net impact on employment will be of marginal benefit to the Macedon Ranges Shire community.

Complementary expenditure and supply contracts

90. The Urbis Report considered that reopening the Premises would increase demand for downstream suppliers, such as for food and beverage products. Urbis opined that some of these suppliers were likely to be local. Urbis considered that this would be a low economic benefit to the Macedon Ranges Shire community.¹¹⁵ Neither the Urbis Report nor the Urbis Addendum rated the weight to be given to the benefit of complementary expenditure.
91. The SGS Report regarded supply contracts to be of marginal benefit to the Macedon Ranges Shire community in the long term.¹¹⁶ The SGS Report also considered complementary expenditure to be of marginal benefit in part because of its Base Case.¹¹⁷
92. As with the employment of all contractors and staff, the Commission notes that the Applicant has not adopted a policy of engaging local suppliers. Further, the Applicant did not identify or provide the Commission with any evidence of the existence of local suppliers the Applicant would likely engage if the Application were approved. It follows that the Commission considers, if the Application is approved, the net impact of supply contracts and complementary expenditure will be less than that submitted by the Applicant and of marginal benefit to the Macedon Ranges Shire community.

Contributions to the Community

93. The Applicant contends that, if the Application is approved, the community in the Primary Catchment will benefit from the profits generated by the Hotel Business in two ways. First, the profits from the Hotel Business will provide the Applicant with greater funds to pursue its purposes and this, the Applicant says, is to the community's benefit. Second, the Applicant says that it will pay a portion of the Hotel Business profits into a "community chest" for distribution to worthy community groups principally in the Primary Catchment.
94. The Applicant had agreed to potential conditions, in the Proposed Conditions, (in the event of the Application being approved) to distribute the annual net profit of the Hotel Business as follows:¹¹⁸

¹¹³ 73% of food and beverage workers live and work in Macedon. SGS Report, paragraph 82 and Table 6.

¹¹⁴ Conclave Report, page 9.

¹¹⁵ Urbis Report, page 32; Urbis Addendum, page 16.

¹¹⁶ SGS Report, paragraphs 197 to 199.

¹¹⁷ SGS Report, paragraphs 200 to 201.

¹¹⁸ Condition 6.2.2, Annexure C.

- (a) the first \$200,000 in net profit of the Hotel Business and a further 30% of the balance of the net profit to be distributed to the Applicant (or Venue Operator);
- (b) the other 70% of the balance of the net profit to be paid into the Community Chest; and
- (c) a minimum amount of \$25,000 to be guaranteed to be paid into the Community Chest if the level of profit is too low.

As explained below, the Applicant has provided two competing definitions of “net profit” for the purpose of that distribution to the Community Chest.

Funding the Applicant’s activities

- 95. The Applicant proposes applying the profits generated from the Hotel Business to fund its sporting and social activities, including improvements to the facilities at Romsey Reserve¹¹⁹ and wellbeing programs.¹²⁰
- 96. The Commission makes the following three observations.
- 97. First, the Applicant will only benefit from the profits of the Hotel Business for so long as the Applicant remains the operator of the Premises. Submissions received from the community raised concerns about the ability of the Applicant (staffed by volunteers) to oversee management of the Premises. The Commission notes here that the Applicant’s President and Treasurer struggled to answer questions at the Hearing in respect of the operation of, and arrangements that underpin, the Applicant’s proposed Premises and Hotel Business.¹²¹ In community submissions, a concern was raised that the Application was, in truth, Mr Hogan’s application. One submission referred to the Application as Mr Hogan’s “trojan horse”.
- 98. The Applicant has sought to address this concern by agreeing, as a condition on approval, that:
 - (a) all the Applicant’s office holders are required to receive training in Responsible Service of Gaming¹²² and in the operation of a Hotel at Mr Hogan’s Wallan Hotel;¹²³
 - (b) only the Applicant, or a similar community organisation located within Romsey, should be permitted to operate the Premises, whether itself or through the engagement of a third-party management company.¹²⁴
- 99. Second, it is difficult to assess the benefit of the funds being distributed to the Applicant when the amount of profit that will be generated by the Hotel Business is uncertain. This is considered further below.
- 100. Third, the Commission considers that, although the Applicant is the town’s main football and netball club, it is nevertheless only a segment of the Macedon Ranges Shire community. That is, the Applicant’s activities are activities that benefit its members and supporters, not the Macedon Ranges Shire community at large.

Community Chest

- 101. The Applicant has offered, as a condition of approval of the Premises for gaming, that a “Community Chest” be established. As SGS observes, the amounts that could be distributed to the community in

¹¹⁹ Milburn Witness Statement, paragraph 24; Muir Witness Statement, paragraphs 25 and 29.

¹²⁰ Muir Witness Statement, paragraphs 28 and 30.

¹²¹ See for example transcript page 30, lines 10 to 25, page 33, lines 6 to 14, page 250, lines 31 to 36, page 265, lines 22 to 29.

¹²² Condition 3.1, Annexure C.

¹²³ Condition 3.4, Annexure C.

¹²⁴ Condition 6.1, Annexure C.

the Primary Catchment, through the Community Chest, would be among the highest that any gaming venue has provided.¹²⁵ This, of course, is dependent on the Applicant achieving the projected net profit or a significant proportion of it.

102. The Applicant proposes benefiting local organisations, in the Primary Catchment, such as the CFA, RSL, Lions Shed, Men's Shed and preschools.¹²⁶
103. During the Hearing, concern was raised as to whether the Applicant's rules permitted the proposed distribution of funds to other organisations not aligned to the Applicant's purposes. The Commission accepts the Applicant's submission that rule 5(1) empowers the Applicant to do all things incidental or conducive to achieve the Applicant's purposes which includes, under rule 5(2)(b), holding an approval required to conduct gaming. This necessarily means that the Applicant is empowered to do all things necessary to comply with any condition of approval.¹²⁷ Alternatively, as the Applicant submits, the Applicant can amend its rules.¹²⁸
104. Urbis weighs the economic benefit of the community contributions to the community in the Primary Catchment as being high¹²⁹ and the social benefit as medium.¹³⁰ Importantly, and as distinct from SGS, Urbis includes in this calculation the profits that the Applicant itself will earn and use consistent with its purposes.
105. SGS estimates the net present value of community benefits as being \$2.51 million.¹³¹ Given SGS's view as to the uncertainty of the amounts that will be paid into the Community Chest, SGS has adopted a community contribution of \$200,000 per year.¹³² SGS assesses the community contribution as being a marginal benefit to the community.¹³³ SGS does not include in this assessment any funds distributed to the Applicant and used for the Applicant's purposes.
106. The Commission agrees with SGS that a degree of uncertainty about the level of net profit (and therefore, the amounts to be paid into the Community Chest) makes it difficult to assess the benefit of these community contributions to the community in the Catchment Area.
107. The Original Profit and Loss Statement was for the first year of trade only. The Original Profit and Loss Statement also did not refer to repayments on any loan from either the CBA and/or Mr Hogan or the Hotel Company. This was the subject of cross-examination of the Applicant's President.¹³⁴ After the final day of evidence but prior to closing submissions at the Hearing, and without notice, the Applicant provided the Revised Financials and a capital financing model for year 1, year 2, and year 4 of the Hotel Business calculating the amounts available to be paid to the Applicant and the Community Chest (the **Capex Model**).¹³⁵
108. As mentioned above in paragraph 67 above, the figures for some items in the year 1 profit and loss statement from the Revised Financials differed from the Original Profit and Loss Statement.¹³⁶ Profit and loss statements for year 2 and year 4 did not appear to make any allowance for management fee increases (reviewable annually under the Management Agreement), salary increases (in year 2) or even rental increases (despite the Lease providing annual increases of 3%), among other things.

¹²⁵ SGS Report, at paragraph 176.

¹²⁶ Milburn Witness Statement, paragraph 26.

¹²⁷ Applicant's Closing Submissions, paragraphs 87 to 88.

¹²⁸ Applicant's Closing Submissions, paragraph 93.

¹²⁹ Urbis Report at page 32.

¹³⁰ Urbis Report at page 34; Urbis Addendum, page 14.

¹³¹ SGS Report, at page 5.

¹³² SGS Report, at paragraph 109.

¹³³ SGS Report, at paragraphs 176 to 178.

¹³⁴ Transcript, page 233, line 32 to page 234, line 29.

¹³⁵ For reasons that were not explained by the Applicant, no profit or loss statement, or capital financing model, was provided for year 3.

¹³⁶ Those items include accounting, signage, maintenance, rubbish removal, and SKY.

- Superannuation also does not appear to have been calculated at the correct rate of 11.5% for year 1 and 12% thereafter. On their face, the Revised Financials appear incomplete and, possibly, unreliable. However, as stated earlier, these observations were not tested because this material was provided by the Applicant after the close of evidence and before closing submissions at the Hearing.
109. The Commission is not sure that the Capex Model contains all the significant items that it should. For example, the Capex Model includes two financing options: financing solely from the CBA (**Option 1**) and financing split between Mr Hogan and the CBA (**Option 2**). Option 1 states that capital and interest payments to the CBA will be \$250,000 and \$200,000 respectively in year 1. But, if interest is charged in year 1 at 4% per year (the rate Mr Hogan proposes charging under Option 2), it would equal \$300,000, not \$200,000 as set out in the Capex Model. Further, Option 2 makes no reference at all to the interest payable to the CBA portion of the finance package. Using the above assumed rate of 4% per year, interest would be approximately \$160,000 extra in year 1. Another source of concern is that Option 2 also includes repayment of the principal to Mr Hogan during the 10-year term of the loan although the parties agreed that the Applicant would be required to pay interest-only prior to expiration of the term.¹³⁷ This may explain why the interest cost also does not appear to have been correctly calculated at the agreed rate of 4% per year (that is, \$136,000 for year 1 if interest-only, instead of \$100,000) but, regrettably, the Commission has been left to guess which repayment model to Mr Hogan – interest-only or principal and interest – is proposed. Again, these observations could not be tested because this material was provided by the Applicant after the close of evidence and before closing submissions at the Hearing. Without further detail or explanation, it is difficult for the Commission to rely on the accuracy of a range of figures set out in the Capex Model.
110. The Capex Model predicts the amounts that will be paid out to the Applicant and into the Community Chest *after* loan repayments and payment of interest. The predicted distribution to the Community Chest for year 1 of trading under the Capex Model, under either finance option, is significantly less than the \$541,292.50 the Applicant advised the Council in the BSP Letter: \$136,926 (Option 1) and \$49,426 (Option 2). Again, the Applicant did not offer any explanation for its radical change in position.
111. The Commission notes that the BSP Letter¹³⁸ provided for the distribution of funds *before* loan and interest payments. Nonetheless, the Commission considered it appropriate to also assess the benefit of the Applicant's proposed contributions *after* loan and interest payments for three reasons. First, prudent business practice suggests that obligations under all loan agreements should be met before any money is drawn out of the business. Second, the Commission needs to factor in the Applicant's loan and interest payments to determine the amounts that realistically will be paid out to the Applicant and into the Community Chest, especially since such payments will presumably be made monthly throughout the year ahead, in time, of any community distributions. Third, the Commission needs to have regard to the Applicant's loan and interest payments to gain an understanding of whether the Hotel Business is likely to be profitable given the Applicant submits that a profitable sporting club is a benefit to the community. The relevance of the Commission looking at it this way is because the weighting to be given to the benefit of contributions to the community is entirely dependent on the level of profit realised and available for distribution.
112. Having regard to the perceived omissions and errors set out in paragraphs 108 and 109, the Commission considers it likely that the amount available to the Community Chest, after loan and

¹³⁷ Agreement for Lease, clause 7.

¹³⁸ See BSP Letter definition of "net profit".

interest payments, will be much lower than that predicted by the Applicant. These omissions also emphasise how uncertain the net profit figure is for the purpose of the benefit associated with the Community Chest.

113. The weight the Commission attributes to the benefit associated with contributions to the Community Chest will be similar, whether it is assessed based on the distribution model in the BSP Letter or in the Capex Model. Using the Applicant's own figures, if that contribution were to be assessed based on net profit before interest and repayment of loans, the Applicant would not have sufficient available funds to meet those repayment obligations in year 1. On the other hand, if it only calculated its contributions after it had met its repayment obligations, the amount to be paid to it would be a small fraction of what it had projected to the Council and in the Application. Hanging over this is the Commission's assessment of the unreliability of the Applicant's figures and the consequent unlikelihood of them being achieved. Given the uncertainty as to the amounts that will be available for distribution from the Community Chest, the Commission can only assess the benefit to the community in the Primary Catchment by reference to the guaranteed amount, of \$25,000. In fact, pursuant to the Applicant's distribution formula in the Capex Model, if net profit were assessed *after* loan repayments and payment of interest, it would need to exceed \$235,000 per year before the wider community would receive anything more than \$25,000. If the Applicant's year 1 loan repayment figures were correct (\$450,000 or \$575,000) its net profit, *prior* to loan repayments, would need to roughly exceed either \$685,000 or \$810,000 depending on the finance option used. So far as the amount of net profit earned by the Applicant and available for its own retention is concerned, given that it is a community sporting club, this is an additional marginal benefit. But it is hard to rate it any higher, due to the same uncertainty.
114. When combined, the Commission assesses the Community Chest contribution, and the amounts available to fund the Applicant's activities as being a marginal economic and social benefit to the Macedon Ranges Shire community.

Gambling expenditure not associated with problem gambling

115. The Commission recognises that gaming expenditure is difficult to estimate in circumstances where gaming has never taken place at the Premises and there are no other gaming venues within a 10-kilometre radius of the Premises.
116. In the SW Report, a benchmarking analysis of similar or comparable venues to the Premises was undertaken to arrive at net machine revenue (**NMR**), per EGM per day, of \$176.¹³⁹
117. The SGS Report considered that a benchmarking analysis was an appropriate method to estimate gaming expenditure but did not consider that the sample group selected in the SW Report is to be comparable to the Premises. Using a different sample group, the SGS Report estimated an NMR of \$257.¹⁴⁰
118. At the conclave of experts, no agreement could be reached on any comparable venues save for the Kyabram Club¹⁴¹ which achieved, in the 2023 financial year, an NMR of \$200.¹⁴² The Kyabram Club is like the proposed Premises in that the Kyabram Club (although it is club rather than a hotel) has 53 EGMs and a similarly sized adult population to the Primary Catchment.¹⁴³

¹³⁹ SW Report, paragraph 9.21.

¹⁴⁰ SGS Report, paragraph 89.

¹⁴¹ Conclave Report.

¹⁴² SW Report, paragraph 9.19.

¹⁴³ SW Report at paragraph 9; SGS Report at page 64.

119. Commission staff also estimated the likely NMR, but by adopting two different methods of analysis. First, by analysing the expenditure of regional gaming venues with fifty EGMs to arrive at an NMR of \$192. Second, by analysing the expenditure of regional gaming venues with similar population of the Primary Catchment to arrive at an NMR of \$250.¹⁴⁴
120. Both the Urbis Report and SGS Report recognise that gaming activity as a recreational activity brings associated economic and social benefits.¹⁴⁵ The Urbis Report assesses this benefit to be a low benefit to the Macedon Ranges Shire community on the basis that the gaming expenditure is considered by Urbis to be moderate and the benefit would only be enjoyed by a small share of the population.¹⁴⁶ The SGS Report, however, assesses the benefit as being a moderate benefit to the Catchment Area.¹⁴⁷ The SGS Report arrives at this weighting by calculating the time saved by people living in the Catchment Area by engaging in gaming activity at the Premises rather than having to drive to a gaming venue further away.¹⁴⁸
121. The Commission using the Applicant's NMR and method of determining the impact of gambling expenditure (in preference to the SGS approach on this point) assesses the benefit to the Macedon Ranges Shire community to be marginal. The Commission arrived at a lower weighting of the benefit compared to the Applicant, after the Commission reduced the Applicant's NMR to reflect the portion of the NMR that would likely not be associated with problem gambling. Here the Commission notes that research conducted by the Victorian Responsible Gambling Foundation, found that problem gamblers accounted for 35.8% of the total spending across EGMs in Victoria.¹⁴⁹

Increased competition among gaming venues in the Macedon Ranges Shire

122. The SGS Report observes that increased competition among gaming venues will likely improve experiences for EGM users in the Macedon Ranges Shire. The SGS Report, however, considers that this benefit will likely be offset by an increase problem gambling, as problem gamblers are induced to gamble more and others with a tendency to develop problem gambling, are introduced to gambling. The SGS Report accordingly, assesses the benefit of competition between venues as "neutral".¹⁵⁰
123. The Urbis Addendum considers that the offsetting, in the SGS Report, is inappropriate for two reasons. First, the Urbis Addendum argues that people attracted to one venue over another reduce problem gambling at that other venue. Second, the Urbis Addendum argues that other, non-gaming, venues will improve their offering to attract patrons without any negative impact of problem gambling.¹⁵¹
124. The Commission assesses the benefit of competition between gaming venues, to the Macedon Ranges Shire community, to be nil to marginal. Given the location of the Premises most patrons will be drawn from the Catchment Area. This is illustrated by the Applicant and Council agreeing to a notional transfer rate of gaming expenditure of only 20% as outlined below at paragraph 136.

Social and economic detriments

¹⁴⁴ VGCCC Intelligence Report – Romsey Football Netball Club, dated May 2024.

¹⁴⁵ Urbis Report at page 32 and SGS Report at paragraphs 123 to 127 and 187 to 188.

¹⁴⁶ Urbis Report at 31 and Urbis Addendum at page 15.

¹⁴⁷ SGS Report, paragraphs 187 to 188.

¹⁴⁸ SGS Report, paragraphs 124 to 125.

¹⁴⁹ Browne, M, et al, "The Social Cost of Gambling to Victoria", Victorian Responsible Gambling Foundation, November 2017: <https://responsiblegambling.vic.gov.au/resources/publications/the-social-cost-of-gambling-to-victoria-121/>

¹⁵⁰ SGS Report, paragraphs 193 to 196.

¹⁵¹ Urbis Addendum, page 16.

Gambling expenditure associated with problem gambling

125. The Commission accepts that, whatever the likely gaming expenditure, 80% will be new expenditure at what would be a new venue in a town currently without gaming. This is a high level of new expenditure and will create a level of harm in the community from problem gambling. Residents in the Catchment Area will be exposed to EGMs in a way they have not been exposed before.
126. The Urbis Report assesses the overall risk of problem gambling to be “low to moderate”.¹⁵² The Urbis Report considers that the risk of problem gambling is offset by, among other things, “an above average socio-demographic profile in an area with low disadvantage”.¹⁵³
127. The SGS Report disagrees with the Urbis Report and identifies pockets of vulnerability within the Catchment Area, including those living in social housing next to the Premises.¹⁵⁴ The SGS Report also identifies a risk of financial stress. The SGS Report notes that, consistent with the “growing and young family profile” of the area a relatively high proportion of dwellings are owned with financial support.¹⁵⁵ The SGS Report considers that, with the cost of living and interest rates increasing, there is an increased risk of mortgage or housing stress.¹⁵⁶ The SGS Report identifies housing stress as a factor likely to exacerbate the risk of problem gambling.¹⁵⁷
128. The VGCCC Report also identifies generally higher rates of housing stress in the Primary Catchment than rural Victoria.¹⁵⁸
129. The Applicant’s expert, in reply to the SGS Report, asserts that social housing near the Premises is housing for elderly residents. The Applicant’s expert argues that, although the elderly residents may have small incomes, the Primary Catchment, as a whole, is an area of low disadvantage.¹⁵⁹ As for housing stress, the Applicant’s expert rejects the conclusions drawn in the SGS Report and the VGCCC Report. The Applicant’s expert asserts that housing stress in the Catchment Area is lower than the Victorian average.¹⁶⁰
130. The Commission accepts the evidence in the SGS Report¹⁶¹ that indicates there is more financial vulnerability in the community than the aggregate level would indicate.
131. The Commission recognises that another significant factor in assessing the risk of problem gambling is the location of the Premises, specifically the extent to which the Premises provides a convenient, as distinct from a destination, venue for gaming. The experts agreed that the Premises was neither a highly convenient nor a strong destination venue for gaming.¹⁶² The SGS Report, however, does consider that the Premises is more of a convenience, than destination, venue due in part to its closeness to the Community Hub.¹⁶³ The Applicant’s expert disagrees with the SGS Report and rates the Premises location “closer to neutral” because the Premises, the Applicant’s expert says, is not located on a busy pedestrian thoroughfare or immediately next to a high traffic retail facility.¹⁶⁴

¹⁵² Urbis Report, page 30; Urbis Addendum, page 14.

¹⁵³ Urbis Report, page 30; Urbis Addendum, page 14.

¹⁵⁴ SGS Report, page 33.

¹⁵⁵ 56.4% in the Primary Catchment and 54.0% in the Secondary Catchment area. In contrast only 33.9% of households were making repayments on a mortgage: SGS Report, page 19.

¹⁵⁶ SGS Report, page 33.

¹⁵⁷ SGS Report, page 33.

¹⁵⁸ VGCCC Report, pages 32 to 34.

¹⁵⁹ Conclave Report, page 8.

¹⁶⁰ Conclave report, page 8.

¹⁶¹ SGS Report, page 30.

¹⁶² Conclave Report.

¹⁶³ SGS Report, page 32.

¹⁶⁴ Urbis Addendum, page 7.

132. As noted above, the RNH is located at the Community Hub. The Commission received an oral submission from Michelle Balthazar, Manager of the RNH.¹⁶⁵ Ms Balthazar described the services provided by RNH to support members of the community. These services included “food share” service providing free food and locating housing. Ms Balthazar told the Commission that over the last six years she has witnessed an increase in the demand for food share services¹⁶⁶ and, in the last few months, an increase in homelessness.¹⁶⁷ Several of the submissions made by the community have also described some residents in the Catchment Area as struggling financially.
133. The Commission considers that the location of the Premises, whilst not a pure convenience venue, is not remote enough from everyday life to in any way mitigate the level of harm from gambling in the way that a genuine destination venue may do. There are some services on Main Street that will attract people to the area (including the Community Hub, the municipal offices, the bus stop, and retail, commercial, medical, hospitality, postal and religious services). The location of the Premises on Main Street increases the risk of problem gambling as the Premises will be convenient to people attending those other locations on the street.
134. The Commission considers that, if the Application is approved, the expenditure associated with problem gambling will have a low to moderate detriment to the Macedon Ranges Shire community, particularly the community in the Catchment Area.

Potential diversion of trade

135. Both the Urbis Report¹⁶⁸ and the SGS Report¹⁶⁹ consider that diversion, by the Premises, of trade from other retail facilities is a low detriment to the community based on matters observed in the SW Report.
136. The SW Report notes that the distance travelled by people to gaming venues is generally less than five-kilometres.¹⁷⁰ There are no other gaming venues within a 10-kilometre radius of the Premises.¹⁷¹ The SW Report concludes that given the lack of local competitor venues, among other things, about 80% of the users of the EGMs at the Premises will be residents in the local area¹⁷² and about 20% of people using EGMs at the Premises will be residents transferring their expenditure from other gaming venues (**Notional Transfer Rate**).¹⁷³ Both the Urbis Report and the SGS Report adopt the Notional Transfer Rate.
137. Given the consensus of expert opinion and the absence of any strong evidence to contradict this, the Commission accepts that diversion of trade will be a low detriment to the community in the Catchment Area.

Community attitude to Applicant’s proposal

138. The Commission received evidence in respect of the community’s attitude to the Application from surveys undertaken by the Applicant and the Council and written and oral submissions received from members of the community.

¹⁶⁵ Transcript, page 113, line 5 to page 118, line 19.

¹⁶⁶ Transcript, page 113, line 47 to page 114, line 1.

¹⁶⁷ Transcript, page 114, line 15.

¹⁶⁸ Urbis Report, page 33; Urbis Addendum, page 16.

¹⁶⁹ SGS Report, page 51.

¹⁷⁰ SW Report at paragraph 10.1 referring to the 2003 Victorian Longitudinal Community Attitudes Survey.

¹⁷¹ SW Report at paragraph 10.3.

¹⁷² SW Report at paragraph 10.8.

¹⁷³ SW Report at paragraph 10.5.

139. Community attitude to the Application is a relevant consideration in the no net detriment test (irrespective of whether the community is disadvantaged or not).¹⁷⁴ If approval of the Application is likely to cause unhappiness or discontent in the community, that is a social impact which will be detrimental to the community.¹⁷⁵ The Commission must decide for itself what weight to give any evidence of community attitudes. The statistical level of opposition is not determinative.¹⁷⁶ The Commission's task is to ascertain whether approval of the application will result in a net detriment to the Macedon Ranges Shire community, not to hold a referendum on EGMs.
140. Based only on the survey evidence (outlined below) the SGS Report assessed community attitudes to be a marginal detriment to the well-being of the community.¹⁷⁷ Conversely, the Urbis Addendum considered community attitudes to be neutral to slightly positive in its impact on the community.¹⁷⁸ The Commission notes here that community submissions received by the Commission were not provided to parties before the dates of the experts reports.
141. As to the weight that should be given to community submissions, the Council and the Applicant offered starkly different views. The Council urged the Commission to give "significant weight" to submissions made by the community given the number and nature of the submissions made in opposition to the Application.¹⁷⁹ The Applicant, however, submitted that the community submissions merely reflected the views of the individual submitters. The Applicant contended that neither the number nor content of the community submissions was sufficient to draw any conclusions as to the impact of approval on community well-being.¹⁸⁰

Survey Evidence

142. Both the Applicant and the Council conducted surveys into the community's attitude to the Application in the Catchment Area.¹⁸¹
143. The Applicant's survey had 400 respondents.¹⁸² The results of the Applicant's survey were weighted. That is, the survey results were adjusted to infer results for the total scope of the population.¹⁸³ The Council sent the survey to the whole adult population on the 2020 electoral roll¹⁸⁴ and achieved a 37% response rate of 1,493 respondents.¹⁸⁵ The results of the Council's survey were not weighted.
144. The Applicant's survey found:
- (a) 77% supported the proposed development of the Premises as a whole (including the installation of EGMs);¹⁸⁶
 - (b) 48% opposed the inclusion of a bar lounge with fifty gaming machines;¹⁸⁷ and

¹⁷⁴ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275 at paragraph 448.

¹⁷⁵ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* [2008] VSCA 45, paragraphs 41, and 44; *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275 at paragraphs 355 and 415; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation* [2013] VCAT 101 at paragraphs 72 and 73.

¹⁷⁶ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* [2008] VSCA 45, paragraph 44; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation* [2013] VCAT 101 at paragraph 75.

¹⁷⁷ SGS Report, paragraphs 183 to 186.

¹⁷⁸ Urbis Addendum, page 15.

¹⁷⁹ Council's Closing Submissions, paragraph 53.

¹⁸⁰ Applicant's Closing Submissions, paragraphs 174 to 175.

¹⁸¹ Taverner Survey Report, paragraph 2.5; Insync Survey Report, paragraph 2.2.

¹⁸² Taverner Supplementary Report dated 15 May 2024, ('Taverner Supplementary Report').

¹⁸³ Taverner Survey Report, pages 32 to 32 and Transcript, page 161, line 38 to page 162, line 30 and page 198, line 1 to page 199, line 6.

¹⁸⁴ Insync Survey Report, paragraph 2.2.

¹⁸⁵ Insync Survey Report, paragraph 3.1.

¹⁸⁶ Taverner Survey Report, pages 15 and 16.

¹⁸⁷ Taverner Survey Report, pages 16 and 17.

- (c) 68% believed that the proposed development of the Premises would make life better.¹⁸⁸
145. The Council's survey found:
- (a) 47.68% thought that EGMs in the Primary Catchment would have a mostly negative impact on them;¹⁸⁹
- (b) 60.36% thought that EGMs would have a mostly negative impact on the broader community;¹⁹⁰ and
- (c) 59.93% did not support the Application.¹⁹¹
146. The Council's survey also asked respondents about their financial circumstances.¹⁹² The Commission notes that the Council's survey found that of respondents who:¹⁹³
- (a) support the Application, 51.03% reported that they "live comfortably";
- (b) did not support the Application, 82.87% of reported that they "just meet basic needs"; and
- (c) 89.13% reported that they "don't have enough to meet basic expenses".
147. The Applicant's survey was reviewed by an expert engaged by the Council.¹⁹⁴ That review identified some drawbacks to the Applicant's survey¹⁹⁵ but ultimately concluded that it met standard industry practice in its design.¹⁹⁶
148. The Commission considers that both surveys provide helpful evidence of community attitudes to the Application, although the Commission notes the following two limitations.
149. First, neither survey used a 5-point scale¹⁹⁷ to measure the strength of the respondents' support or opposition to the Application.¹⁹⁸ The Applicant's expert, Dr Don Porritt, asserted that "*Since the aim is to establish the level of support or opposition to the proposed development, the strength of the sentiments is irrelevant*".¹⁹⁹ The Commission disagrees and considers that it would have been assisted by this evidence. Indeed, the Applicant itself submitted that "*the mere fact of opposition to (or support for) an application is not, in and of itself, of great significance.*"²⁰⁰
150. Second, the timing of Applicant's survey may have had an impact on survey results. The Applicant's survey was conducted²⁰¹ two months after Mr Hogan's online survey.²⁰² Dr Porritt told the Commission that those who took a position in Mr Hogan's survey would be likely to take the same position again in the Applicant's survey.²⁰³ The Applicant's survey was also conducted before the Application was made and reported on in the media. Dr Porritt conceded in cross-examination that what people read in the media could have a bearing on survey results,²⁰⁴ as would the Council's position on the Application.²⁰⁵ The Applicant's survey also pre-dates the opening of The 1860 Romsey.

¹⁸⁸ Taverner Survey Report, page 15 and 20.

¹⁸⁹ Insync Survey Report, page 9.

¹⁹⁰ Insync Survey Report, page 10.

¹⁹¹ Insync Survey Report, page 11.

¹⁹² Insync Survey Report, page 12.

¹⁹³ Insync Survey Report, page 16.

¹⁹⁴ Peer Review of a research report, Clare Gelman, Principal Research Manager, Orima, dated 27 November 2023, ('Orima Report').

¹⁹⁵ The Applicant's expert, Dr Don Porritt, responded to these criticisms in the Taverner Supplementary Report.

¹⁹⁶ Orima Report, page 6.

¹⁹⁷ For example: strongly support, support, do not care, oppose, strongly oppose.

¹⁹⁸ A criticism made of the Applicant's Survey in the Orima Report, page 4.

¹⁹⁹ Taverner Supplementary Report. Dr Porritt gave the same response in cross-examination: Transcript, page 187, line 26 to page 187, line 27.

²⁰⁰ Applicant's Closing Submissions, paragraph 156.

²⁰¹ The Applicant's survey was conducted between 11 May 2023 and 22 May 2023.

²⁰² Mr Hogan's survey was conducted online between 23 February 2023 to 2 March 2023.

²⁰³ Transcript, page 203, lines 18 to 34.

²⁰⁴ Transcript, page 175, lines 8 to 12.

²⁰⁵ Transcript, page 173, line 26 to page 174, line 13.

151. Ultimately, the Commission observes that the Applicant's survey and the Council's survey examined different aspects of the Application. The Applicant's survey examined the community's attitude to the proposed development of the Premises (which will include fifty EGMs). The Council's survey examined the Community's attitude to the installation of fifty EGMs at the Premises (proposed for redevelopment). But both surveys report (as outlined above) that there is at least a significant level of community opposition to EGMs at the Premises and that the introduction of EGMs to the Primary Catchment continues to be a polarising issue.

Community Submissions

152. The Council received a total of 87 confidential submissions from the community: 15 in support and 72 opposed to the Application.²⁰⁶ The Council deidentified many submissions at the request of submitters and asked the Commission not to publish specific submitters details.²⁰⁷
153. The Commission received 106 submissions from the community: 22 in support and 84 opposed to the Application.
154. The submissions supporting the application were typically brief. The submitters included Mr Hogan and Mr Hogan's employee, and Applicant witness, Mr Freestone.
155. The submissions objecting to the application tended to be longer and more considered than those in support. They included several lengthy submissions which referred to relevant research and exhibited photographs.²⁰⁸ Many of the submissions also discussed specific aspects of the Applicant's proposal, revealing that their opposition was to the entire package being offered under the proposal (and not just the introduction of EGMs). Two submitters made oral submissions to the Commission during the Hearing.²⁰⁹

Applicant's members attitude

156. The Commission notes that the Applicant did not, itself, hold an Annual General Meeting or a Special General Meeting to gauge the attitudes of its own members. As a result, the Commission finds that, although the Applicant asserts that its members are aware of and support its proposal,²¹⁰ the Applicant is not able to say how its own members would have voted.

Council opposition

157. At a full Council meeting on 24 April 2024 the Council resolved to oppose the Application.²¹¹

²⁰⁶ Romsey Football Netball Club – Application for electronic gaming machines at Romsey Hotel, Submissions received until 10 April 2024 (deidentified log of submissions received by Council).

²⁰⁷ Letter from Council to the Commission dated 24 April 2024.

²⁰⁸ See for example submissions by Sue Kirkegard.

²⁰⁹ Michelle Balthazar (transcript, page 113, line 4 to page 117, line 36) and Sue Kirkegard (transcript, page 207, line 35 to page 210, line 29).

²¹⁰ Both Mr Muir (the Applicant's Treasurer) and Mr Milburn (the Applicant's President) gave evidence that the Applicant's proposal for the Premises was voted on by the Applicant's members at an Annual General Meeting: transcript page 45, line 38 to page 46, line 1 and transcript, page 215, lines 11 to 36 respectively. The Applicant later advised the Commission, in a letter from its solicitor dated 31 May 2024, that the proposal was not voted on at an Annual General Meeting, but members knew about the proposal from informal discussions and the Applicant would not proceed with the proposal unless it believed that it had the support of members.

²¹¹ Council letter to the Commission dated 24 April 2024. Council's Closing Submissions at paragraph 5.

158. The Applicant submitted that Council's opposition to the Application was not a relevant consideration in the no net detriment test.²¹² The Commission disagrees for two reasons. First, the Commission notes that its consideration of the Council's submissions is mandated under the GR Act.²¹³ Second, the Tribunal has recognised that councils, being democratically elected by their communities, will have a "*significant role*" in the determination of an application for approval of a premises for gaming and decision makers must "*seriously consider*" submissions made by councils.²¹⁴

Community attitude is a moderate detriment

159. The Commission notes that the submissions received from the community, in respect of the Application, greatly exceed the number of submissions received by the Commission for any other application, for approval of a premises for gaming, in the last five years. The Commission considers that survey results and community submissions demonstrate that the advent of EGMs at the Premises remains a divisive issue in the Macedon Ranges Shire community, particularly in the Catchment Area. This is illustrated by the reluctance of some submitters to be identified in submissions to Council. The Commission concludes that, if the Application is approved, residents' happiness with, or contentment in, their community will be diminished. The Commission's assessment is that this will likely result in a moderate detriment to the well-being of the community.

Conclusion: net detriment to the well-being of the Macedon Ranges Shire community

160. On the material that has been put before it, the Commission has determined that there would be a net detriment resulting from the grant of the Application and therefore the no net detriment test has not been satisfied. Therefore, pursuant to section 3.3.7(1) of the GR Act, the Commission must not grant the Application. Accordingly, the Commission has no power to exercise a discretion as to whether to approve the Application.

161. The Application is refused.

²¹² Applicant's Closing Submissions, paragraph 157: "The Council has no special status under the Act, and it (sic) views have neither greater nor lesser weight than those of the applicant."

²¹³ GR Act, section 3.3.7(3).

²¹⁴ *Branbeau Pty Ltd v Victorian Commission of Gambling Regulation* [2005] VCAT 2606 at paragraph 42. See also *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275 at paragraph 292.

ANNEXURE A

Summary of social and economic impacts

The following table is a summary of the economic and social benefits and detriments considered by the Commission in reaching its decision. The table is to be read in conjunction with the main body of the Commission's reasons for decision (**Reasons**).

	Impact	Weight
Benefit	New or additional facilities for EGM consumption and social interaction (paragraphs 79 to 85)	Low to moderate
	Employment creation (paragraphs 86 to 89)	Marginal
	Complementary expenditure and supply contracts (paragraphs 90 to 92)	Marginal
	Contributions to the community (paragraphs 93 to 114)	Marginal
	Gambling expenditure not associated with problem gambling (paragraphs 115 to 121)	Marginal
	Increased competition among gaming venues (paragraphs 122 to 124)	Nil to marginal
Total weight of social and economic benefits	Marginal to low	
Detriments	Impact includes gambling expenditure associated with problem gambling (paragraphs 125 to 134)	Low to moderate
	Potential diversion of trade (paragraphs 135 to 137)	Low
	Community attitude to Applicant's proposal (paragraphs 138 to 159)	Moderate
Total weight of social and economic detriments	Low to moderate	

ANNEXURE B

Evidence received by the Commission

The evidence received by the Commission before and during the Hearing included:

1.	Application for approval of premises for gaming (Application)	4 August 2023
2.	Romsey Hotel Development Community Survey 2023 prepared by Dr Don Porrit of Taverner Group (Taverner Survey Report)	June 2023
3.	Social and Economic Impact Assessment (SEIA) Report – prepared by Rhys Quick of Urbis (Urbis Report)	October 2023
4.	Romsey Hotel Expert’s Report in Respect of Application for 50 Electronic Gaming Machines prepared by SW Accountants and Advisors (SW Report)	25 September 2023
5.	Romsey Community Hotel – Responsible Gambling Policy	July 2023
6.	Witness Statement – Wayne Milburn (Milburn Witness Statement)	August 2023
7.	Draft guidelines for distribution of community chest – Romsey Football Netball Club attached to Milburn Witness Statement	Undated
8.	Witness statement of James Anthony Hogan (Hogan Witness Statement) and Annexures (photos and premises designs)	August 2023
9.	Witness Statement of Darren Freestone and Annexure	August 2023
10.	Public Notice – Herald Sun – NewsCorp Australia	October 2023
11.	Evidence of application for Planning Permit – Macedon Ranges Shire Council and Annexure 90-94 Main Street, Town Planning Report – Prepared for Romsey Football Netball Club	December 2023
12.	<i>Romsey Hotel Gaming Bid</i> – Sunbury and Macedon Ranges Star Weekly, Melbourne	7 November 2023
13.	<i>Hardly A Good Return</i> by Peter Burridge – Midland Express, Kyneton	9 December 2023
14.	<i>Keep Romsey Pokies Free</i> – Sunbury and Cobaw Community Health	19 December 2023
15.	<i>Macedon Ranges draft gambling policy lacks ‘substance’</i> – Sunbury and Macedon Ranges Star Weekly, Melbourne	12 March 2024
16.	<i>Council Ban on Pokies?</i> by Amy Hume – Midland Express	13 March 2024
17.	Transcript of Breakfast at 8:32 a.m. – ABC Central Victoria	19 March 2024
18.	<i>Plebiscite on Pokies</i> – Midland Express	21 March 2024
19.	<i>Council Seeks Romsey community opinion</i> – Sunbury and Macedon Ranges Star Weekly, Melbourne	26 March 2024
20.	<i>Survey rule a ‘slap in the face’</i> – Sunbury & Macedon Ranges Star Weekly, Melbourne	2 April 2024
21.	<i>Vandals target signs in pokies fight</i> – Midland Express	4 April 2024
22.	<i>Hotel pokies Bid ‘detrimental’</i> – Sunbury and Macedon Ranges Star Weekly, Melbourne	30 April 2024
23.	<i>Council Backs Pokies Fight</i> by Amy Hume – Midland Express	30 April 2024
24.	Public Submissions – 79 Objections (Hearing Book page 310 – 541)	October 2023 – May 2024

25.	Public Submissions – 19 Support (Hearing Book page 542 – 566)	October 2023 – April 2024
26.	Letter from Applicant to Macedon Ranges Shire Council – Romsey Football Netball Club – Application to the VGCCC for approval of premises	16 October 2023
27.	Email from Macedon Ranges Shire Council to VGCCC – Acknowledgement and confirmation of intended submission	1 December 2023
28.	Letter from Macedon Ranges Shire Council to VGCCC – Submission of Social and Economic Assessment	24 April 2024
29.	Macedon Ranges Shire Council Economic and social impact submission for Romsey Hotel Application	24 April 2024
30.	Romsey Hotel EGM Application: Social and Economic Impact Assessment, prepared by SGS Economics and Planning (SGS Report)	16 April 2024
31.	Peer review of a research report – Macedon Ranges Shire Council, prepared by Orima Research (Orima Report)	27 November 2023
32.	Summary of Community support for the Romsey Hotel VGCCC application – Prepared by Dr Erika Szerda and Kevin Hwang, Insync (Insync Survey Report)	April 2024
33.	Witness Statement – Dr Erika Szerda (Insync)	8 May 2024
34.	Romsey Football Netball Club – Application for electric gaming at Romsey Hotel – Collated and redacted summary of Community Submissions received until 10 April 2024	14 April 2024
35.	Submission against Romsey Hotel Application received by Council	28 November 2023
36.	Submission against Romsey Hotel Application received by Council	22 December 2023
37.	Submission to support Romsey Hotel Application received by Council	Undated
38.	Submission against Romsey Hotel Application received by Council	27 March 2024
39.	Submission against Romsey Hotel Application received by Council	Undated
40.	Submission against Romsey Hotel Application received by Council	Undated
41.	Letter from Applicant to Macedon Ranges Shire Council – Response to information requested	8 November 2023
42.	Romsey Community Hotel – Projected Profit and Loss Statement for the year ended 30 June 2024 – created by Nigel Bird CPA (Original Profit and Loss Statement)	Undated
43.	Draft Guidelines for Distribution of Community Chest – Romsey Football Netball Club	Undated
44.	Schedule for Hogans Hotel from 22 January 2024 to 28 January 2024	17 and 19 January 2024
45.	Revised Suggested Conditions to attach to approval	Undated
46.	Draft Romsey Hotel Harm Minimisation Policy by BSP Lawyers	January 2024
47.	Romsey Hotel – Response to Council RFI on diversion of trade from other entertainment businesses prepared by Urbis	5 February 2024
48.	VGCCC Economic and Social Impact Report – Application for approval of premises for gaming	3 May 2024

49.	VGCCC – Romsey Hotel Pre-hearing Size, Layout and Facilities Report (Commission Premises Report)	3 May 2024
50.	VGCCC Intelligence Report Romsey Football Club – Application for New premises (Romsey Hotel) with 50 EGMs (VGCCC Intelligence Report)	May 2024
51.	VGCCC Letter to Applicant – Proposing pre-hearing meeting between Urbis, SGS and SW	7 May 2024
52.	VGCCC Letter to Council – Proposing pre-hearing meeting between Urbis, SGS and SW	7 May 2024
53.	Economic and Social Impact – Expert Witness Conclave Report (Conclave Report)	16 May 2024
54.	VGCCC Letter to Applicant – Request for Information	4 March 2024
55.	Applicant Response to Request for Information (Applicant RFI Response)	18 March 2024
56.	Premises Title Search – Romsey Hotel	13 March 2024
57.	Romsey Football Netball Club Incorporated – Memorandum and articles of association and rules	Undated
58.	Consumer Affairs Victoria – Associated Incorporations Extract for Romsey Football Netball Club	18 March 2024
59.	Agreement for Lease between Romsey Hotel Pty Ltd and Romsey Hotel Football Netball Club Inc.	3 April 2023
60.	Lease of Real Estate with Guarantee and Indemnity (Commercial property) – Romsey Football Netball Club Inc.	3 April 2023
61.	Letter from Certified Practising Valuer to Romsey Hotel Pty Ltd – Calculation of Hotel Rental Parameters Summary	20 October 2023
62.	Management Agreement – Romsey Hotel 90 Main Street, Romsey VIC 3434 (Management Agreement)	16 June 2023
63.	Letter from Applicant to Macedon Ranges Shire Council – Response to RFI (BSP Letter)	8 February 2024
64.	Public notice for application of approval – Midland Express classifieds	19 March 2024
65.	Photos of public notices of Application for approval of Premises	Undated
66.	VGCCC Letter to Applicant – Request for Information	10 May 2024
67.	Letter from Applicant – Response to RFI sent on 10 May (Response to RFI)	16 May 2024
68.	Revised 1-50 plan of the gaming lounge plan prepared by HP Architects 'Romsey Hotel Extension' project – with problem gambling mitigation features	May 2024
69.	Revised 1 – 200 Site plan prepared by HP Architects 'Romsey Hotel Extension' project – with problem gambling mitigation features	May 2024
70.	Email from VGCCC to Macedon Ranges Shire Council – Request for Information	15 May 2024
71.	Email from Macedon Ranges Shire Council to VGCCC – Response to RFI	16 May 2024
72.	Macedon Ranges Shire Council – Annual Report 2022/23	Undated

73.	Macedon Ranges Shire Council – Draft Gambling Harm Prevention Policy 2024	Undated
74.	Macedon Ranges Shire Council – Draft Gambling Harm Prevention Policy 2024 – Background Paper	Undated
75.	Scheduled Council Meeting Agenda Council Report – Gambling Harm Prevention Policy	28 February 2024
76.	Letter from Applicant to VGCCC – Applicant response to Commission Premises Report and VGCCC Intelligence Report	15 May 2024
77.	Letter from Applicant to VGCCC – Supplementary material	17 May 2024
78.	Supplementary Report prepared by Dr Don Porritt and Annexures (Taverner Supplementary Report)	15 May 2024
79.	Witness Statement of Michael Muir, Club Treasurer (Muir Witness Statement)	May 2024
80.	Romsey Hotel Social and Economic Impact Assessment – Addendum report prepared on behalf of Romsey Football Netball Club by Rhys Quick and Mike Zhang (Urbis Addendum)	15 May 2024
81.	Romsey Football Netball Club Inc – RSG Management Report prepared by Andrew Jeynes of Onyx Gaming	10 May 2024
82.	AHA VIC – Responsible Gambling Code of Conduct	September 2020
83.	Romsey Hotel – Net Gaming Revenue Comparison, by Tim Stillwell	23 May 2024
84.	Letter from Rhys Quick	22 May 2024
85.	Inquiry into the Costs of Problem Gambling Final Report December 2012 ‘Counting the Cost Report’, by Victorian Competition & Efficiency Commission	December 2012
86.	Decision and Reasons for Decision in an application by Werribee Football Club Ltd for approval of premises, Club Tarneit as suitable for gaming with seventy EGMs (Club Tarneit Decision)	1 April 2021
87.	Social Cost of Gambling to Victoria, Research Report by the Victorian Responsible Gambling Foundation	November 2017
88.	Scheduled Council Meeting Agenda for Macedon Ranges Shire Council to adopt Draft Romsey Structure Plan	22 May 2024
89.	Counsel Assisting the Commission’s Outline of Opening Submissions, prepared by Dr Michelle Sharpe	21 May 2024
90.	VGCCC spreadsheet of Club Venues with management companies	24 May 2024
91.	Written Submission in closing for Macedon Ranges Shire Council, prepared by John Rantino of Maddocks Lawyers	27 May 2024
92.	Applicant Closing Submissions, prepared by Nick Tweedie SC and Nicola Collingwood of Counsel instructed by BSP Lawyers	27 May 2024
93.	Further revised conditions of approval	Undated
94.	Letter from Commonwealth Bank to Applicant, provided to Applicant in April 2024	Undated
95.	Supplementary letter from Dr Don Porritt	24 May 2024
96.	Updated Profit and Loss Figures prepared by Nigel Bird CPA	Undated

97.	Schedule of costs incurred by the intended Landlord which are proposed to be passed on to the Applicant for reimbursement	Undated
98.	Letter to Macedon Ranges Shire Council from Insync with Survey Scope and Quote	20 December 2023
99.	Letter to Macedon Ranges Shire Council from Insync with Revised Survey Scope and Quote	19 February 2023
100.	Email from Macedon Ranges Shire Council regarding Draft potential conditions of approval supplied by the VGCCC for comment by Parties	31 May 2024
101.	Draft potential conditions of approval with Parties comments	31 May 2024
102.	Letter from Applicant to VGCCC regarding the Club's resolution and meeting minutes approving the Application and the extension of dates under agreement for Lease	31 May 2024

ANNEXURE C

Agreed potential conditions should the Application have been granted

1. Condition 1 – Risk Assessment and Risk Register

- 1.1 Prior to the installation of any electronic gaming machines (**EGMs**) at the Premises, the Venue Operator (**VO**) must appoint a suitably qualified independent third party to:
 - 1.1.1 conduct a Risk Assessment to identify the risks related to gambling harm and criminal influence associated with the operation of EGMs at the Premises.
 - 1.1.2 the Risk Assessment must consider at least the people, systems and processes in place at the Premises.
 - 1.1.3 develop a Risk Register in relation to the Premises' people, systems and processes and how harm minimisation and criminal influence in gambling will be managed at the Premises.
 - 1.1.3.1. the Risk Register must identify the treatments and controls that will address each risk, along with the steps that the VO must take to implement those treatments and controls; and
 - 1.1.3.2. the steps set out in 1.1.3.1 must then be enshrined in the VO's operating manual.
- 1.2 Prior to appointing the suitably qualified independent third party, the VO must provide the details of that third party (including qualifications and experience) and the proposed scope of the Risk Assessment to the Commission for approval.

2. Condition 2 – Compliance with Risk Register

- 2.1. No later than one (1) month after the development of the Risk Register in accordance with Condition 1 and every six (6) months after that date, the VO must provide a written attestation to the Commission confirming the following:
 - 2.1.1. that the VO has made all necessary enquiries to be satisfied that all the identified treatments and controls have been, and continue to be, implemented; and
 - 2.1.2. that they have reviewed the Risk Register to ensure that any new risks or changes to risks have been identified and that the Risk Register has been updated to ensure the treatments and controls are effective to address those risks.
- 2.2. The written attestation is to be made by an office holder of the VO.

3. Condition 3 – Compliance with other obligation

- 3.1. No later than one month following the installation of any EGMs at the Premises and every twelve (12) months after that date, the VO must provide a written attestation to the Commission confirming that they have made all necessary enquiries to be satisfied that:
 - 3.1.1. the service of any food and beverage to patrons whilst seated at the EGMs at the Premises will not occur;
 - 3.1.2. minimum staffing levels are maintained as follows:
 - 3.1.2.1. from 10:00 AM until 1:00 AM the following day, a minimum of two (2) staff on duty in the gaming room;

- 3.1.2.2. from 10:00 AM until 10:00 PM, a minimum of one (1) responsible gambling officer (**RGO**) on duty in the gaming room at all times the gaming room is operational;
- 3.1.2.3. after 10:00 PM until 1:00 AM the following day, a minimum of two (2) RGOs on duty in the gaming room at all times the gaming room is operational; and
- 3.1.2.4. a person aged over 18 years who is appropriately qualified and trained as manager in charge of hotel operations at the Premises.
- 3.1.3. all staff rostered in the gaming room are trained in YourPlay and able to assist patrons to enrol with YourPlay and set pre-commitment levels for EGM time and spend;
- 3.1.4. a full-time RGO is employed at the Premises to coordinate the venue's self-exclusion program, and to implement harm minimisation training for staff. The RGO must have completed Victorian Government Responsible Service of Gaming (**RSG**) Module 2 and Module 4 within the last 2 years;
- 3.1.5. at all times the gaming room is in operation, at least one (1) staff member who has completed RSG Module 2 and Module 4 training is on duty;
- 3.1.6. staff are prohibited from using EGMs at the Premises at any time;
- 3.1.7. patrons are prohibited from reserving EGMs they were previously using, in order to use another EGM;
- 3.1.8. all office holders of the VO have completed RSG Modules 1 and 2 training within 60 days of their appointment or prior to commencement of the operation of any EGMS at the Premises (whichever is the earlier).
- 3.1.9. whilst and so long as any third party management company is engaged in the management of the Premises, the VO must commission an independent annual review of the performance of the manager with those findings to be presented to the VO.
- 3.2. The written attestation is to be made by an office holder of the VO.
- 3.3. The written attestation must specify each of the systems, policies and procedures that have been developed and implemented to ensure continued compliance with each of the requirements in Condition 3.
- 3.4. Prior to the commencement of the operation of any EGMs at the Premises, all office holders of the VO must complete an induction program at the Wallan Hotel including 'on the job training' by the venue operator of the Wallan Hotel.

4. Condition 4 – Risk of Criminal Influence

- 4.1. Prior to the installation of any EGMs at the Premises and every twelve (12) months after that date, the VO must provide a written attestation to the Commission confirming that:
 - 4.1.2. all office holders of the VO, the nominee, managers and all gaming room staff have completed Anti-Money Laundering (**AML**) and Counter Terrorism Finance (**CTF**) Training within the last 12 months;
 - 4.1.3. adequate systems, policies and procedures have been developed and implemented at the Premises to ensure all staff are appropriately trained in identifying and mitigating this risk.
- 4.2. The written attestation is to be made by an office holder of the VO.
- 4.3. The written attestation must specify each of the systems, policies and procedures that have been developed and implemented to demonstrate compliance with Condition 4.1.2.

5. Condition 5 – Breach of conditions

- 5.1. Where the Commission determines that the VO has not complied with one or more of the conditions, the Commission may require the VO to cease operating any EGMs at the Premises until it is satisfied that:
 - 5.1.2. such failure is rectified to the satisfaction of the Commission; and
 - 5.1.3. the VO has carried out the relevant and necessary action and/or implemented the relevant and necessary systems, processes and procedures to prevent the occurrence of a future breach.

6. Condition 6 – Community benefit

- 6.1. If the Romsey Football Netball Club Inc or similar community organisation located within Romsey approved by the Commission ceases to be the VO of the Premises, then this Premises Approval will lapse.
- 6.2. The VO will establish the Romsey Hotel Community Chest (**Community Chest**). The VO will administer the Community Chest in accordance with the **attached** Guidelines.
 - 6.2.2. The Net Profit as defined in the proposed Management Agreement (**Net Profit**) is to be distributed as set out in the Guidelines referred to in Condition 6.3 and as extracted here as follows:
 - 6.2.2.1. The first \$200,000.00 in Net Profits are to be distributed to the VO, with 30% of the balance of Net Profits to also be distributed to the VO; and
 - 6.2.2.2. The balance of the Net Profits will be made available for the Committee to distribute in accordance with the Guidelines.
 - 6.2.2.3. If the balance of Net Profits referenced in clause 6.2.2.2 is less than \$25,000, the VO will apply a minimum of \$25,000 towards the Community Chest from the Net Profits referenced in clause 6.2.2.1.
 - 6.2.3. The Community Chest will be in place and administered whilst and so long as there are any EGMs installed at the Premises.
 - 6.2.4. If the Community Chest is not allocated in full in each year in accordance with this condition, the VO must:
 - 6.2.4.1. notify the Commission of that fact as soon as reasonably practicable; and
 - 6.2.4.2. cease operating the EGMs immediately for as long as the allocation (or part thereof) remains outstanding.
 - 6.2.5. The Venue Operator must keep detailed financial records of all allocations made under the Community Chest and must provide:
 - 6.2.5.1. financial records showing the allocation to the Commission on request; and
 - 6.2.5.2. a yearly attestation to the Commission, signed by a director of the Venue Operator, that the allocation has been made so long as the EGMs are operational at the Premises.

7. Condition 7 – Works

- 7.1. The Premises Approval does not take effect until the Commission has notified the VO in writing that the Premises have been inspected for the purpose of section 3.3.7(1)(b) of the *Gambling Regulation Act 2003* and the Commission is satisfied that the Premises are suitable for the management and operation of EGMs.
- 7.2. Prior to the installation of any EGMs at the Premises, the Works (as defined in condition 7.3) must be substantially completed to the satisfaction of the Commission. The commencement of the operation of any of the EGMs at the Premises must not occur until after the Commission has notified the VO in writing under Condition 7.1.

- 7.3. The “Works” are defined to include Stage 1 and Stage 2. The Works must generally accord with the floor plans of the Premises prepared by HP Architects dated October 2023 presented to the Commission at the hearing except that the courtyard adjacent to the gaming room must be deleted.
- 7.4. If the Works set out in Condition 7.3 are not completed by the date that is two (2) years from this approval, then this Premises Approval will lapse.
- 7.5. The VO must notify the Commission within seven (7) days if the VO forms the view that it is probable or reasonably likely that the Works will not be substantially completed by the date contemplated in condition 7.2 and 7.4.
- 7.6. The Commission may, on the request of the VO, agree to extend the time for completion of the Works. Any request for an extension of time must:
 - 7.6.2. be made no later than the date that is three months prior to the applicable date referred to in condition 7.4;
 - 7.6.3. demonstrate compliance with condition 7.2; and
 - 7.6.4. include an explanation as to why the Works have not been substantially completed.
- 7.7. The Commission may decide not to grant an extension of time under condition 7.6 if the Applicant cannot demonstrate compliance with conditions 7.2 and 7.6.

Guidelines – Romsey Football Netball Club (VO)

1. A Committee will be established comprising either 5 or 7 individuals, to be made up of:
 - a. A permanent position available for Council (should they choose to be involved);
 - b. A permanent position for the VO; and
 - c. Additional seats on the Committee to be filled by representatives from other diverse not-for-profit community organisations and/or residents from the township of Romsey.
2. Tenure on the Committee is to be for a 12-month period, with each person’s involvement on the Committee to be assessed by the VO and Council every 12 months.
3. The profits of the Premises are to be distributed as follows:
 - a. The first \$200,000.00 in Net Profits as defined in the proposed Management Agreement are to be distributed to the VO, with 30% of the balance of profits to also be distributed to the VO; and
 - b. The balance of the profits will be made available for the Committee to distribute in accordance with these guidelines.
 - c. If the balance of Net Profits referenced in clause 3b is less than \$25,000, the VO will apply a minimum of \$25,000 towards the Community Chest from the Net Profits referenced in clause 3a.
4. The Committee will, twice annually, call for submissions from community and sporting organisations in a local paper and online that assist residents of the Macedon Ranges Shire and, more particularly, residents of the Romsey township.
5. These organisations will be able to make requests for the distribution of funds by the Committee in relation to projects, services and facilities that will benefit people within the township of Romsey.
6. The contributions are to be distributed to as broad a range of organisations as possible to ensure the maximum possible benefits are derived from the donations.