

Decision and reasons for decision

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by APD Group Pty Ltd to amend its venue operator licence to vary the number of electronic gaming machines at the approved premises, the Valley Inn Hotel, located at 120 Fyans Street, South Geelong from twenty-nine (29) to thirty-nine (39).

Commission: Ms Fran Thorn, Chair
Ms Danielle Huntersmith, Commissioner

Date of Hearing: 16-17 March 2022

Date of Decision: 26 April 2022

Date of Reasons: 26 April 2022

Appearances: Ms Sarah Porritt of Counsel for the Applicant, instructed by Bazzani Scully Priddle
Lawyers
Mr Ian Munt of Counsel for the Council
Mr Cameron Warfe, Counsel Assisting the Commission

Decision: The Commission has determined to refuse the application.

Signed:



Fran Thorn

Chair

Background

1. APD Group Pty Ltd (**Applicant**) owns and operates the Valley Inn Hotel, located at 120 Fyans Street, South Geelong (**Premises**).
2. This is an application by the Applicant to the Victorian Gambling and Casino Control Commission (formerly the Victorian Commission for Gambling and Liquor Regulation) (**Commission**) to amend its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the approved Premises, from twenty-nine (29) to thirty-nine (39) (**Application**).
3. The relevant municipal authority is the City of Greater Geelong (**Council**). By correspondence dated 23 December 2021, the Commission notified the Council of the Application and requested that it advise the Commission whether it wished to lodge a submission to address the social and economic impacts of the Application on the local community.
4. On the same date, the Commission notified the surrounding municipalities of Golden Plains Shire Council and Surf Coast Shire Council of the Application. As surrounding municipalities, they are able to make comment or prepare a submission to be included in the Council's submission or provide an independent submission if their view differs.
5. The Council responded to the Commission on 25 January 2022, advising that it intended to make an economic and social impact submission in relation to the Application, and did so on 22 February 2022.
6. The Commission considered the Application at a public inquiry conducted via remote means on 16-17 March 2022 (**Hearing**). The Applicant was represented by Ms Sarah Porritt of Counsel, instructed by Bazzani Scully Priddle Lawyers. The Council was represented by Mr Ian Munt of Counsel.

Legislation and the Commission's task

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

- (ii) *practices that could undermine public confidence in community and charitable gaming are eliminated;*
 - (iii) *bingo centre operators do not act unfairly in providing commercial services to community or charitable organisations;*
 - (f) *to promote tourism, employment and economic development generally in the State.*
9. Chapter 3 of the GR Act deals with the regulation of gaming machines. Section 3.1.1 of the GR Act sets out the purpose of Chapter 3 as follows:
- (1) *The purpose of this Chapter is to establish a system for the regulation, supervision and control of gaming equipment and monitoring equipment with the aims of—*
 - (a) *ensuring that gaming on gaming machines is conducted honestly; and*
 - (b) *ensuring that the management of gaming equipment and monitoring equipment is free from criminal influence or exploitation; and*
 - (c) *regulating the use of gaming machines in casinos and other approved venues where liquor is sold; and*
 - (d) *regulating the activities of persons in the gaming machine industry; and*
 - (e) *promoting tourism, employment and economic development generally in the State; and*
 - (f) *fostering responsible gambling in order to—*
 - (i) *minimise harm caused by problem gambling;*
 - (ii) *accommodate those who gamble without harming themselves or others.*
 - (2) *The purpose of this Chapter is also to—*
 - (a) *provide for the allocation of gaming machine entitlements in order to maximise the financial and social benefits to the Victorian community within the regulatory framework applying to the allocation of entitlements;*
 - (b) *promote a competitive gaming industry with the aim of providing financial and social benefits to the Victorian community.*
10. Section 9(3) of the *Victorian Gambling and Casino Control Commission Act 2011 (VGCCC Act)*¹ provides, inter alia:
- The Commission must, when performing functions or duties or exercising its powers under the Gambling Regulation Act 2003 ... or any other Act, have regard to the objects of the Act conferring functions on the Commission.*
11. The relevant provision concerning the Application is section 3.4.17(1)(b) of the GR Act, which states that variation of the number of EGMs permitted in an approved venue may be amended in accordance with Division 2, Part 4 of Chapter 3 of the GR Act.
12. Sections 3.4.18 to 3.4.19 of the GR Act provide for the manner in which requests for amendments under section 3.4.17(1)(b) are to be made. Relevantly for the Application, section 3.4.18 provides, inter alia, that:
- (1) *A request by a venue operator for an amendment of licence conditions—*
 - ...
 - (c) *in the case of ... an amendment to increase the number of gaming machines permitted in an approved venue, must be accompanied by a submission—*

¹ On 1 January 2022, the then *Victorian Commission for Gambling and Liquor Regulation Act 2011* was renamed the *Victorian Gambling and Casino Control Commission Act 2011*. Other than this name change, the substantive provisions of the legislation remained unchanged during the process of this Application.

- (i) *on the net economic and social benefit that will accrue to the community of the municipal district in which the approved venue is located as a result of the proposed amendment; and*
- (ii) *taking into account the impact of the proposed amendment on surrounding municipal districts—*

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

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

- (1) *Subject to this section, after receiving a copy of a request for an amendment referred to in section 3.4.18(2), a municipal council may make a submission to the Commission—*
 - (a) *addressing the economic and social impact of the proposed amendment on the well-being of the community of the municipal district in which the approved venue is located; and*
 - (b) *taking into account the impact of the proposed amendment on surrounding municipal districts.*

14. Section 3.4.20 sets out matters that are required to be considered by the Commission with respect to such a proposed amendment, as follows:

- (1) *Without limiting the matters which the Commission may consider in deciding whether to make a proposed amendment the Commission must not amend a venue operator's licence unless—*
 - (a) *the Commission is satisfied that the amendment of the licence does not conflict with a direction, if any, given under section 3.2.3; and*
 - (b) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the regional limit or municipal limit for gaming machines for the region or municipal district in which the approved venue is located will not be exceeded by the making of the amendment; and*
 - (c) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the net economic and social impact of the amendment will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located; and*
 - (d) *if premises are proposed to be added to the licence as an approved venue and the premises are situated within 100 metres of an approved venue of which the applicant for the amendment, or an associate of the applicant, is the venue operator, the Commission is satisfied that the management and operation of the approved venue and the proposed approved venue are genuinely independent of each other.*

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

16. Section 3.4.20(1)(c) provides for what is now commonly described as the '*no net detriment*' test. It requires the Commission to be satisfied that there is no net detriment arising from the approval through positively and objectively establishing that the net economic and social impact will not be detrimental to the well-being of the community.²

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

17. The GR Act does not specify the matters which the Commission must consider in deciding whether the ‘*no net detriment*’ test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:
- (a) the likely economic impacts of approval;
 - (b) the likely social impacts of approval; and
 - (c) the net effect of those impacts on the well-being of the relevant community.³
18. As such, the ‘*no net detriment*’ test is a composite test requiring consideration of a single net impact in economic and social terms on the well-being of the community.⁴ The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.
19. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.⁵ On review, decisions in the Victorian Civil and Administrative Tribunal (**VCAT**) have held that for impacts that may be both economic and social – for example the benefits of gaming consumption – it does not matter whether the impact is considered on the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.⁶
20. The Commission also notes the position taken by VCAT that:
- A table of likely economic and social benefits and disbenefits, and with some comments relevant to the relative weight to be given to particular factors ... is a useful way of transparently dealing with the ‘no net detriment’ test, and might perhaps be considered for wider application.*⁷
- The Commission has utilised this approach for the purpose of considering the ‘*no net detriment*’ test in this matter.
21. If the Commission is not satisfied that the ‘*no net detriment*’ test is met, that is clearly fatal to the application before it, as, given the opening words of section 3.4.20(1) of the GR Act, satisfaction of the test is a mandatory pre-condition to approval. However, although section 3.4.20(1) sets out certain mandatory considerations for the Commission, the provision is not exhaustive. If the Commission is satisfied that the ‘*no net detriment*’ test is met, it still has an ultimate discretion as to whether or not to grant the approval.⁸ The Commission must decide whether to make the proposed amendment, with or without any changes from that proposed by the applicant, even where the applicant has satisfied the minimum threshold of the ‘*no net detriment*’ test.⁹
22. In considering the exercise of this discretion:

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

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

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

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

⁷ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [60] per Dwyer DP.

⁸ See *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M; see also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [97] and following per Dwyer DP (with respect to section 3.3.7 GR Act).

⁹ GR Act, section 3.4.20(2).

- (a) it must be exercised having regard to the purposes of the GR Act and, in particular, the specific purposes of Chapter 3 of the GR Act dealing with the regulation, supervision and control of gaming machines;¹⁰ and
 - (b) it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the GR Act as a whole.¹¹
23. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*¹² that, if all of the mandatory considerations under the GR Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval – other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.
24. Finally, pursuant to section 9(4) of the VGCCC Act, the Commission must have regard to Ministerial guidelines issued under section 5 of the VGCCC Act when performing functions under gambling legislation. The Commission did not identify any Ministerial guidelines directly relevant to its consideration of this Application.

Material before the Commission

25. Before the Hearing, the Applicant provided the Commission with the following material in support of the Application:
- (a) application form – amendment to venue operator licence – vary gaming machines, received by the Commission on 13 December 2021 (**Application Form**);
 - (b) social and economic impact assessment prepared by Rhys Quick of Urbis, dated 3 December 2021 (**Urbis Report**);
 - (c) expenditure analysis prepared by Tim Stillwell of ShineWing Australia, dated 3 December 2021 (**Expenditure Report**);
 - (d) responsible service of gambling (**RSG**) management report prepared by Andrew Jeynes of PVS Australia, dated 2 December 2021 (**PVS Report**);
 - (e) witness statement of Anthony Eastmure, dated November 2021;
 - (f) witness statement of Hayley Wakeling, dated November 2021;
 - (g) further witness statement of Anthony Eastmure, dated March 2022; and
 - (h) supplementary witness statement of Anthony Eastmure, dated March 2022.
26. A report titled Economic and Social Impact Report, dated 21 January 2022 (**VGCCC Report**), prepared by Commission officers, was provided to the Applicant and Council and was considered by the Commission.
27. The Council provided written economic and social impact submissions in opposition to the Application, dated February 2022 (**Council Report**).
28. In addition, the Commission received correspondence from an individual member of the public in opposition to the Application.

¹⁰ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [98] per Dwyer DP.

¹¹ *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M. As to policy principles identified for consideration, see the *Romsey* case (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

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

29. The following witnesses gave oral evidence at the Hearing:
- (a) Mr Anthony Eastmure, Director of the Applicant;
 - (b) Ms Hayley Wakeling, Venue Manager of the Applicant;
 - (c) Mr Rhys Quick, Director of Urbis;
 - (d) Mr Tim Stillwell, Partner of ShineWing; and
 - (e) Mr Andrew Jeynes, Compliance Manager of PVS Australia.
30. Following the Hearing, the Commission was provided with two written submissions by each of:
- (a) the Applicant, prepared by Ms Porritt, dated 17 and 22 March 2022; and
 - (b) the Council, prepared by Mr Munt, dated 17 and 22 March 2022.
31. Chair Thorn and Commissioner Huntersmith visited the Premises on 3 April 2022.

Reason for decision

BACKGROUND

Location

32. The Premises is located in the City of Greater Geelong,¹³ a regional municipality located approximately 75 kilometres south-west of Melbourne. Major centres in the City of Greater Geelong include Geelong, Ocean Grove, Lara and Leopold. The LGA shares its borders with Surf Coast Shire (to the south), Moorabool Shire (to the north), Golden Plains Shire (to the west) and Wyndham (to the north-east).
33. The Premises is located at 120 Fyans Street, South Geelong, which is located on the north side of the Barwon River and east of the Princes Highway. The site sits within an industrial area of the suburb of South Geelong on the south side of Fyans Street. On the north side of the street are residential premises.
34. According to the VGCCC Report, the City of Great Geelong has an adult population of 212,437 which ranks it 1st of the 13 regional metropolitan municipalities (being the most populous in Victoria). The annual rate of population growth of 2.37% in 2021 was projected by the Department of Environment, Land, Water and Planning (**DELWP**) to be higher than the Victorian average of 1.2%.

Current gaming in the City of Greater Geelong

35. A regional cap of the permissible number of gaming entitlements (made under a Ministerial Order pursuant to sections 3.2.4 and 3.4A.5(3A) of the GR Act) applies for the combined municipalities of the City of Greater Geelong and the Borough of Queenscliff.¹⁴ The maximum number of gaming machines permitted in this area is 1,421. Currently, there are 26 gaming venues operating within the City of Greater Geelong and the Borough of Queenscliff with approvals to operate a total of 1,375 EGMs.¹⁵ The success of this application would increase the number of licensed EGMs in this area to 1,385 EGMs.
36. The City of Greater Geelong has an EGM density of 6.3 EGMs per 1,000 adults, which is 10.3% less than the regional average (7.0) and 26.9% more than the State average (4.9). This ranks the City of Greater Geelong as the 12th of 13 regional LGAs in terms of EGM density per 1,000 adults.
37. The VGCCC Report notes that in the 2020/21 financial year, the City of Greater Geelong had an average gaming expenditure of \$328.63 per adult, which is 5.99% less than the regional LGA average (\$349.55) and 12.7% more than the State average (\$291.61). Applying the estimate of increased gaming expenditure as received from the Applicant in the first year of operation of the additional 10 EGMs at the Premises, approval of this Application would result in an increase in average gaming expenditure per adult from \$328.63 to \$329.47. In the 2020/21 financial year, the expenditure on gaming for the City of Greater Geelong was

¹³ Where reference is made in these reasons to Greater Geelong, this is a reference to the local government area (**LGA**).

¹⁴ Victorian Government Gazette S318, 20 September 2017.

¹⁵ This includes the additional 11 EGMs approved for the Waurn Ponds Hotel but not yet in operation.

\$69,812,595.48. Of that amount, the Applicant's 29 EGMs at the Premises had generated \$1,283,246.57 (i.e. a Net Machine Revenue (**NMR**) of \$44,249.88), representing 1.8% of the total for the City of Greater Geelong.

Socio-economic profile of the City of Greater Geelong

38. The City of Greater Geelong is characterised by an above average socio-economic profile, in comparison to regional municipalities. It is ranked 13th of 13 regional LGAs and 40th of 79 LGAs in Victoria on the Socio-Economic Indexes for Areas (**SEIFA**) index of relative socio-economic disadvantage (**IRSD**),¹⁶ indicating an average level of disadvantage within the LGA (1st being the LGA with the greatest disadvantage).
39. In relation to the immediate surrounding area of the Premises (i.e. within 2.5 kilometres),¹⁷ the SEIFA IRSD index is 4.28% higher than the SEIFA IRSD index for the City of Greater Geelong, and 2.58% higher than the SEIFA IRSD index for Victoria. On the SEIFA IRSD, a higher score indicates a lack of disadvantage, therefore the immediate surrounding area from the City of Greater Geelong indicates a slightly lower disadvantage than regional Victoria. 17.5% of SA1s¹⁸ in the immediate surrounding area are in the 1st quintile¹⁹ of SEIFA scores (below the regional average of 33.2%). This also suggests that the area immediately surrounding the Premises experiences lower levels of disadvantage than the regional average.
40. The VGCCC Report also indicates that:
 - (a) the unemployment rate in the City of Greater Geelong is 3.63%. This is lower than the regional average of 5.97%, and lower than the State average of 5.56%. The unemployment rate for the immediate surrounding area is 3.5%, being 41.3% lower than the regional average;
 - (b) the equivalised household income in the City of Greater Geelong is \$938.36, which is slightly higher than the regional average of \$893.07, however lower than the State average of \$1,028.24. The equivalised household income in the immediate surrounding area is \$1,033.97, being 15.8% higher than the regional average;
 - (c) housing stress in the City of Greater Geelong is 58.6%, which is higher than the regional average of 51.9%, however lower than the State average of 60.2%. Housing stress in the immediate surrounding area is 65.7%, being 26.6% higher than the regional average; and
 - (d) the homelessness rate in the City of Greater Geelong is 4.0 per 1,000 adult population, is 9th highest of regional LGAs. The homelessness rate within the immediate surrounding area is 37.1% higher than LGA rate and 22.5% higher than all regional LGAs.

Nature of the Premises

41. The Applicant received premises approval from the then VCGLR to operate 29 EGMs at the Premises in 2016, subject to conditions. As part of that application, the Commission found that the no net detriment test has been satisfied and granted approval. The conditions of the approval required:
 - (a) renovation works to be completed; and
 - (b) annual community contributions in the amount of \$30,000 until 25 August 2022.
42. The Premises is a double storey building, however it currently operates from the ground floor only. The Premises currently comprises a range of facilities including:

¹⁶ SEIFA is a product developed by the ABS to assist in the assessment of the welfare of Australian communities. The SEIFA Indices allow the ranking of regions/areas, providing a method of determining the level of social and economic well-being in each region or area. As such, the SEIFA IRSD provides a relative, rather than an absolute, indication of the level of socio-economic disadvantage within the relevant area.

¹⁷ The VGCCC Report adopts a 2.5km radius as the immediate surrounding area for applications to amend EGM venue operators' licences for venues within metropolitan and major regional LGAs.

¹⁸ SA1s have been designed by the ABS as the smallest unit for the release of Census data, and generally have a population of 200 to 800 persons, with an average of 400 persons.

¹⁹ SEIFA index of relative disadvantage is divided into five quintiles each comprising 20% of areas (Statistical Areas Level 1 (SA1s)) ranked by socioeconomic status from the most disadvantaged (lowest / 1st quintile) to least disadvantaged (highest / 5th quintile). High disadvantage is indicated by a low SEIFA score (and low disadvantage by a high score).

- (c) Bistro/restaurant with seating for approximately 84 patrons;
- (d) Sports bar/TAB with access to a small outdoor terrace; and
- (e) Gaming room with 29 EGMs.²⁰

Catchment area of Premises

43. The 'no net detriment' test primarily applies to 'the community of the municipal district in which the approved venue is located.' In determining the impact of an application of this nature on a municipal district, previous Commission and VCAT decisions have had particular regard to the area serviced by the relevant premises, which is generally referred to as the 'catchment area'²¹. The determination of the likely catchment area in this instance is important in the Commission's consideration of the identity of those residents who will be most affected by the Application in terms of gambling-related benefits and harms.
44. The Urbis Report contains an analysis of the current and anticipated patronage to the Premises. The current membership profile for the Premises indicates that 95% of registered members reside within the City of Greater Geelong, with a majority of members residing in suburbs to the south and east of the Geelong CBD. This membership profile is broadly consistent with the results of a bistro patronage survey conducted by the Applicant during the period 16 August 2021 and 21 August 2021 (inclusive).
45. The Applicant also conducted a suburb survey of the patronage of the gaming room at the Premises during a 6-day period between 16 August 2021 and 21 August 2021 (inclusive). The Urbis Report notes that the full two-week survey period was unable to be completed due to restrictions on the trade of licensed premises as a result of the COVID-19 pandemic. Urbis nevertheless relied on the results of the survey, and the Commission considers that the gaming patron survey (albeit less reliable than if it were conducted for the two-week period) provides some supporting evidence in relation to existing and anticipated gaming patrons at the Premises.
46. The results of this gaming room survey are consistent with the membership data and evidence that the Premises' core catchment area is within a 2.5km radius of the Premises, including Geelong, Newtown, Belmont, Breakwater, Whittington, Newcomb, and East Geelong. The Applicant also submitted that given its location on the south-eastern side of Geelong, the Premises is also accessible to other locations on that side of the Geelong CBD beyond 2.5km such as Highton, Grovedale, and Leopold.
47. The Council Report also proceeded on the basis of a catchment area of a 2.5km radius of the Premises.
48. In this instance, the Commission considers that the gaming room patron survey provides some indication of the likely gaming patrons for the Premises. Having regard to the material and evidence put forward by the Applicant and the Council, and noting the VGCCC Report analysing the surrounding area as a radius of 2.5km around the Premises, the Commission considers that the appropriate primary catchment area of the Premises consists of the area within a 2.5km of the Premises, with a secondary catchment area consisting of the area extending to 5km from the Premises to the south and east of the Premises.

Issues for determination on review

49. As set out in paragraph 14 above, the Commission cannot grant the Application unless it is satisfied as to the four matters set out in section 3.4.20 of the GR Act. These matters are considered in parts A to D below.
50. If it determines that these matters have been satisfied, the Commission is then required to exercise its discretion under section 3.4.20 to determine whether or not the Application should be granted. That is, whether or not the proposed amendment to the venue operator's licence should be made.

²⁰ The gaming room is open daily between 10am to 12 midnight (Monday to Thursday), 10am to 12.30am (Friday and Saturday), and 10am to 11pm (Sunday).

²¹ See for example, *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation & Anor (Occupational and Business Regulation)* [2009] VCAT 2275 (12 November 2009); *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 (7 April 2011).

A. Directions given under section 3.2.3

51. Pursuant to section 3.4.20(1)(a) of the GR Act, the Commission must be satisfied that the proposed amendment does not conflict with a Ministerial direction, if any, given under section 3.2.3 of the GR Act. There is no relevant direction issued pursuant to section 3.2.3 of the GR Act that relates to this Application.
52. On this basis, the Commission is satisfied that granting the Application would not conflict with a direction given under section 3.2.3 of the GR Act, and therefore considers that the mandatory pre-condition set out in section 3.4.20(1)(a) of the GR Act is satisfied.

B. Regional Cap

53. As noted in paragraph 35 above, the City of Greater Geelong and Borough of Queenscliff is subject to a regional cap on the number of EGMs under a Ministerial Order under sections 3.2.4 and 3.4A.5 of the GR Act. The maximum permissible number of gaming machine entitlements in the area covered by the LGA is 1,421.
54. There are already 1,375 licensed EGMs over 26 gaming venues within the capped region. The grant of this Application would result in the number of licensed EGMs within the LGA increasing to 1,385.
55. Overall, the Commission is satisfied that granting the Application would not cause the relevant regional cap for gaming machines for the City of Greater Geelong to be exceeded, and therefore considers that the mandatory pre-condition set out in section 3.4.20(1)(b) of the GR Act is satisfied.

C. 'No net detriment' test

56. The Commission must be satisfied that, if the Application is granted, the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the Premises is located. Set out below (and summarised in tabular form at Appendix A) is the Commission's assessment of the economic and social benefits and disbenefits associated with the Application, including the weighting given to each of these impacts.
57. As noted in paragraph 19 above, the Commission considers that it does not matter whether impacts are considered on the economic side, or the social side, or both, so long as such impacts are included and not double-counted in the ultimate composite test. In this Application, the Commission has adopted the approach it took in *Lynbrook Tavern Pty Ltd at Lynbrook Hotel premises (Gaming – EGM Increase)* [2018] VCGLR 31 and determined to consider the impacts associated with the proposed community contributions as a single impact under the 'Social impacts' section of its consideration. As noted in its discussion of this impact below, the Commission has taken into account both the economic and social benefits generally associated with community contributions forming part of EGM increase applications and given appropriate weight to that impact in its cumulative form.

Economic impacts

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

Expenditure on capital works

59. A potential economic benefit associated with this Application is that arising from the expenditure on the proposed redevelopment of the Premises.
60. In relation to the proposed renovations of the Premises, the Applicant submitted that renovation works (**Works**) would occur at the Premises, including the addition of a new rooftop function space with flexible indoor and outdoor areas (to be serviced by a dedicated full-service bar and kitchen) and reconfiguration within the existing gaming room to accommodate the additional 10 EGMs. The Applicant submitted that this new level would provide the ability for the Premises to host functions and events, which are not able to be accommodated in the existing bistro facilities.
61. The proposed Works are expected by the Applicant to cost approximately \$2.1 million. The Applicant asserted that without approval of the Application, it would not be in a position to implement the proposed renovations.

The Applicant proposed that the Works would be substantially completed within 24 months from the operation of any of the additional 10 EGMs at the Premises.

62. Mr Eastmure, a director of the Applicant, gave evidence that the Applicant would seek to engage local contractors for the Works if the Application was approved. Mr Eastmure confirmed that the Applicant had received detailed costings prepared by the construction company Schiavello. It appears that the Works are proposed to be carried out by Schiavello, which is located outside the Geelong LGA. Of the proposed 24 building contractors and suppliers intended to be engaged as part of the Works, 23 are based within the Geelong LGA (with the remaining one located in Torquay).
63. The Council accepted that the proposed expenditure on the Works is an economic benefit, however submitted that its value was small within the context of the LGA economy, was a one-off (rather than recurring) benefit, and that there was uncertainty as to how much of the quoted \$2.1 million would be retained within the City of Greater Geelong.
64. The Commission accepts that the Applicant intends to undertake the Works if the Application is granted, and also finds that, given the nature of the proposed Works, it is likely that a majority of the required contractors would be sourced from within the City of Greater Geelong. However, the Commission also notes that the proposed head contractor (Schiavello) is not resident within the Geelong LGA, and therefore a proportion of the total \$2.1 million cost would not be retained within the local municipality. The Commission considers this expenditure is an economic benefit and, in the circumstances, gives it marginal weight.
65. Related to the economic benefit associated with the expenditure on the Works, the Commission notes the short-term employment benefits that will arise during the refurbishment of the Premises. While accepting that a majority of the required contractors would be sourced from within the City of Greater Geelong, the Commission considers that the value of the economic benefit that arises in relation to this short-term employment has been considered and counted in this benefit associated with the expenditure on the Works more generally.
66. Further, the Commission is careful to ensure that benefits associated with the Works expenditure are not double counted, having regard to the social impact that may result from the improved facilities. This aspect is considered further below at paragraphs 102 to 106.

Supply contracts and complementary expenditure

67. The Applicant estimated that that the Works would result in increased patronage in the order of 500 patrons per week. At section 1.7.4 of the Urbis Report, this increased patronage expected to generate approximately \$936,000 in complementary expenditure in its first year. Further, the value of additional supply contracts was estimated to be \$406,000 per annum. The Applicant also estimated that 11.6% (\$47,000) of additional supply contracts would be fulfilled by local suppliers within the City of Greater Geelong.
68. The Commission finds that there is likely to be an increase in patronage arising from the Works and such increased patronage could result in increased supply contracts and non-gaming revenue spend within the Premises. However, there was no direct evidence as to whether the anticipated source of this new additional revenue would be from existing patrons, new patrons that reside within the City of Greater Geelong, or new patrons from outside Greater Geelong. There was also no evidence regarding the extent that any of this additional revenue would be transferred from other hospitality venues from within the City of Greater Geelong, and thereby not generating any additional benefit for the LGA. On this basis, there is some uncertainty as to the extent to which any increase in complementary expenditure would generate increased economic activity within the City of Greater Geelong, as opposed to transferred activity within the City of Greater Geelong. Given the strong local patronage at the Premises currently (with 95% of its registered members being resident within the Greater Geelong LGA) and despite the slightly wider draw of bistro patrons as compared to gaming patrons, the Commission considers that it is more likely that a significant proportion of the estimated \$936,000 in complementary expenditure would be transferred from within the LGA..
69. For these reasons, the Commission finds that any benefit associated with supply contracts and complementary expenditure for the City of Greater Geelong is limited and consequently places marginal weight on this impact.

Additional employment

70. According to the Applicant, employment benefits associated with this Application would include the creation of 9.5 additional full time equivalent (**FTE**) positions at the Premises, including 1.6 FTE positions within the expanded gaming room. These figures were calculated by reference to a proposed roster detailing the increase in the staffing requirements at the Premises to support to new rooftop bar area and the expanded gaming room.
71. Mr Eastmure gave evidence that approximately 80% of the current 25-30 staff members of the Applicant live within the local area. In the Urbis Report, Mr Quick submitted that the majority of the new positions would be taken by residents within the City of Greater Geelong.
72. According to the Council Report, Council submitted that consideration of employment impacts at the Premises should be limited to those that relate specifically to gaming activity, citing *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534. On this basis, the Council submitted that the anticipated additional employment was of limited economic benefit. It submitted that only new gaming employees should be counted and also noted that the number of new employees was negligible within the context of the LGA employment market and that there was uncertainty as to how many of the additional employees would reside in the City of Greater Geelong.
73. On a preliminary matter, the Commission does not accept the Council's submission that only gaming employment should be considered relevant. The Commission notes that the factual situation in *Whittlesea CC v George Adams Pty Ltd* differed from that which applies in this Application (in that it related to the construction of an entirely new venue), and in that case if relevant evidence were available, it may have been appropriate to consider the non-gaming employment effect. This approach, to count all new employment, found support from Dwyer DP in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101 at [190] and has previously been adopted by the Commission.
74. Overall, the Commission finds that the additional employment is a minor positive impact; noting that the additional employment of 9.5 EFT is of limited significance to a municipality with an adult population of 212,437 and an unemployment rate that is significantly lower than the regional and State rate. The Commission also notes the possibility of employment transfer resulting from the impact of this Application on other venues within Geelong due to the anticipated increase in gaming and other complementary expenditure at the Premises. As such, the Commission considers it is an economic benefit to the community to which it should attribute no weight to marginal weight.

Increased gaming competition in the City of Greater Geelong

75. Increasing competition in gaming in the City of Greater Geelong is a factor to be considered by the Commission in light of the statutory purposes of the Act²² and the consumer benefits that derive from competition.
76. In the ShineWing Report, Mr Stillwell indicated that the Premises has five gaming competitors within a 2.5km radius and a further eight gaming competitors within a 5km radius. While Mr Stillwell noted that the utilisation survey method was usually considered to be most appropriate for comparatively low to mid performing venues with comparatively smaller gaming rooms (such as the Valley Inn Hotel), the restrictions imposed during the COVID lockdowns made this method less appropriate in the circumstances. As such, Mr Stillwell used the empirical evidence method of estimating additional gaming expenditure to be derived at the Premises. Accordingly, Mr Stillwell considered the range of estimated additional gaming expenditure for the Premises, if the Application is approved, to be between \$291,528 and \$356,311 in the first 12 months of trade post installation of the additional 10 EGMs.
77. Mr Stillwell estimated that a transfer rate of 50% and calculated the amount of transferred expenditure within the City of Greater Geelong would be between \$145,764 and \$178,155. He also estimated that the grant of the Application would result in a 0.14% increase in the average net gaming expenditure per adult in the LGA over the first 12 months of trade following the installation of the additional 10 EGMs at the Premises.
78. Having regard to the estimated adult population of 212,437 in the City of Greater Geelong for 2020/21, the Commission notes that this Application, if approved, would:

²² See GR Act, s 3.1.1(2).

- (a) increase the total number of attached licensed EGMs in the municipality to 1,385;
 - (b) increase EGM density in the municipality from 6.28 to 6.33 per 1,000 adults, as compared with the regional average of 7.0 and the State average of 4.9 EGMs per 1,000 adults; and
 - (c) on the basis of Mr Stillwell's figures, would result in an estimated increase between \$145,764 and \$178,155 of new gaming expenditure to the LGA in the first year of operation.
79. Considering the matters discussed above, while this impact would be a positive economic benefit, as supported by the significant transfer rate, the Commission considers that 10 additional EGMs is a negligible increase relative to the overall market in the City of Greater Geelong, currently being 1,375 EGMs across 26 venues. Accordingly, the Commission considers it appropriate to attribute no weight to marginal weight to this economic benefit.

Gaming expenditure not associated with problem gambling

80. To the extent that gaming expenditure is not associated with problem gambling, it has been recognised that such expenditure can be treated as an economic positive.²³ As Bell J notes in *Romsey No. 2*, this approach also brings to account the benefit obtained from pure consumption by the lone gambler who does not use EGMs for social reasons.²⁴
81. In the ShineWing Report and at the Hearing, Mr Stillwell gave evidence regarding the likely increase in gaming expenditure should the Application be granted. Specifically, he gave evidence of the likely increased gaming expenditure in the first 12 months of operation of the additional 10 EGMs at the Premises.
82. Mr Stillwell estimated that (as noted in paragraphs 76 and 77 above):
- (a) the level of additional gaming expenditure generated from the Application would be between \$291,528 and \$356,311 in the first 12 months of trade;
 - (b) due to the location of the Premises and the LGA being within a regional area of Victoria, the expenditure would most likely be transferred expenditure from existing venues within the City of Greater Geelong at the rate of 50%; and
 - (c) adopting the estimated level of 50% transferred expenditure, new gaming expenditure was estimated to be between \$145,764 and \$178,155 in the first 12 months of trade.
83. The Council Report did not provide any contrary evidence to Mr Stillwell's gaming expenditure figures for the Premises relating to the additional 10 EGMs at the Premises. Noting the above, the Commission accepts Mr Stillwell's analysis.
84. In assessing the extent of this benefit, the Commission has had regard to the evidence outlined in paragraphs 86 to 96 below with respect to the incidence of problem gambling. The Commission finds that the portion of new expenditure not attributable to problem gambling is an economic benefit. Various factors suggest that the extent of problem gambling is likely to be low, including the Premises' classification as a destination venue (albeit with some level of convenience to proximate residents), that the venue would be considered a relatively small one with 39 EGMs, and its limited operating hours of the gaming room. Generally, it is located in an area of mixed relative socio-economic disadvantage, and one that is anticipated to experience ongoing population growth and gentrification. Further, while there are areas of higher relative socio-economic disadvantage within 2.5 kilometres of the Premises, residents in those communities already have access to a number of other close EGM venues. It is also likely that there would be portions of new expenditure at the Premises associated with a risk of problem gambling (and therefore not forming part of this economic benefit), which is considered below. Overall, the Commission attributes this benefit no weight to marginal weight.

²³ See *Romsey No. 2* [2009] VCAT 2275 [351] per Bell J.

²⁴ *Ibid.* Bell J further notes at [352] that the other approach is to say (as Morris J did in *Branbeau Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2005] VCAT 2606 at 79) that gaming extends 'substantial economic and social benefits' to gaming machine users, which treats consumption as a benefit without saying whether it is economic or social. While Bell J states both approaches are correct, for the purposes of this Application, this benefit is treated as an economic benefit.

Gaming expenditure associated with problem gambling and gambling related harm

85. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an economic disbenefit.²⁵ In assessing this impact (and other effects of problem gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gambling undertaken by those who may be defined as 'problem gamblers', as well as those who may be otherwise regarded as 'low-risk' or 'moderate-risk' gamblers.
86. In assessing the extent of this disbenefit, the Commission has had regard to the expenditure evidence set out in paragraph 82 above and the findings in relation to the risk of problem gambling at the Premises discussed further below. In considering this aspect of the '*no net detriment*' test, the Commission does not include consideration of transferred expenditure because such expenditure cannot be said to exacerbate problem gambling.²⁶
87. The extent to which new gaming expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with the Application, will be influenced by the socio-economic status and vulnerability of the community of Greater Geelong, and in particular those living in the identified catchment area of the Premises. This is because communities characterised by relative socio-economic disadvantage are considered more vulnerable to the harms arising from problem gambling.
88. In the Urbis Report, the Applicant submitted that:
- (a) The SEIFA Index score for the Greater Geelong LGA (994) ranks it as 41st out of 80 Victorian LGAs, indicating an average level of disadvantage within the LGA.
 - (b) Similarly, the SA2 where the venue is located (Geelong) ranks as 192nd out of 454, indicating that residents on average demonstrate typical levels of disadvantage relative to the rest of Victoria.
 - (c) The suburbs that comprise the patron catchment of the venue (based on the membership and patron surveys) have mixed SEIFA scores, with some areas demonstrating low levels of disadvantage (particularly to the north and south-west) with others demonstrating significant disadvantage (particularly to the east).
 - (d) The venue is located within an SA1 that sits in the first (most relatively disadvantaged) decile, although this SA1 largely represents a commercial/light industry area with relatively few residents.
 - (e) There are pockets of SA1s located in the eastern section of the 2.5km radius that sit within the first two deciles of SEIFA scores and these correlate to the suburbs with a low SEIFA score such as Thomson, Newcomb and Whittington, where residents have easier access to other gaming venues than the Valley Inn Hotel.
 - (f) This indicates that the patron catchment shows a mixed level of disadvantage.
89. In summary, the Applicant submitted that the socio-economic profile of the Premises' catchment generally reflects that of Greater Geelong as a whole – being mixed, and moderate on average.
90. Similarly, the Council Report stated that there were areas within the Premises' catchment area that demonstrated high levels of disadvantage, in particular the SA1 in which the Premises is located and the South Geelong – Thomson – Breakwater area. The Council also noted the existing above average levels of low-income households, unemployment and housing stress within these areas.

²⁵ The Commission recognises that, on review, the key likely disbenefit of 'problem gambling' has, for convenience, been treated under the heading of 'social impacts' in various instances: see *Mount Dandenong Tourist Hotel Pty v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted; see, for example, *Mount Alexander Shire Council* [2013] VCAT 101 at [178] and following per Dwyer DP. For completeness, the Commission considers both the economic and social impacts of problem gambling in assessing this Application.

²⁶ See *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192 at [11] per Code PM and Nelthorpe M; *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J.

91. However other factors raised on behalf of the Applicant to suggest there is lower risk of increased incidence and economic impact of problem gambling at the Premises should this Application be granted, include:
- (a) It draws patrons from an area which effectively covers most of Greater Geelong, with an overall moderate socio-economic profile.
 - (b) It is a 'destination venue', being not positioned in a high foot traffic location that would induce a greater incidence of convenience gambling, and it is not centrally located those the most disadvantaged parts of the catchment area to the eastern suburbs of Geelong.
 - (c) It has a broad 'full service' venue offer, with physical and functional separation of the gaming room (with the planned renovation works only to enhance the well-established configuration).
 - (d) There is a minimum 9.5 hour closure of the gaming room each day, and other facilities also operating whenever the gaming room is open.
 - (e) The installation of an additional 10 machines will have a negligible effect on accessibility in a physical sense as this is an existing premise.
 - (f) It has a venue operator with a strong commitment to responsible gambling practices, assisted by the engagement of experts in RSG compliance to implement best practice initiatives.
92. The Commission notes from the VGCCC Report that the average net EGM expenditure per adult in the City of Greater Geelong (\$328.63, based on spending in the 2020/21 financial year) is slightly less than the regional average (\$349.55), however more than the State average (\$291.61).
93. The Urbis Report submitted that the Applicant's EGM utilisation records for the period 16 to 21 August 2021 (inclusive) indicated that the Premises' gaming room did not operate at peak utilisation (i.e. greater than 70% or 21 EGMs) at any time during the survey period. Mr Quick noted that each of the relative "busy" periods within the gaming room coincided with lunch or dinner service, indicating that the gaming room is used in conjunction with other areas of the Premises, rather than in isolation. However, Mr Quick noted that this was a more limited survey than is normally conducted, and likely indicates that the gaming room usage has not returned to pre-pandemic levels.
94. The Commission notes the following in respect to the Premises:
- (a) while the Premises is considered a 'destination venue', there is an element of convenience for those residents living in immediate proximity to the Premises (particularly the residential areas directly across the road from the Premises, and more broadly to the immediate north of Fyans Street) which the Commission considers is a relevant risk factor for this venue;
 - (b) within 2.5km of the Premises, there are already 271 EGMs across 6 venues (including the existing 29 accessible at the Premises), with a further 8 venues located between 2.5km and 5km from the Premises;
 - (c) the gaming room operates between 10am and between 11pm and 12.30am each day, creating a mandatory break in operation of between 9.5 and 11 hours every day;
 - (d) the median weekly household income for residents living within the primary catchment area of the Premises is higher relative to the rest of the City of Greater Geelong, the regional average and the State average;
 - (e) housing stress in the City of Greater Geelong is ranked highest by regional LGAs, and the housing stress in the immediate surrounding area of the Premises (65.7%) is higher than housing stress for the City of Greater Geelong (58.6%) and much higher than the regional average (51.9%);
 - (f) unemployment in the City of Greater Geelong is 3.63% (ranked 7th of 13 regional LGAs), compared with the State unemployment rate of 5.56%;
 - (g) in the 2020/21 financial year, the City of Greater Geelong had an average gaming expenditure which is 5.99% less than the regional LGA average, but 12.7% more than the State average; and
 - (h) approximately 33.8% of residents within the 2.5km radius from the Premises are in the lowest two State SEIFA deciles (less than the regional average of 58.3%).

95. Overall, notwithstanding the Council's submission, the Commission considers that with the mitigating factors (including, importantly, the relatively small size of the gaming room, the relatively short hours of operation and the RSG commitment and training of its staff at the Premises) the potential expenditure associated with problem gambling is a marginal disbenefit. Issues relating to the negative social impacts associated with problem gambling are considered further in paragraphs 123 to 127 below.

Diversion of trade from other gaming venues and retail facilities

96. As stated above, Mr Stillwell estimated that at least 50% of gaming expenditure would be transferred from existing venues within the City of Greater Geelong. Mr Stillwell also submitted that due to the location of the Premises and the LGA being within a regional area of Victoria, the gaming expenditure would most likely be transferred expenditure from existing venues within the City of Greater Geelong (in particular, the Lord of Isles Tavern).
97. The Commission accepts the Applicant's evidence that at least 50% of anticipated increased expenditure would be derived from other venues located within the City of Greater Geelong. The Commission considers that a transfer rate of this size is not insignificant, however in light of the competitive market and relative stability of the affected venues, the Commission finds that the diversion of trade will have a negligible detrimental economic impact on other venue operators.
98. In addition, the Commission recognises that the impact that could be felt by local non-gaming businesses is the value of the new expenditure from this Application, being between \$145,764 and \$178,155 in the first year of operation, and a portion of the complementary expenditure that may be transferred from other venues within Greater Geelong. However, the Commission notes that it is difficult to determine if, and to what extent, that expenditure would necessarily have been spent elsewhere in the regional LGA.
99. The Commission finds that there is an economic disbenefit associated with any diversion of trade from both gaming venue and retail facilities or other businesses in the City of Greater Geelong as a result of this Application and considers it appropriate to attribute no weight to marginal weight to this impact.

Conclusion on economic impacts

100. After considering the economic benefits of the Application and balanced against the detriments, the Commission considers that there is likely to be a slightly positive economic impact if the Application is granted.

Social impacts

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

Improved services and facilities at the Premises

102. Separate from the economic benefit that may be associated with expenditure involved in capital works at the Premises, there are also potential social benefits to the community that may arise having regard to the nature of the renovations that are intended to take place.
103. As noted at paragraph 60 above, the Works primarily consists of the addition of a new rooftop function space, together with some reconfiguration within the existing gaming room to accommodate the 10 additional EGMs. Accordingly, the Applicant submits that the proposed renovations to the Premises are not solely or even principally associated with gaming.
104. Both Mr Eastmure and Ms Wakeling gave evidence that the Applicant's ability to hold functions at the Premises was extremely limited as it would occur within a roped off area of the bistro. Mr Eastmure stated that he has refused requests for functions as he would not be able to continue to offer services to his existing patrons if the function proceeded.
105. Mr Eastmure also gave evidence that other nearby venues with rooftop bars were quite popular, and he expected that popularity to extend to the Premises once the rooftop bar was constructed.
106. The Commission considers that the community's access to, and use of, the proposed improved facilities at the Premises will provide a social benefit to the community of the City of Greater Geelong. The Commission

recognises that the Works will create additional indoor and outdoor social spaces for the Premises' patrons, including the ability to host functions while maintaining existing bistro services for existing patrons. However, the Commission notes that this would not be a unique offering within Greater Geelong, and also that there was no evidence to suggest that there was significant unmet demand for such facilities generally. Therefore, the Commission considers it is appropriate to attribute no weight to marginal weight to this factor.

Increased gaming opportunities for those who enjoy gaming

107. Increased gaming opportunities is a positive impact if the Application will better serve the needs of gaming patrons through providing additional opportunities and choice for those who play EGMs responsibly.
108. Ms Wakeling gave evidence that there was a genuine demand for more EGMs at the Premises, noting that there are times (particularly Friday and Saturday evenings) when patrons cannot access their machine of choice and would prefer to wait. During the Hearing, Ms Wakeling stated that patrons would utilise other facilities within the Premises for a short time, and then leave to go to a different gaming venue. The Commission notes that there was no specific data provided by the Applicant to evidence the rate or number of patrons that elected either to wait at the Premises or depart for a competitor venue.
109. Mr Stillwell referred to the gaming room survey and confirmed that the Premises' gaming room did not operate at peak utilisation (i.e. greater than 70% or 21 EGMs) at any time during the survey period. However, he did note that the gaming room survey was conducted during a period where there was a restriction on the number of gaming machines allowed to be in operation due to COVID-19 requirements.
110. The Commission considers that the approval of the Application would have a positive effect of increasing gaming opportunities for those who enjoy gaming. However, the Commission notes the existing gaming environment within Greater Geelong and finds that the addition of a low number of EGMs to an existing venue with low utilisation rates and in a gaming market with high accessibility to EGMs is unlikely to have a discernible impact. The Commission therefore attributes no weight to marginal weight to this factor.

Community contributions

111. In determining the net economic and social impact of applications of this nature, both the Commission²⁷ and VCAT²⁸ have regularly treated community contributions proposed by an Applicant as a positive benefit. However, for such contributions to be regarded as a benefit associated with the Application, it is necessary that they are properly regarded as community contributions and that they will result as a consequence of the Application being granted.
112. The Commission has taken into account in this section both the economic (financial benefit enjoyed by recipients) and the social (improvement to the social fabric of the community) benefits associated with the proposed community contributions forming part of the Application, and given appropriate weight to that impact in its cumulative form.
113. The Commission notes that in 2016, an application to approve the Premises as suitable for gaming with twenty-nine EGMs was approved. As part of that approval, a condition was imposed on the Applicant's venue operator's licence by the Commission to make cash community contributions annually to the value of \$30,000 (indexed to CPI) until 15 August 2022. In his statement dated November 2021 (which was supplied as part of the current Application), Mr Eastmure stated that due to financial difficulties (including unforeseen costs of exiting the Barwon Heads Hotel and the subsequent impact to revenue during the COVID-19 pandemic), the Applicant had been unable to comply fully with the community contribution condition. At the time of making the Application to the Commission, the Applicant had only paid \$1,547.14 (being less than 2%) of the \$133,993.80 payable in community contributions (a shortfall of \$132,446.66).²⁹

²⁷ See e.g., *Application by Richmond Football Club* [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

²⁸ See e.g., *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

²⁹ This figure is calculated on a pro rata basis based on the days during 2020-21 that EGMs were able to operated at the Premises due to the COVID-19 pandemic. The total amount of community contributions payable if no such allowance is made would be \$155,830.78.

114. Subsequently and proximate to the Hearing (which commenced on 16 March 2022), Mr Eastmure provided written statements to the Commission that the Applicant had made community contribution payments to five community organisations across the period 4 to 9 March 2022 in the total amount of \$132,500.
115. As part of this Application, the Applicant proposed new conditions, if the Application were granted, the scope of which shifted in the lead up to and during the Hearing. In its post-hearing submissions, the Applicant confirmed that its proposed conditions relating to community contributions (which would replace the existing conditions relating to community contribution) would require the Applicant to:
- (a) make the existing community contributions to meet its obligation under the 2016 premises approval (up until 15 August 2022) (**Historical Contributions**); and
 - (b) make new community contribution in the amount of \$15,000 (increased each year by the increase in CPI) for as long as any of the additional 10 EGMs are in operation at the Premises (**Additional Contributions**).
116. The Applicant proposed that the Historical and Additional Contributions would be allocated each year to not-for-profit community groups and sporting organisations providing services and facilities to residents in the City of Greater Geelong.
117. Mr Quick noted the financial circumstances of the Applicant and stated that its “commitment to community contributions, despite the impact of COVID and the challenge in turning a profit, must be given weight”.³⁰ He assessed that both the economic and social benefit of the community contributions should be given medium weight.³¹
118. The Council submitted that it takes a public health harm minimisation approach to addressing gambling-related harm and would therefore like to see community contributions allocated to addressing these harms caused by gambling. Further, Council submitted that greater accountability is needed to ensure the Additional Contributions are made given the history of the Applicant in meeting its community contributions undertaking.
119. In its Closing Submissions, Council submitted that the proposed community contributions represented a reduction in community contribution payments by the Applicant (from its current \$30,000 per annum to \$15,000 per annum), however acknowledged that it would constitute a benefit as compared with nil contributions if the Application were not approved. In any event, the Council submitted that the economic and social benefits arising from the community contributions would be negligible.
120. Overall, the Commission considers that the effect of the proposed conditions is to commit the Applicant to community contributions in the amount of \$15,000 (indexed to CPI) per annum to organisations providing services or facilities to residents of the City of Greater Geelong. The Commission does not consider the Applicant’s commitment to make the final Historical Contributions to form part of this Application, as it is already mandated by conditions imposed as part of the 2016 premises approval to pay the Historical Contributions until August 2022.
121. The Commission notes that as proposed, the Applicant would pay \$15,000 per annum going forward (as the 2016 condition to pay \$30,000 ceases in August 2022). However, this \$15,000 commitment differs from that proposed during the 2016 premises approval in that:
- (a) it continues for as long as the additional 10 EGMs are operating at the Premises (rather than for a defined period of time); and
 - (b) the Applicant would have full discretion as to the recipient and amount of contributions, rather than being conditioned to establish a committee with input from local council and/or community representation and advertising for charitable recipients (the Applicant confirmed that it had not, and submitted that it did not wish to, establish such a committee, as reflected in its proposed conditions).
122. Accordingly, the Commission considers that the Applicant’s commitment to the Additional Contributions would be a positive economic and social benefit and considers it appropriate to attribute marginal weight to this impact.

³⁰ Urbis Report, para 107.

³¹ Urbis Report, para 107.

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

123. Wherever accessibility to EGMs is increased, there is a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, family breakdowns and other social costs. Accordingly, the Commission accepts that there is potential for a negative social impact through possible increased problem gambling expenditure.
124. The Commission refers to and relies upon the evidence set out in paragraphs 86 to 95 with respect to the economic impact of problem gambling on the community, which similarly apply to the social impact of problem gambling. As is concluded there, the Commission considers that there is potential for an increased risk in gambling-related harms as a result of this Application. This gives rise to a negative social impact. The Commission accepts that harms associated with gambling are wide-ranging and attributable to all categories of gamblers ('low-risk', 'moderate-risk' and 'problem gamblers') and across the community more broadly.³²
125. In the PVS Report, Mr Jeynes noted that the size of a venue, its operating hours, its broad venue offer and its layout were all protective factors against problem gambling. As a result, he considered that granting the Application would have a negligible impact on the prevalence of problem gambling in the City of Greater Geelong.³³ He stated that the Applicant "is committed to a best practice approach to responsible gambling, harm minimisation and customer care".³⁴ He also found that there was a strong culture of staff training and dedication to RSG practices, supported by an excellent level of staff knowledge. Overall, Mr Jeynes submitted that the Applicant's commitment to RSG would ensure that gaming at the Premises would be conducted in a safe and responsible manner.
126. In the Council Report, the Council submitted that both the community of Greater Geelong and the residents of the Premises' catchment area display indicators of vulnerability to gambling-related harm. In particular, Council submitted that "middle-income communities with high housing stress have increased incidence of, and less capacity to cope with, gambling-related harm".³⁵
127. Having regard to all of the evidence and circumstances, for the reasons discussed in relation to the economic impact of problem gambling, particularly given both the location of the Premises within the City of Greater Geelong and the socio-economic disadvantage and signs of economic vulnerability of residents within the identified catchment area, the Commission considers it appropriate to attribute marginal weight to low weight to this negative social impact.

Community attitude

128. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,³⁶ the Commission recognises that while community apprehension is not an over-riding factor (in the sense that the Application is not a referendum on gaming), it is certainly a relevant factor in the consideration of the particular social impact within, and as part of, the 'no net detriment' test.
129. The Council submitted that there was a negative community attitude to the Application. This was demonstrated by direct submissions the Council had received by community organisations (such as Barwon Child Youth and Family) and individuals, as well as the results of a community attitudes survey conducted by Council as part of its consideration of the Application. The Council Report sets out that the survey received 260 responses from members of the Greater Geelong community, and concludes that the survey results (together with feedback from the social media posts promoting the survey) demonstrate that a "high number of

³² The Commission notes the Council's submissions that the evidence of Mr Quick and Mr Jeynes only refers to "problem gambling". The Commission considers that the reference by these witnesses to "problem gambling" is not confined to those harms suffered by "problem gamblers" (being only one category of gambler that may suffer gambling-related harms) but also includes harms suffered by all categories of gambler.

³³ PVS Report, para 43.

³⁴ PVS Report, para 49.

³⁵ Council Closing Submissions, para 107.

³⁶ The *Romsey* case (2008) 19 VR 422, [44] per Warren CJ, Maxwell P and Osborn AJA. See also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [73] per Dwyer DP.

community members believe that increasing the number of EGMs at the Valley Inn Hotel will have a detrimental effect on their community".³⁷

130. In response, the Applicant submitted that:

- (a) it is unlikely that an application to increase the number of permitted EGMs at an existing gaming venue could significantly impact on the community's sense of well-being;
- (b) the community attitudes survey conducted by Council included a very small sample size of the community of Greater Geelong;
- (c) there were a number of flaws in the survey methodology conducted by Council which should reduce the weight placed on its findings, including:
 - i. the survey was not conducted as a random sample of the community (i.e. it only reflects the views of those community members with an active interest in the subject matter);
 - ii. indicating that Council had already determined to oppose the Application;
 - iii. while providing a link to the application documents in their entirety, the survey provides very little information regarding the non-gaming aspects of the Application; and
 - iv. not including an "all or nothing" question to ask whether survey participants would accept (or be more accepting of) the perceived negative aspects of the Application if the benefits would not occur without those disbenefits; and
- (d) both the views of the Barwon Child Youth and Family and many of the comments submitted as part of the survey indicate a more general opposition to gaming as opposed to specific opposition to the Application in question.

131. Overall, the Commission is satisfied that there is some negative attitude within the City of Greater Geelong regarding the Application, evidenced by:

- (a) Council's opposition to the Application;
- (b) the results of the community attitudes survey (although acknowledging its limitations); and
- (c) the public submissions referred to in both paragraph 28 and 129.

132. In all of these circumstances and taking into account the Council's position and evidence in relation to the Application, the Commission considers it appropriate to attribute marginal weight to this negative social impact.

Conclusion on social impacts

133. After considering the social benefits of the Application balanced against the social disbenefits, the Commission considers that there is likely to be a neutral social impact if the Application is granted.

Net economic and social impact

134. The '*no net detriment*' test in section 3.4.20(1)(c) of the GR Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. As stated in paragraph 18 above, this test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impact of approval on the well-being of a relevant community will be either neutral or positive.³⁸

135. After consideration of the material before it, including the evidence provided at the Hearing (and weighted as outlined above and summarised in tabular form at Appendix A of these Reasons for Decision), the Commission is satisfied that the social and economic impact on the well-being of the community of the

³⁷ Council Report, p 38.

³⁸ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 at [52] per Dwyer DP.

municipal district in which the Premises is located will not be detrimental to the well-being of the community of the LGA. Accordingly, the pre-condition set out in section 3.4.20(1)(c) of the GR Act is satisfied.

D. Independence from other gaming venues

136. Section 3.4.20(1)(d) of the GR Act requires the Commission to be satisfied that, if the Premises is proposed to be added to the Applicant's licence as an approved venue and the Applicant (or an associate of the Applicant) operated an approved venue within 100 metres of the Premises, the management and operation of the Premises and other approved venues are genuinely independent of each other.

137. The Commission notes that the Application is not proposing to add the Premises to the Applicant's venue operator's licence (as it already exists on the licence), nor does the Applicant (or an associate) operate an approved venue within 100 metres of the Premises.

138. On this basis, the Commission considers that the mandatory pre-condition set out in section 3.4.20(1)(d) is not applicable to this Application.

General discretion of the Commission

139. As noted in paragraphs 21 to 23 above, the Commission retains an ultimate discretion whether to grant or refuse the Application, once the mandatory preconditions set out in section 3.4.20(1) have been found to be satisfied.

140. In exercising its discretion whether or not to approve the Application, the Commission may take into account relevant matters.³⁹ These include broader policy considerations, drawn from the content and objectives of the GR Act as a whole.⁴⁰

141. The Commission notes that the 'policy context' of the GR Act, is referenced through some, if not all, of the following six principles set out in the second reading speech for the Bill:

- developing and reinforcing the government's commitment to responsible gambling through measures that assist and protect problem gamblers and those at risk of becoming problem gamblers, their families and the wider community;
- developing and maintaining the state's commitment to the highest standards of probity for gambling service providers;
- accepting gambling is a valid activity for many Victorians who are entitled to expect ongoing high standards of service, transparency and accountability from the gambling sector;
- ensuring that the legitimate financial benefits of gambling (both private and public) are transparent, appropriately recognisable and fairly distributed to the Victorian community;
- that to the extent possible consistent with the other principles, gaming service providers operate in a competitive environment; and
- establishing proper consultative processes to ensure that appropriate information is given to, and input is received from, the wide variety of persons interested in gambling including stakeholders, affected parties and, to the widest extent possible, the broader Victorian community.⁴¹

142. As a preliminary issue, the Council made submissions regarding the broad statutory framework relevant to gaming within Victoria, including the obligations of the Applicant as a holder of a venue operator's licence, and also the disciplinary action powers available to the Commission where non-compliance with the regulatory framework has been identified. The Commission wants to make it clear that its role in this Application is only to determine whether or not to exercise its discretion to grant or refuse the Application. Contrary to any suggestion by the Council in its closing submissions, the Commission is not required to consider or establish whether the Applicant is continuing to satisfy the statutory criteria for issuing a venue operator's licence under section 3.4.11 of the GR Act. It is also not appropriate for the Commission (as constituted for this matter) to

³⁹ Section 3.4.20(1)

⁴⁰ *Ocean Grove Bowling Club v Victorian Commission for Gambling Regulation* [2006] VCAT 1921.

⁴¹ Hansard, Legislative Assembly, 6 November 2003 at p 1595 (Hon. John Pandazopoulos, Minister for Gaming).

attempt to conduct any type of investigation or inquiry into whether the Applicant has complied with each and every one of its obligations as the holder of the venue operator's licence, or to consider the nature of any enforcement action that may arise in the event that non-compliance is established. This includes any consideration as to whether there may or may not be grounds for the Commission to take disciplinary action against the Applicant.

143. In deciding whether to exercise its discretion to refuse to grant its approval to the Application, the Commission not only may, but should, give appropriate weight to relevant events in the past and to any stated intentions for the future. Specific to this Application, the Commission refers to the 2016 premises approval and the conditions imposed in relation to community contributions offered by the Applicant during that application. In the Commission's decision and reasons in that matter, the Commission placed weight on those community contributions in balancing the economic and social impacts of the proposal, and determined that it was appropriate to impose the conditions in order to secure those payments as part of the approval.⁴²
144. As part of this Application, the Applicant confirmed that it was willing to accept a condition to ensure the continued provision of \$30,000 per annum until 15 August 2022 (being the Historical Contributions), with an ongoing commitment to pay \$15,000 per annum (being the Additional Contributions). Although the Additional Contributions were initially only offered for a period of 10 years, the Applicant subsequently offered to make the Additional Contributions for as long as the additional EGMs were in operation at the Premises. The Applicant also proposed a condition requiring the Applicant to notify the Commission on an annual basis confirming that the community contributions for the relevant year had been paid in compliance with its obligations.
145. In his statement, Mr Eastmure acknowledged the underpayment of the Historical Contributions and provided the following reasons for the non-payments:
- (a) The Applicant was required to operate the Barwon Heads Hotel for an additional 12-month period (including the purchase 10 EGM entitlements) due to its existing lease obligations at that venue. In 2017, the Barwon Heads Hotel suffered operating losses of approximately \$500,000.
 - (b) Unexpected costs were also incurred while exiting the Barwon Heads Hotel at the end of 2017, including a payout figure to the landlord, staff entitlements, and make good costs. Together with the operating losses, the Applicant incurred a loss of "well over one million dollars".
 - (c) At the end of 2017, the Applicant was faced with a debt to the Australian Tax Office of over \$600,000, for which it was served a winding up notice.
 - (d) Mr Eastmure, along with the other directors of the Applicant, contributed all of their savings, borrowed additional sums of money and re-mortgaged their residential properties in order to pay off the bulk of its debts.
 - (e) Within its first year of operation, the Premises was making very little money, and the Applicant was struggling to pay suppliers and commitments due to the ongoing debt obligations.
 - (f) By the end of 2019, the Premises was becoming profitable however was forced to close for most of 2020 and into 2021 due to the COVID-19 pandemic.
146. Mr Eastmure also attached a summary table of the financial position of the Applicant across the relevant period, which confirmed the limited payments of community contributions as set out in paragraph 113 above and also indicated that while the Valley Inn Hotel had generated profits in the amount of approximately \$280,000, the Applicant incurred losses of approximately \$1.25 million as a result of operations at the Barwon Heads Hotel.
147. In a further statement to the Commission, Mr Eastmure stated that the Applicant was not able to refinance during 2020 and 2021 due to the COVID-19 pandemic and outstanding ATO debt. However, the Applicant was recently able to secure refinancing and had subsequently repaid the majority of outstanding community contributions during the period 4 to 7 March 2022, with the final outstanding amount being paid on 9 March 2022.

⁴² APD Group Pty Ltd at Valley Inn Hotel premises (Gaming-new premises) [2016] VCGLR 5 (23 March 2016).

148. At the Hearing, the issue of the late payment of community contributions was raised with Mr Eastmure. Mr Eastmure gave evidence that at around 2016-17 the Applicant was “financially stretched”, having purchased the Premises for \$2.7 million, spent \$3.1 million on renovating the Premises, on top of the losses being incurred through the Barwon Heads Hotel.⁴³ He stated that the Applicant had put all available funds into keeping the business operational, and that “we were well-aware of our obligations but we had no option but to defer them until the time that the Valley Inn was profitable and we ... could refinance and pay them as soon as we could.”⁴⁴
149. The Council submitted that although the Applicant may have belatedly paid the community contributions, it did not do so in compliance with the conditions that required the formation of a committee consisting of a Council representative and a representative from a local gambling support group, as well as a newspaper advertisement seeking applications from community groups to be considered by the committee. Under cross examination, Mr Eastmure gave evidence that he “forgot about” the conditions requiring the establishment of the committee.
150. Mr Eastmure gave evidence that the recipient organisations (bar one) were identified to the Commission and the Council during the 2016 premises approval application, and thought it would be acceptable to pay to those organisations.
151. Mr Eastmure stated that at the peak, the Applicant held debts of approximately \$9 million. Mr Eastmure stated that the Applicant either deferred payments with suppliers or entered into payment plans (such as with the ATO) and that eventually all of the Applicant’s financial obligations were met. He stated he didn’t seek a payment arrangement with the Commission as no one from either the Council or the Commission had contacted the Applicant seeking payment of the community contributions. The Applicant “put everything to the bottom of the priority list until someone asked for it”.⁴⁵ He concluded that as soon as the Applicant was able to pay the community contributions, it did so.
152. The Council also submitted that the Applicant had not taken any steps to notify the Commission in mid-2017 when it first identified that it would not be able to comply with its community contribution conditions. Mr Eastmure conceded that he should have notified the Commission, however was fighting for his business and family’s survival. Mr Eastmure gave evidence that he considered if the Applicant had made community contribution payments while subject of the ATO debt, the Applicant would have been wound up.
153. In its closing submissions, the Applicant submitted that all outstanding contributions “have now been made in accordance with the intent of the conditions imposed by the Commission despite the considerable unforeseen obstacles encountered by the Applicant arising from unexpected commercial difficulties in the transfer from the Barwon Heads hotel to the Valley Inn and then the impact of the Covid-19 restrictions”.⁴⁶ The Applicant also sought to distinguish its situation with that considered by the Commission in the Robin Hood Hotel matter, in that the Applicant has provided compelling evidence as to the reasons and circumstances surrounding the delay in payment, and that the Applicant has now paid all outstanding community contributions in full.⁴⁷
154. The Applicant also referred to a number of other decisions of the Commission where there had been a failure by the venue operator to comply with its licence conditions and the Commission had not exercised its discretion to refuse to grant an application that otherwise met the statutory criteria for approval. The Commission notes that it is not bound by its earlier decisions, and in any event finds that many of the examples provided by the Applicant can be distinguished on their individual facts and circumstances, which may include:

⁴³ Transcript, Mr Eastmure, Day 1, page 51.

⁴⁴ Transcript, Mr Eastmure, Day 1, page 52.

⁴⁵ Transcript, Mr Eastmure, Day 1, p 65.

⁴⁶ Applicant’s Closing Submissions, para 22.

⁴⁷ Applicant’s Closing Submissions, para 62.

- the relative weight placed on the impact as part of its consideration at the time of the original application;⁴⁸
- whether the obligation was imposed as a condition of the venue operator's licence (either at the time of the original application or in response to the subsequent application);⁴⁹
- the relative scale and/or amount of the outstanding obligation;⁵⁰ and
- any transfer of the relevant premises to a new venue operator between the original obligation and any subsequent application.⁵¹

155. The Council also referred to the Commission's ultimate discretion in its closing submissions. In summary, the Council submitted that:

- (a) The Applicant had consciously and deliberately refused to comply with, and remains in breach of, various conditions arising from the 2016 premises approval;
- (b) The Applicant failed to inform the Commission of its non-compliance until lodging the Application for an additional 10 EGMs at the Premises;
- (c) In failing to inform the Commission of its financial position and inability to pay community contributions and instead deciding to trade itself out of trouble "in defiance of its obligations under the venue operator's licence and the GR Act", the Applicant denied the Commission the opportunity to consider granting a deferral of those obligations;
- (d) The Applicant has not apologised to the Commission or shown any contrition or remorse for its non-compliance;
- (e) The Applicant commenced preparations for the Application sometime in the middle of 2021, and potentially incurred costs in doing so, which was many months before the Applicant paid the outstanding community contributions;
- (f) The Applicant's financial distress might mitigate, but it does not excuse, the Applicant's failure to comply with the conditions on its venue operator's licence;
- (g) For the last five years, the Applicant has treated compliance with its obligations under the venue operator's licence and the GR Act, as well as the Commission generally, with contempt.
- (h) The discretion under section 3.4.20(1) of the GR Act exists because the regulation of venue operators to operate EGM venues lawfully is central to the functions of the Commission, given that the Commission cannot be expected to monitor in real time compliance with all of the conditions on all of the venue operator's licences in Victoria.

156. The Commission refers to its reasons in relation to the 2016 premises approval and considers that the economic and social impacts of the community contributions offered by the Applicant formed a relevant part of the reasons of that approval. Of course, it is not known whether, but for the offered community contributions, the Commission would have reached the same decision in relation to the no-net detriment test.

157. The Commission refers to the purposes of Chapter 3 of the GR Act (outlined in section 3.1.1(2)), which include to "promote a competitive gaming industry with the aim of providing financial and social benefits to the Victorian community". Further, as expressed in its Robin Hood Hotel decision, the Commission considers that:

"those who operate in the gambling sector do so pursuant to a social, as well as a regulatory, licence. This failure to meet its social, if not legal, obligations to pay the Existing Contributions, together with a

⁴⁸ E.g. Richmond Football Club Ltd at Wantirna Club premises (Gaming-EGM increase) [2015] VCGLR 31 (24 July 2015), where the Commission did not place any weight on the proposed renovations due to funding uncertainty.

⁴⁹ E.g. Craigieburn Sporting Club Inc at Craigieburn Sporting Club premises (Gaming-EGM increase) [2012] VCGLR 38 (23 November 2012), where the scope of the original capital works were not a condition of the original application however completion of those original works (along with further works) were made a condition of the subsequent application.

⁵⁰ E.g. Benmara Pty Ltd at The Bridge Inn Hotel premises (Gaming-EGM increase) [2014] VCGLR 41 (11 November 2014), where the venue operator had made \$74,952 of the \$75,000 community contributions, a shortfall of \$48.

⁵¹ E.g. TTHL Pty Ltd at Torquay Hotel premises (Gaming - EGM Increase) [2018] VCGLR 26 (26 June 2018), where the commitments had been made by a previous venue operator and the premises had been transferred to a new venue operator.

non-commitment to rectify such a failure as part of this Application, is found, on balance, to be contrary to the broad policy principles of the GR Act outlined in the second reading speech mentioned ... above. References to “the highest standards of probity” and “accountability from the gambling sector” may or may not have had in mind the adherence by licensees to promises made to the Commission in the course of applications pursuant to the GR Act. However, in the present circumstances the Commission has come to the view that the level of accountability Victorians are entitled to expect of a licensee in the position of the Applicant is greater than has been demonstrated.”⁵²

158. The Commission considers that the specific circumstances of this case bring into question the same issues of probity and accountability as referred to above. Further, unlike the situation in the Robin Hood Hotel (in which an undertaking had been given in relation to community contributions – thus creating a social and perhaps not legally enforceable obligation), in the present case, the 2016 premises approval decision contained clear conditions legally requiring the annual community contributions to be paid, and paid in a timely manner and allocated by a specifically constituted committee following specified advertising. While the Applicant has now made the outstanding community contribution payments in this case, the Commission finds that the totality of the Applicant’s conduct in relation to its community contribution obligations arising out of the 2016 premises approval is inconsistent with its stated commitment to the very same community those funds were intended to support. Importantly, the Commission relies on the totality of the evidence including:
- (a) the conscious and deliberate decision of the Applicant to meet all of its business obligations in priority to, and in preference to, its regulatory obligations;
 - (b) this prioritisation which put the Applicant’s commercial needs ahead of the community benefit it was obliged to support (through the legal obligations imposed as conditions in line with the conditions proposed by the Applicant in 2016). This prioritisation even included the preference of preparation for and lodging this Application prior to making the outstanding payments;
 - (c) the non- or under-payment of the promised Historical Contributions occurred in each of the five years leading up to the Application in 2021, reflecting a continuing course of conduct rather than a single isolated incident;
 - (d) the failure of the Applicant to contact either the Council or the Commission to discuss the non-compliance between mid-2017 and late-2021 until the lodgement of the Application thus denying the Commission the timely opportunity to:
 - i. consider granting a deferral or restructuring of those obligations;
 - ii. conduct an investigation into the failure to comply; and/or
 - iii. take other action, as appropriate ; and
 - (e) the continued failure of the Applicant to make any attempt to meet its community contribution obligations in accordance with the terms of the conditions (which were put forward by the Applicant in 2016) and accordingly formed part of the 2016 premises approval conditions (i.e. the formation of the committee and the newspaper notification process). The Commission notes the Applicant’s evidence that the Applicant has not, and does not wish to form the committee for the remaining 2016 conditioned community contributions or for any newly conditioned community contributions if the Application were granted.
159. The Commission considers that the exercise of its discretion to refuse to approve the Application is consistent with furthering the objects of the GR Act and the broader policy principles underpinning it.
160. Having regard to these above considerations, the Commission considers that this is one of those relatively rare or exceptional cases where the ultimate discretion militates against an approval despite the ‘*no net detriment*’ test having been satisfied.

⁵² Robin Hood Hotel, para 140.

Decision on review

CONCLUSION

161. On the material that has been put before it, the Commission has determined that, despite the mandatory pre-conditions for approval set out in section 3.4.20(1) having been satisfied, it is appropriate for the Commission to exercise its discretion in this matter and refuse the Application.

162. The Application is therefore refused.

The preceding 162 paragraphs and the following Appendix A are a true copy of the Reasons for Decision of Ms Fran Thorn, Chair, and Ms Danielle Huntersmith, Commissioner.

Appendix A

Summary of economic and social impacts

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

Economic impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	<i>Expenditure on capital works</i>	59 – 66	<p>The Applicant intends to undertake the Works in the amount of \$2.1 million if the Application is granted. It is likely that a majority of the required contractors would be sourced from within the City of Greater Geelong, although as the proposed head contractor (Schiavello) is not resident within the Geelong LGA, a proportion of the total cost would not be retained within the local municipality.</p> <p>Short-term employment benefits that will arise during the refurbishment of the Premises, with a majority of the required contractors likely being sourced from within the City of Greater Geelong.</p> <p>Marginal weight.</p>
	<i>Supply contracts and complementary expenditure</i>	67 – 69	<p>The value of additional supply contracts was estimated to be \$406,000 per annum, with 11.6% (\$47,000) being fulfilled by local suppliers within the City of Greater Geelong.</p> <p>The Applicant estimated increased patronage in the order of 500 patrons per week, expected to generate approximately \$936,000 in complementary expenditure in its first year.</p> <p>There is some uncertainty as to the extent to which any increase in complementary expenditure would generate increased economic activity within the City of Greater Geelong, as opposed to transferred activity, given the strong local patronage at the Premises currently.</p> <p>Marginal weight.</p>

	Impact	Paragraph numbers	Comment relevant to weight
	<i>Additional employment</i>	70 – 74	<p>Employment benefits include the creation of 9.5 additional FTE positions, including 1.6 FTE positions within the expanded gaming room. As approximately 80% of the current 25-30 staff members of the Applicant live within the local area, the majority of the new positions would be taken by residents within the City of Greater Geelong.</p> <p>Additional employment of 9.5 FTE is a minor positive impact with limited significance to a municipality with an adult population of 212,437 and an unemployment rate that is significantly lower than the regional and State rate. There is also the possibility of employment transfer resulting from the impact of this Application on other venues within Geelong due to the anticipated increase in gaming and other complementary expenditure at the Premises.</p> <p>No weight to marginal weight.</p>
	<i>Increased gaming competition in the City of Greater Geelong</i>	75 – 79	<p>The Premises has five gaming competitors within a 2.5km radius and a further eight gaming competitors within a 5km radius. The range of estimated additional gaming expenditure for the Premises, if the Application is approved, to be between \$291,528 and \$356,311 in the first 12 months of trade post installation of the additional 10 EGMs.</p> <p>A transfer rate of 50% would result in between \$145,764 and \$178,155 new gaming expenditure within the City of Greater Geelong.</p> <p>No weight to marginal weight.</p>

	Impact	Paragraph numbers	Comment relevant to weight
	<i>Gaming expenditure not associated with problem gambling</i>	80 – 84	<p>The level of additional gaming expenditure generated from the Application would be between \$291,528 and \$356,311 in the first 12 months of trade, with a transfer rate of 50% resulting in new gaming expenditure estimated between \$145,764 and \$178,155 in the first 12 months of trade.</p> <p>The portion of new expenditure not attributable to problem gambling is an economic benefit. Various factors suggest that the extent of problem gambling is likely to be low, including the Premises' classification as a destination venue (albeit with some level of convenience to proximate residents), that the venue would be considered a relatively small one with 39 EGMs, and its limited operating hours of the gaming room. The Premises is located in an area of mixed relative socio-economic disadvantage, and one that is anticipated to experience ongoing population growth and gentrification. While there are areas of higher relative socio-economic disadvantage within 2.5 kilometres of the Premises, residents in those communities already have access to a number of other close EGM venues.</p> <p>No weight to marginal weight.</p>
Disbenefits	<i>Gaming expenditure associated with problem gambling and gambling related harm</i>	85 – 95	<p>The socio-economic profile of the Premises' catchment generally reflects that of Greater Geelong as a whole – being mixed, and moderate on average.</p> <p>There are areas within the Premises' catchment area that demonstrated high levels of disadvantage, in particular the SA1 in which the Premises is located and the South Geelong – Thomson – Breakwater area. These areas exhibit above average levels of low-income households, unemployment and housing stress.</p> <p>Certain mitigating factors (including, importantly, the relatively small size of the gaming room, the relatively short hours of operation and the RSG commitment and training of its staff at the Premises) will reduce the risk of gambling-related harms.</p> <p>Marginal weight.</p>

	Impact	Paragraph numbers	Comment relevant to weight
	<i>Diversion of trade from other gaming and non-gaming venues</i>	96 – 99	<p>At least 50% of anticipated increased gaming expenditure would be derived from other venues located within the City of Greater Geelong, having a negligible detrimental economic impact on other venue operators.</p> <p>The impact to local non-gaming businesses is the value of the new expenditure from this Application, and a portion of the complementary expenditure that may be transferred from other venues within Greater Geelong.</p> <p>No weight to marginal weight.</p>

Social impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	<i>Improved facilities enabling a greater range of services</i>	102 – 106	<p>The Works primarily consists of the addition of a new rooftop function space, together with some reconfiguration within the existing gaming room to accommodate the 10 additional EGMs.</p> <p>The community's access to, and use of, the proposed improved facilities at the Premises (including the creation of additional indoor and outdoor social spaces with the ability to host functions while maintaining existing bistro services for existing patrons) will provide a social benefit to the community of the City of Greater Geelong. This would not be a unique offering within Greater Geelong, and there was no evidence to suggest that there was significant unmet demand for such facilities generally.</p> <p>No weight to marginal weight.</p>
	<i>Increased gaming opportunities for those who enjoy gaming</i>	107 – 110	<p>Approval of the Application would have a positive effect of increasing gaming opportunities for those who enjoy gaming.</p> <p>The addition of a low number of EGMs to an existing venue with low utilisation rates and in a gaming market with high accessibility to EGMs is unlikely to have a discernible impact.</p> <p>No weight to marginal weight.</p>
	<i>Community contributions</i>	111 – 122	<p>A 2016 application to approve the Premises as suitable for gaming with twenty-nine EGMs was approved with a condition to make cash community contributions annually to the value of \$30,000 (indexed to CPI) until 15 August 2022.</p> <p>Due to financial difficulties, the Applicant had (at the time of making the Application) only paid \$1,547.14 (being less than 2%) of the \$133,993.80 payable in community contributions (a shortfall of \$132,446.66). The Applicant subsequently made community contribution payments to five community organisations across the period 4 to 9 March 2022 in the total amount of \$132,500.</p> <p>The Applicant is committing to community contributions in the amount of \$15,000 (indexed to CPI) per annum to organisations providing services or facilities to residents of the City of Greater Geelong. The Applicant's commitment to make the final \$30,000 payment does not form part of this Application.</p> <p>Marginal weight.</p>

	Impact	Paragraph numbers	Comment relevant to weight
Disbenefits	<i>Possibility of increased incidence and the potential impact of problem gambling on the community</i>	123 – 127	<p>There is potential for an increased risk in gambling-related harms as a result of this Application.</p> <p>Both the community of Greater Geelong and the residents of the Premises' catchment area exhibit socio-economic disadvantage and signs of economic vulnerability, being indicators of vulnerability to gambling-related harm.</p> <p>The size of a venue, its operating hours, its broad venue offer and its layout are protective factors against problem gambling. There is evidence of a strong culture of staff training and dedication to RSG practices, supported by an excellent level of staff knowledge.</p> <p>Marginal weight to low weight.</p>
	<i>Community attitude</i>	128 – 132	<p>There is some negative attitude within the City of Greater Geelong regarding the Application, evidenced by Council's opposition to the Application, the results of the community attitudes survey and the public submissions.</p> <p>Marginal weight.</p>