


## 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 McKinnon Hotels Pty Ltd to amend its venue operator licence to vary the number of electronic gaming machines at the approved premises, the McKinnon Hotel, located at 251 McKinnon Road, McKinnon from forty-five (45) to sixty (60).

<b>Commission:</b>	Ms Fran Thorn, Chair Mr Andrew Scott, Deputy Chair
<b>Date of Hearing:</b>	10 – 11 November 2022
<b>Date of Decision:</b>	13 December 2022
<b>Date of Reasons:</b>	13 December 2022
<b>Appearances:</b>	Ms Louise Hicks of Counsel for the Applicant, instructed by Hall and Thompson Lawyers Ms Karpaagam Shanmugam, Counsel Assisting the Commission
<b>Decision:</b>	The Commission has determined to grant the application subject to the conditions set out in Appendix A.
<b>Signed:</b>	
	<b>Fran Thorn</b>
	Chair

## Background

1. McKinnon Hotels Pty Ltd (**Applicant**) owns and operates the McKinnon Hotel, located at 251 McKinnon Road, McKinnon (**Premises**).
2. This is an application by the Applicant to the Victorian Gambling and Casino Control Commission (**Commission/VGCCC**) to amend its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the approved Premises, from forty-five (45) to sixty (60) (**Application**).
3. The relevant municipal authority is the City of Glen Eira (**Council**). By correspondence dated 2 August 2022, 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 15 August 2022, the Commission notified the adjoining municipalities of City of Bayside, City of Boroondara, City of Kingston, City of Monash, City of Port Phillip and City of Stonnington of the Application, none of which provided any comment or submission.
5. The Council responded to the Commission on 28 September 2022, advising that it intended to make an economic and social impact submission in relation to the Application, and did so on 14 October 2022.
6. The Commission considered the Application at a public inquiry on 10–11 November 2022 (**Hearing**). The Applicant was represented by Ms Louise Hicks of Counsel, instructed by Hall and Thompson Lawyers. The Council did not attend the hearing.

## Legislation and the Commission's task

### *Victorian Gambling and Casino Control Commission Act 2011 – Harm Minimisation*

7. In July 2022, the *Casino and Liquor Legislation Amendment Act 2022* (Vic) (**Act**) came into effect.
8. The Act made substantive changes to the regulatory powers of the VGCCC. Specifically, the Act amended the *Victorian Gambling and Casino Control Commission Act 2011* (**VGCCC Act**) and clarified the objectives of the VGCCC, including a specific reference to minimise gambling harm and problem gambling.
9. The Second Reading Speech explained that:

*“by embedding harm minimisation in the core functions and objectives of the VGCCC, this [Act] will ensure that it shapes every decision being made by the regulator and protect Victorians from gambling-related harm.”*
10. The objectives of the VGCCC Act are set out at section 8A, which provides:

*The objectives of the Commission are—*

  - (a) to maintain and administer systems for the licensing, supervision and control of gambling businesses and casinos, for the purpose of—*
    - (i) ensuring that the management and operation of gambling businesses and casinos remain free from criminal influence and exploitation through oversight of those gambling businesses and casinos and liaison with other regulatory agencies; and*
    - (ii) ensuring that gambling conducted or operated by a gambling business and gaming and betting in a casino are conducted or operated honestly; and*
    - (iii) fostering responsible gambling conducted or operated by a gambling business or in a casino; and*
  - (b) to minimise gambling harm and problem gambling.*
11. Section 9(1)(i) of the VGCCC Act provides that the functions of the Commission which will include among other things “to undertake activities to minimise gambling harm.”

12. Section 9(3) of the VGCCC Act provides, inter alia:

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

### **Gambling Regulation Act 2003**

13. 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.

14. 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.*

15. 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.*
16. 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.
17. 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—*
      - (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.*
18. 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.*
19. 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.*
20. The matters set out in sections 3.4.20(1)(a) and 3.4.20(1)(b) of the GR Act are discussed further at paragraphs 57 to 61 below.
  21. 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.<sup>1</sup>
  22. 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.<sup>2</sup>
  23. As such, the ‘*no net detriment*’ test is a composite test requiring consideration of a single net impact in economic and social terms on the well-being of the community.<sup>3</sup> The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.
  24. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.<sup>4</sup> On review, decisions in the Victorian Civil and Administrative Tribunal (**VCAT**) have held that for impacts that may be both economic and social – for example the benefits of gaming consumption – it does not matter whether the impact is considered on the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.<sup>5</sup>
  25. The Commission also notes the position taken by VCAT that:

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<sup>1</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.

<sup>2</sup> *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [42]-[43] per Warren CJ, Maxwell P and Osborn AJA.

<sup>3</sup> *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275, [332], [348] per Bell J cited in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [58] per Dwyer DP.

<sup>4</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [57] per Dwyer DP.

<sup>5</sup> See *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275, [352] per Bell J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [58] per Dwyer DP.

*A table of likely economic and social benefits and disbenefits, and with some comments relevant to the relative weight to be given to particular factors ... is a useful way of transparently dealing with the 'no net detriment' test, and might perhaps be considered for wider application.<sup>6</sup>*

The Commission has utilised this approach for the purpose of considering the 'no net detriment' test in this matter.

26. 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.<sup>7</sup> 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.<sup>8</sup>
27. In considering the exercise of this discretion:
  - (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;<sup>9</sup> 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.<sup>10</sup>
28. The Commission notes the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*<sup>11</sup> 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.
29. 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

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

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<sup>6</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [60] per Dwyer DP.

<sup>7</sup> 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).

<sup>8</sup> GR Act, section 3.4.20(2).

<sup>9</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [98] per Dwyer DP.

<sup>10</sup> *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] 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.

<sup>11</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [98].

- (a) 'application for approval of premises for gaming' form, received by the Commission on 26 July 2022 (**Application Form**);
  - (b) Social and Economic Impact Assessment prepared by Nick Anderson, Managing Director of NAB Group Pty Ltd (**NBA**), dated July 2022 (**NBA Report**), and the updated report dated 14 November 2022 (**NBA Addendum**);
  - (c) Expenditure Analysis prepared by Tim Stillwell of ShineWing Australia (**ShineWing**), dated 14 April 2022 (**ShineWing Report**) and the additional material dated 16 November 2022 being case studies analysing top-up applications (**ShineWing Case Studies**);
  - (d) Responsible Service of Gambling (**RSG**) management report prepared by George O'Keeffe of RSA Compliance Specialist, dated March 2022 (**Compliance Report**);
  - (e) inspection report of Mr O'Keeffe dated 8 September 2022 and 15 November 2022, and an email from Mr O'Keeffe dated 3 February 2022 following an inspection on that day;
  - (f) witness statements of Thomas Christopher Walker, director of the Applicant, dated 7 July 2022 and 8 November 2022;
  - (g) letter from Stannards Accountants and Advisors, dated 2 November 2022 and Hall & Thompson Lawyers dated 3 November 2022 relating to payment of community contributions from 2013; and
  - (h) Site Plan and Gaming Room Plan.
31. A report titled Economic and Social Impact Report, dated 21 October 2022 (**VGCCC Report**), prepared by VGCCC officers, was provided to the Applicant and Council and was considered by the Commission.
  32. The Council provided written economic and social impact submissions in opposition to the Application, dated 14 October 2022 (**Council Report**).
  33. The following reports, prepared by VGCCC officers, was provided to the Applicant and the Council and was considered by the Commission:
    - 'Economic and Social Impact Report', dated 21 October 2022 (**VGCCC Report**);
    - 'Pre-Hearing Size, Layout and Facilities Report', dated 17 October 2022 (**VGCCC Premises Report**); and
    - 'Pre-Hearing Inspection and Compliance Report in respect of the McKinnon Hotel', dated 28 September 2022 (**Compliance History Report**); and
    - 'Pre-Hearing Inspection and Compliance Report in respect of the Bleakhouse Hotel (also known as The Beach)', dated 28 September 2022.
  34. In addition, the Commission received submissions from the Alliance for Gambling Reform and two members of the public in opposition to the Application:
  35. The following witnesses gave oral evidence at the Hearing:
    - (a) Mr Thomas Walker, Director of the Applicant;
    - (b) Mr Nick Anderson, Managing Director of NAB Group;
    - (c) Mr Tim Stillwell, Partner of ShineWing;
    - (d) Mr George O'Keeffe, RSA Compliance Specialist;
    - (e) Mr Terence Williams, former Director of the Applicant from 2013 to 2018.
  36. Following the Hearing, the Commission was provided with written submissions by Ms Hicks of Counsel on behalf of the Applicant, dated 16 November 2022 (**Applicant Final Submissions**) and suggested conditions to attach to the approval (**Proposed Conditions**).
  37. The Commission Chair and Deputy Chair visited the Premises before the Hearing.

# Reason for decision

## BACKGROUND

### *Location*

38. The Premises is located in the City of Glen Eira,<sup>12</sup> a metropolitan municipality located approximately 15 kilometres south-east of Melbourne. Major suburbs include Caulfield, Bentleigh and Elsternwick. According to the VGCCC Report, the estimated total adult population is 125,897, ranking 17th of 31 metropolitan municipalities (1 being the most populated area).<sup>13</sup> The City of Glen Eira's estimated annual population growth of 1.3% in 2022 was projected by the DELWP to be slightly higher than the Victorian average of 1.2%.

### *Current gaming in the City of Glen Eira*

39. Currently, there are nine (9) gaming venues operating within the City of Glen Eira with approvals to operate a total of 652 EGMs. The maximum permissible number of gaming machine entitlements under which gaming may be conducted in the City of Glen Eira is 1,119 EGMs.<sup>14</sup> The success of this application would increase the number of licensed EGMs in this area to 667 EGMs.
40. The VGCCC Report notes that the City of Glen Eira has an EGM density of 5.18 EGMs per 1,000 adults, which is 16.1% more than the metropolitan LGA average (4.5) and 7.6% more than the State average (4.8). This ranks the City of Glen Eira as the 13<sup>th</sup> of 31 metropolitan LGA average in terms of EGM density per 1,000 adults.<sup>15</sup>
41. Similarly, the VGCCC Report identifies that the City of Glen Eira has a gaming venue density of 13,989 adults per gaming venue, which is 1.7% higher than the metropolitan LGA average of 13,759 and 24.3% higher than the State average of 11,253. This places the City of Glen Eira as the 13<sup>th</sup> of 31 metropolitan LGAs in terms of gaming venue density, indicating there are fewer gaming venues per 1000 adults within the City of Glen Eira than many metropolitan LGAs.<sup>16</sup>
42. Also as stated in the VGCCC Report, in the 2020-21 financial year, the City of Glen Eira had an average gaming expenditure of \$408.20 per adult, which is 0.55% more than the metropolitan LGA average (\$405.96) and 0.22% less than the State average (\$409.09). Applying the Applicant's estimate of increased gaming expenditure arising from the operation of the additional 15 EGMs at the Premises in the first year of operation would result in an increase in average gaming expenditure per adult from \$408.20 to \$409.47, which is an increase of 0.31% in the LGA.
43. In the 2020-21 financial year, the expenditure on gaming for the City Glen Eira was \$51,391,551.21. Of that amount, the Applicant's 45 EGMs at the Premises had generated \$2,157,874.00 (i.e. a Net Machine Revenue (NMR) of \$47,952.76), representing 4.1% of the total for the City of Glen Eira.

### *Socio-economic profile of the City of Glen Eira*

44. The City of Glen Eira is characterised by an above average socio-economic profile, in comparison to metropolitan municipalities. It is ranked 27<sup>th</sup> of 31 metropolitan LGA and 73<sup>rd</sup> of 79 LGAs in Victoria on the Socio-Economic Indexes for Areas (SEIFA) index of relative socio-economic disadvantage (IRSD),<sup>17</sup> indicating a lower level of disadvantage within the LGA (1<sup>st</sup> being the LGA with the greatest disadvantage).

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<sup>12</sup> Where reference is made in these reasons to the City of Glen Eira, this is a reference to the local government area (LGA).

<sup>13</sup> Department of Environment, Land, Water and Planning (DELWP), 2019.

<sup>14</sup> See the Ministerial Order under ss 3.2.4 and 3.4A.5(3A) of the GR Act, Victorian Government Gazette, No. S 318 Wednesday 20 September 2017, p.5.

<sup>15</sup> VGCCC Report, page 12.

<sup>16</sup> VGCCC Report, page 15.

<sup>17</sup> 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.



45. In relation to the immediate surrounding area of the Premises (i.e. within 2.5 kilometres),<sup>18</sup> the SEIFA IRSD index is 0.19% higher than the SEIFA IRSD index for the City of Glen Eira, and 6.49% 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 Glen Eira indicates a relative lower disadvantage than Victoria. 0.5% of SA1s<sup>19</sup> in the immediate surrounding area are in the 1st quintile<sup>20</sup> of SEIFA scores (below the metropolitan average of 16.2%). This also suggests that the area immediately surrounding the Premises experiences relatively lower levels of disadvantage than the metropolitan LGA average.
46. The VGCCC Report also indicates that:
- the unemployment rate in the City of Glen Eira is 2.79%. This is lower than the metropolitan LGA average of 4.87%, and the State average of 4.54%. The unemployment rate for the immediate surrounding area is 2.9%, being 41.0% lower than the metropolitan LGA average;
  - the equivalised household income in the City of Glen Eira is \$1,238.72, which is slightly higher than the metropolitan LGA average of \$1,082.94, and the State average of \$1,028.24. The equivalised household income in the immediate surrounding area is \$1,206.46, being 11.4% higher than the metropolitan LGA average;
  - housing stress in the City of Glen Eira is 74.4%, which is higher than the metropolitan average of 64.5%, and the State average of 60.2%. Housing stress in the immediate surrounding area is 72.5%, being 12.3% higher than the metropolitan LGA average; and
  - the homelessness rate in the City of Glen Eira is 4.3 per 1,000 adult population, is 16<sup>th</sup> highest of metropolitan LGAs. The homelessness rate within the immediate surrounding area is 7.4% lower than LGA rate and 29.7% lower than all metropolitan LGAs.

#### *Nature of the Premises*

47. The Premises has held a gaming licence since 1995 where it was originally approved for 25 EGMs. In 2013, the Applicant received approval to amend its venue operator's licence from the then Victorian Commission for Gambling and Liquor Regulation (**VCGLR**) to operate 45 EGMs at the Premises.
48. The Premises currently comprises a range of facilities including:
- restaurant with a total seat capacity of 224 (i.e. restaurant 100 seats, terrace 24 seats, deck 100 seats);
  - sports bar with TAB with a total seat capacity of 80;
  - functions room with capacity for seated dining of 90, and 150 seated for regularly hosts ticketed events and comedy nights; and
  - alfresco area for additional COVID-safe dining, construction of which was completed in July 2021 at a cost of \$350,000 (this enabled the business to continue to trade during the COVID high-risk period).<sup>21</sup>
49. The current hours of operation of the gaming room, sport bar and bistro are as follows<sup>22</sup>:
- Gaming room<sup>23</sup>
    - Monday to Wednesday                      9am – 12 midnight
    - Thursday to Saturday                      9am – 1am the following day

<sup>18</sup> 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.

<sup>19</sup> 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.

<sup>20</sup> 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).

<sup>21</sup> NBA Report, pages 10 and 22.

<sup>22</sup> Supplementary witness statements of Thomas Christopher Walker, director of the Applicant, dated 8 November 2022.

<sup>23</sup> The gaming room offer a minimum 8-hour shutdown window, with most of the week offering a 9-hour plus shutdown.

- Sunday 10am – 11pm
- (b) Sports bar
- Monday to Saturday 11:30am – 12 midnight
  - Sunday 11:30am – 11 midnight
- (c) Bistro area
- Monday to Saturday Lunch – 12pm to 3pm and Dinner – 6pm to 9pm
  - Sunday Lunch and Dinner – 12pm to 9pm

### Catchment area of Premises

50. 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’.<sup>24</sup> 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.
51. As the City of Glen Eira is a metropolitan municipality, typically the catchment area would be a 2.5 kilometre radius from the Premises. In this application, the VGCCC Report applies a 2.5 kilometre radius from the Premises.
52. The NBA Report and the ShineWing Report, proceeds on the basis of a catchment area of 2.5km radius of the Premises. The Council Report also proceeds on this basis.
53. Mr Stillwell’s view is that, empirically, the majority of gaming patrons visiting the McKinnon Hotel reside within the City of Glen Eira or the surrounding LGAs. The Commission notes that no patron locality survey was undertaken by the Applicant, which would have provided an indication of the percentage of patrons that reside within or outside of the City of Glen Eira that attend the Premises.
54. 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 2.5 kilometre around the Premises, the Commission considers that the appropriate primary catchment area of the Premises likely consists of the area within a 2.5km of the Premises.

### Issues for determination on review

55. As set out in paragraph 19 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.
56. 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.

#### A. Directions given under section 3.2.3

57. 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.
58. 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.

<sup>24</sup> 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).

## B. Municipal Cap

59. As noted in paragraph 39 above, the City of Glen Eira is subject to a municipal 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 1,119.
60. There are currently 652 licensed EGMs over nine (9) gaming venues within the municipality. The grant of this Application would result in the number of licensed EGMs within the LGA increasing to 667.
61. The Commission is satisfied that granting the Application would not cause the relevant municipal cap for gaming machines for the City of Glen Eira 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

62. 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 B) 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.
63. As noted in paragraph 24 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

64. 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*

65. A potential economic benefit is that arising from the expenditure on capital works. In this Application, no capital works are proposed by the Applicant which are dependent on the success of this Application.
66. The Applicant submitted that it had completed extensive outdoor renovations during the pandemic to offer COVID-safe dining facilities at a cost of \$350,000, which allowed the business to continue to trade during the COVID high-risk period.<sup>25</sup> The Applicant also submitted that it may undertake some changes to the gaming room layout to facilitate the proposed 15 EGMs as needed in the near future if the Application is granted.
67. At the Hearing, Mr Walker estimated that the potential cost of renovating the gaming lounge area would amount to \$650,000. In the NBA Addendum, Mr Anderson anticipated that at least 50% of this work will be commissioned and provided by local trades with the other 50% limited to specific industry experts and IT providers.<sup>26</sup> Accordingly, Mr Anderson argues that the 'local' component should be considered a community benefit resulting from the Application.<sup>27</sup> Mr Anderson considers the capital works to be an economic benefit that he ascribes a marginal weight.<sup>28</sup>
68. The Commission considers that no capital works are proposed as part of this Application. Furthermore, as there are no works described and no details of what renovations would actually occur should this Application be

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<sup>25</sup> NBA Report, page 22.

<sup>26</sup> NBA Addendum, page 5.

<sup>27</sup> NBA Addendum, page 5.

<sup>28</sup> NBA Addendum, page 5.

granted the Commission finds it difficult to ascribe any weight to this impact. Therefore, the Commission considers this potential renovation works ought not be counted in the benefit associated with expenditure in relation to capital works and, in the circumstances, gives it no weight.

### *Supply contracts*

69. The Applicant considers that the approval of the Application will result in an increase in supply contracts. These include the installation of the additional 15 EMGs, the software per EGM, servicing of the additional 15 EGMs, and provision of increased consumables for the new EGM users.
70. The NBA Report, states that most suppliers are located outside McKinnon from areas including Dandenong, Prahran, and Footscray.<sup>29</sup> However, the Applicant intends to source suppliers in areas such as McKinnon, Bentleigh and Highett going forward.<sup>30</sup>
71. The Applicant proposes to engage a local contractor to supply the additional machines, with a software cost of \$450 per month per machine. It is further intended to increase the current service agreement to include the servicing of the additional machines. This equates to an extra \$36 per month per machine, with a total per month of an additional \$540. It is estimated that the increase to ongoing consumables for the additional machines will result in an extra \$200 per month to local suppliers.<sup>31</sup>
72. At the Hearing, Mr Anderson and Mr Walker gave evidence that while the intention is (if there are subsequent renovation works to the gaming room) that these would be sourced from local contractors to undertake the review and upgrade of the gaming room layout. Accordingly, there may be specific trades that are not available locally and need to be procured from outside of the City of Glen Eira.
73. Mr Anderson considers the supply contracts to be an economic benefit that he ascribes a marginal to low weight, which reflects the uncertainty about the amount of the supply contracts to be given to local businesses.<sup>32</sup>
74. The Commission accepts the Applicant's evidence that there will be supply contracts in the amount of approximately \$540 per month per machine which have a positive economic benefit. However, with only \$200 per month able to be estimated as revenue to local suppliers, the benefit to the local municipality is only minimal and is not guaranteed. As such, the Commission gives this economic benefit no weight.

### *Complementary expenditure*

75. Complementary expenditure is the increased economic activity in the LGA, apart from gaming expenditure, that may arise if the Application is granted. However, the extent of this benefit will likely depend upon a range of factors, including the extent to which the expenditure is a consequence of new spending, for example, as a result of additional people coming to the municipal district as tourists or for business as compared to transferred complementary expenditure from other venues within the municipality, and the extent to which that complementary expenditure results in additional spending on local goods and services.
76. In the NBA Report, Mr Anderson anticipates that the closure of four<sup>33</sup> gaming venues within a 5 kilometre radius of the Premises will result in increased attendance of the restaurant and bar facilities, in particular given the recent introduction of the alfresco dining area. The additional 15 EGMs, whilst not directly encouraging this increased patronage, will provide additional entertainment options for patrons of these facilities. Mr Anderson finds this is an economic benefit that he gives a marginal to low weight.
77. The Commission accepts a degree of complementary expenditure will occur at the Premises, however on the evidence it is uncertain what the level of this will be. The Commission notes that no patron survey was conducted at the Premises, so the Commission is unable to estimate the level of patronage the Premises attracts predominately from the local area. There is insufficient evidence before the Commission to find that this would

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<sup>29</sup> NBA Report, page 24.

<sup>30</sup> NBA Report, page 24.

<sup>31</sup> NBA Report, page 24.

<sup>32</sup> NBA Addendum, page 6.

<sup>33</sup> The four venues that have closed their gaming rooms within a 5 kilometre radius of the Premises includes Bentleigh Club, South Oakleigh Club, East Malvern RSL, and Marine Hotel.

change should the Application be granted. For these reasons, the Commission finds complementary expenditure to be an economic benefit that it accords no weight to marginal weight.

#### *Additional employment*

78. The economic benefit of employment creation arising from this Application falls broadly into the category of longer-term employment benefits arising from the introduction of EGMs and increased patronage of facilities at the Premises.
79. Mr Walker gave evidence that 2 full-time equivalent employee (**FTE**) positions would be created with an estimated salary package of \$65,000 to \$70,000 per role if the Application is granted. He indicated that these 2 FTEs would be specifically gaming positions.<sup>34</sup> He noted that they currently employ 13 gaming staff who operate across two venues (McKinnon Hotel and Bleakhouse Hotel), the sharing of staff across the two venues gives the Applicant flexibility with potential for staff shortages in a COVID normal environment.<sup>35</sup>
80. In the NBA Addendum, Mr Anderson noted that “these roles are not mandatory as the current roster could service the proposed additional machines. The implementation of these two new roles is considered to be a responsible service of gaming (**RSG**) initiative as well as a commitment to better servicing patrons across the venue overall”.<sup>36</sup> Further, Mr Anderson noted that “these roles are considered ‘plum’ roles within the hospitality sector as they attract higher rate of pay compared to non RSG roles”.<sup>37</sup> With regard to these matters, Mr Anderson views employment creation to be a positive economic benefit that he gives a low to moderate weight.
81. The Commission is of the view that granting the Application will generate employment at the Premises, and this is a positive benefit. The Commission accepts the evidence given on behalf of the Applicant that if the Application is granted, this will result in the creation of the equivalent of 2 FTE positions at the Premises. Overall, the Commission considers the additional employment arising from the Application as positive and gives this benefit marginal to low weight.

#### *Gaming expenditure not associated with problem gambling*

82. As the economic category of gaming expenditure not associated with problem gambling includes consumption, then to the extent that such expenditure is not associated with problem gambling, it has been recognised that it can be treated as an economic positive.<sup>38</sup> 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.<sup>39</sup>
83. Mr Stillwell gave evidence that, adopting an empirical approach, he would anticipate:
  - (a) the level of additional gaming expenditure generated from the Application would be between \$152,771 and \$265,821 in the first 12 months of trade;
  - (b) due to the location of the Premises and the LGA being within a metropolitan area of Victoria, the expenditure would most likely be transferred expenditure from closed venues within the City of Glen Eira at the rate of 40%; and
  - (c) adopting the estimated level of 40% transferred expenditure, new gaming expenditure was estimated to be between \$91,663 and \$159,493 in the first 12 months of trade.
84. The Council Report did not provide any contrary evidence to Mr Stillwell's gaming expenditure figures for the Premises relating to the additional 15 EGMs at the Premises.
85. Mr Anderson's view is that “given the high rate of RSG compliance by the Premises according to the recent RSG audit, it is not anticipated that the additional new expenditure will be derived from an excessive number of

<sup>34</sup> Transcript, Mr Walker, Day 2, page 128.

<sup>35</sup> Witness statements of Thomas Christopher Walker, director of the Applicant, dated 7 June 2022.

<sup>36</sup> NBA Addendum, page 7.

<sup>37</sup> NBA Addendum, page 8.

<sup>38</sup> See *Romsey No. 2* [2009] VCAT 2275 [351] per Bell J.

<sup>39</sup> *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.

problem gamblers and hence non-problem gambling expenditure can be seen as a benefit to the community, allowing additional community contributions to be possible".<sup>40</sup> Mr Anderson assessed the new expenditure that is derived from non-problem gamblers as an economic benefit that he gives a weighting of low. The Commission does not accept Mr Anderson's view that the Applicant passing the audit checklist carried out by Mr O'Keefe constitutes a "high rate of RSG compliance" at the Premises. The Commission refers to the evidence of Mr O'Keefe at the hearing and notes that the checklist used for the audits was sourced from the VGCCC's webpage which consists of the minimum requirement to ensure compliance with the relevant gambling regulations and legislation<sup>41</sup> and does not involve a standard that is over and above the minimum requirements.

86. For the purposes of the '*no net detriment*' test, the Commission has considered the impact on the community of the LGA in which the Premises are located. In all the circumstances and with reference to the catchment area of the Premises, the Commission accepts the evidence of Mr Stillwell in relation to anticipated gaming expenditure as outlined in paragraphs 83 above.
87. In assessing the extent of the benefit of gaming expenditure not associated with problem gambling, the Commission has had regard to the evidence outlined in paragraphs 96 to 107 below, with respect to the incidence of problem gambling. Of the problem gambling that occurs within the Premises, the anticipated transfer rate suggests the majority of these are likely to be residents of McKinnon and its immediate surrounds. The expenditure rate from the introduction of the additional 15 EGMs is relatively modest in the context of the LGA. Therefore, the Commission finds that the portion of new expenditure not attributable to problem gambling is an economic benefit that is given a marginal weight.

#### *Increased gaming competition in the City of Glen Eira*

88. Increasing competition in gaming in the City of Glen Eira is a factor to be considered by the Commission in light of the statutory purposes of the Act<sup>42</sup> and the consumer benefits that derive from competition.
89. The VGCCC Report identifies that, on the basis of an estimated adult population in the City of Glen Eira of 125,897 for 2020/21, this Application would (if approved):
  - (a) increase the overall number of EGMs within the municipality by 15 to 667; and
  - (b) increase the EGM density of the municipality in which the Premises are situated from 5.18 to 5.30 EGMs per 1,000 people, to 4.5 EGMs per 1,000 people (compared with the metropolitan average of 4.5 EGMs per 1,000 people and State average of 4.8 EGMs per 1,000 people).
90. Mr Anderson submitted that "four venues have closed within the last year within a 5 kilometre radius of the Premises, thus competition for the patrons who have been left without a regular venue to attend will be heightened".<sup>43</sup> As such, the Application would provide "new types of EGMs that are not currently available in the area and seek to help meet the loss of entertainment options in the area".<sup>44</sup> The Commission notes that no further evidence has been provided about the "new types of EGMs" that will be offered at the Premises in comparison to the other venues in the McKinnon area.
91. In the ShineWing Report, Mr Stillwell describes that the Premises has three (3) gaming venue competitors within a 2.5km radius and a further 17 venue gaming competitors within a 5km radius. 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 \$152,771 and \$265,821 in the first 12 months of trade post installation of the additional 15 EGMs.
92. Mr Stillwell estimated that a transfer rate of 40% and calculated the amount of transferred expenditure within the City of Glen Eira would be between \$91,663 and \$159,493 821 in the first year of operation of the additional 15 EGMs. He also estimated that the grant of the Application would result in a 0.17% increase in the average

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<sup>40</sup> NBA Addendum, pages 8-9.

<sup>41</sup> Transcript, Mr O'Keefe, Day 2, page 90.

<sup>42</sup> See GR Act, s 3.1.1(2).

<sup>43</sup> NBA Addendum, page 8.

<sup>44</sup> NBA Addendum, page 8.

net gaming expenditure per adult in the LGA over the first 12 months of trade following the installation of the additional 15 EGMs at the Premises.

93. As detailed at paragraph 83 above, the evidence shows that, should the Application be approved, there will be a relatively low transfer rate from other venues in the City of Glen Eira.
94. The Commission finds that granting approval of the Application will increase gaming competition in the City of Glen Eira given the closure of gaming venues within the last year. However, the evidence shows the transfer rate is likely to be minimal. On balance, the Commission considers the impact of increased competition to be an economic benefit to which it gives no weight to marginal weight.

#### *Community contributions*

95. The Commission has taken into account 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 has given appropriate weight to this impact in its cumulative form at paragraphs 124 to 131 below.

#### *Gaming expenditure associated with problem gambling and gambling related harm*

96. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an economic disbenefit.<sup>45</sup> 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.
97. In assessing the extent of this disbenefit, the Commission has had regard to the expenditure evidence set out in paragraph 83 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.<sup>46</sup>

#### *The vulnerability of the City of Glen Eira and the catchment area*

98. The extent to which new gaming expenditure will be associated with problem gambling and the resulting harm, 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 Glen Eira, 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 financial harms arising from problem gambling.
99. The VGCCC Report identifies that, within the 2.5 kilometre radius of the Premises:
  - the SEIFA rankings show that, of the SA1s within a 2.5 kilometre radius of the Premises, 0.5% are in the 1<sup>st</sup> quintile, 1.04% in the 2<sup>nd</sup> quintile and 16.4% in the 3<sup>rd</sup> quintile.<sup>47</sup> The SEIFA for the 2.5 kilometre radius of the Premises (1,026.00) is 0.19% more than the City of Glen Eira, 5.41% more than metropolitan LGAs and 6.49% more than Victoria;<sup>48</sup>

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<sup>45</sup> The Commission recognises that, on review, the key likely disbenefit of 'problem gambling' has, for convenience, been treated under the heading of 'social impacts' in various instances: see *Mount Dandenong Tourist Hotel Pty 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.

<sup>46</sup> 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.

<sup>47</sup> VGCCC Report, page 36.

<sup>48</sup> VGCCC Report, page 35.

- the unemployment rate is 2.6%, which is lower than the unemployment rate in the City of Glen Eira Victorian and metropolitan LGAs averages at 2.79%, 4.54% and 4.87% respectively;<sup>49</sup> and
- housing stress is 85.7%, which is higher than housing stress in the entire City of Glen Eira, Victorian and metropolitan LGAs averages at 74.4%, 60.2% and 64.5% respectively.<sup>50</sup>

100. In the NBA Addendum, having applied the VGCCC scale of grading benefits and disbenefits, Mr Anderson grades problem gambling and gambling related harm and possible increase of incidence and impact of problem gambling as low.<sup>51</sup> Mr Anderson also gave evidence that he considers that the addition of 15 EGMs will result in a “very low risk” of problem gambling at the Premises in light of the “management’s high commitment to RSG”.<sup>52</sup> He also took in to account that the Premises is medium sized (i.e. small increase of EGMs to 60) so patrons will not be “lost in the crowd”.<sup>53</sup>

101. The Applicant submitted that the socio-economic profile of the Premises’ catchment indicates “very low levels of disadvantage”.<sup>54</sup> 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:

- *“the culture of the venue is “strong”, Management are clear on what they expect both of themselves and of staff in terms of service including harm minimisation;*
- *the Premises attracts patrons interested in its quality offer;*
- *it is a ‘destination venue’, being not positioned in a high foot traffic location that would induce a greater incidence of convenience gambling;*
- *the EGMs at the Premises have a low utilisation rate and NMR;*
- *the limited hours of operation of the gaming room each day – it being generally accepted that (absent a consideration of shift workers), there is a greater risk of problem gambling in the small hours of the morning, and the existence of other facilities at the Premises; and*
- *the installation of an additional 15 machines will have a negligible effect on accessibility in a physical sense as this is an existing premise”.<sup>55</sup>*

102. The Applicant has also proffered conditions relating to harm minimisation that intend to mitigate and minimise the harm that would flow from problem gambling if the Application were granted. These harm minimisation conditions proposed by the Applicant include:

- *“Before the installation of the additional EGMs the Venue Operator is to develop a Policy and Procedures Manual in consultation with the Venue Support Worker, which process is designed to adopt best practice and ensure harm minimisation in connection with the use of the EGMs at the Premises all to the satisfaction of the VGCCC;*
- *The Policy must include:*
  - steps to minimise harm from the operation of the EGMs, being steps not currently detailed in the AHA Code of Conduct and over and above the current VGCCC RSG requirements;*
  - House Rules detailing a Code of Conduct in respect to the Responsible Use of the EGMs which is to remain visible and on display in a prominent position in the Gaming Room at all times when the Gaming Room is open to the public to the satisfaction of the VGCCC;*

<sup>49</sup> VCGLR Report, page 39.

<sup>50</sup> VGCCC Report, page 32.

<sup>51</sup> NBA Addendum, page 14.

<sup>52</sup> NBA Addendum, page 14.

<sup>53</sup> NBA Addendum, page 14.

<sup>54</sup> Applicant Final Submissions, dated 16 November 2022, paragraph 102.

<sup>55</sup> Applicant Final Submissions, dated 16 November 2022, paragraph 103.



iii. *Staff and management training requirements on recognising customer distress and intervention techniques;*

- *Wherever practicable all entrances to the Gaming Room have frosted glass to obscure vision into the Gaming Room; and*
- *The Venue Operator will engage a recognised training organisation to train all staff in anti-money laundering (AML) and counter terrorism financing (CTF) using a know your customer approach*.<sup>56</sup>

103. It is noted that the Commission can impose conditions if it grants the Application and that these conditions can be as proposed by the Applicant or in another form that the Commission thinks appropriate.
104. The Commission notes from the VGCCC Report that the average net EGM expenditure per adult in the City of Glen Eira (\$408.20, based on spending in the 2020/21 financial year) is slightly higher than the metropolitan average (\$405.96), however less than the State average (\$409.09).
105. The Stillwell Report submitted that the Applicant's EGM utilisation record indicated that the Premises' gaming room did not operate at peak utilisation<sup>57</sup> (i.e. greater than 70%) at any time during the survey period. Arguably, there is "no peak demand" for EGMs at the Premises.<sup>58</sup>
106. In the Council Report, Council stated that both the City of Glen Eira and the residents of the Premises' catchment area display indicators of vulnerability to gambling-related harm. In particular, Council submitted that "the key features of the City of Glen Eira socio-demographic profile, namely age, employment status, income levels, mortgage and housing stress, ethnicity, language, and mental health demonstrate there are vulnerable members within the community who may be at risk of further disadvantage when exposed to gambling".<sup>59</sup> The Council also noted the harms from gambling are not limited to financial stress and may include harms to physical and mental health and relationship harms.
107. Overall, the Commission considers that with the mitigating factors (including, importantly, the harm minimisation conditions proffered by the Applicant, the relatively small size of the gaming room, the relatively modest 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 to low disbenefit. Issues relating to the negative social impacts associated with problem gambling are considered further in paragraphs 132 to 138 below.

#### *Diversion of trade from other gaming venues and retail facilities*

108. As detailed above at paragraph 83 above, Mr Stillwell gave evidence that 40% of gaming expenditure would be transferred from existing venues within the City of Glen Eira. Mr Stillwell also submitted that due to the location of the Premises and the LGA being within a metropolitan area, the gaming expenditure would most likely be transferred expenditure from existing venues within the City of Glen Eira (in particular, a large proportion from Boundary Hotel, Bentleigh RSL and Bentleigh Club with a small proportion from other venues within the City of Glen Eira and surrounding LGAs).<sup>60</sup>
109. The Commission accepts the Applicant's evidence that at least 40% of anticipated increased expenditure would be derived from other venues located within the City of Glen Eira. The Commission considers that a transfer rate of this size is not insignificant, however in light of the concentration and performance of gaming competitors within the market, the Commission finds that the diversion of trade will have a negligible detrimental economic impact on other venue operators.
110. 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 \$91,663 and \$159,493 in the first year of operation, and a portion of the complementary expenditure that may be transferred from other venues within McKinnon. 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 metropolitan LGA.

<sup>56</sup> Proposed Conditions, dated 16 November 2022, paragraphs 4, 5, 6 and 8.

<sup>57</sup> Stillwell Report, paragraph 8.1 – 'peak utilisation' is defined as where ostensible demand exceeds supply.

<sup>58</sup> Transcript, Mr Stillwell, Day 1, page 7.

<sup>59</sup> The Council Report, page 6.

<sup>60</sup> Stillwell Report, paragraph 9.7.

111. 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 Glen Eira because of this Application and considers it appropriate to attribute no weight to marginal weight to this impact.

#### *Conclusion on economic impacts*

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

## **Social impacts**

113. 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*

114. 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.

115. As noted at paragraphs 65 to 68 above, the Applicant submitted that no capital works are being offered to provide additional facilities or services as part of this Application.

116. The NBA Addendum, states that "snacks and beverages are to be offered in the bar during all hours that the gaming room is open, thus lessening risks of problem gamblers attending the venue only to play on the machines".<sup>61</sup>

117. At the Hearing, Mr Walker clarified that since the gaming room operates beyond the Sports Bar and the Bistro, snacks<sup>62</sup> and beverages are currently offered in the bar during all hours that the gaming room is open.<sup>63</sup> Accordingly, the Commission understands the intention is for the Applicant to continue the existing offering without expanding it in any way if this Application is granted.

118. The Commission finds that no capital works are guaranteed to occur as a result of this Application being granted. Further, the Commission notes that the snacks and beverages to be offered in the gaming room (as referred to in the NBA Addendum Report) is an existing practice at the venue and therefore is not actually a benefit that will arise as a result of the Application. As such, the Commission places a no weight on this social benefit.

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

119. Increased gaming opportunities are 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.

120. Mr Anderson's view is that the introduction of 15 EGMs would be considered a benefit for those who enjoy playing responsibly and ascribes a low weight.<sup>64</sup>

121. At the Hearing, 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%) at any time during the survey period.<sup>65</sup> The Commission notes that there was no specific data provided by the Applicant to evidence demand for more EGMs.

122. The Applicant acknowledged that given the mature gaming environment within the City of Glen Eira, current low utilisation rates at the Premises and given the high accessibility to EGMs to within the community is unlikely to have a discernible impact.<sup>66</sup>

123. Having regard to the evidence and submission made with respect to increased gaming competition in the City of Glen Eira and in view of the evidence and findings as to gaming expenditure set out in paragraphs 82 to 87

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<sup>61</sup> NBA Addendum, page 11.

<sup>62</sup> Snacks include a toasted sandwich menu, bowl of olives, nuts etc (see supplementary statement of Mr Walker, dated 8 November 2022, paragraph 7).

<sup>63</sup> Transcript, Mr Walker, Day 2, page 130.

<sup>64</sup> NBA Addendum, pages 11-12.

<sup>65</sup> Transcript, Mr Stillwell, Day 1, page 7.

<sup>66</sup> Applicant Final Submissions, dated 16 November 2022, paragraph 109.

above, the Commission finds that granting approval of the Application will serve the needs of non-problem gaming patrons. However, the Commission considers that the existing gaming environment within City of Glen Eira and the addition of 15 EGMs to an existing venue with low utilisation rates is unlikely to have a discernible impact. The Commission notes that this benefit is to be weighed against the disbenefit to local community members who wish to avoid EGMs (including both those who are problem gamblers and those who are not). Overall, the Commission considers this to be a social benefit and one on which it places marginal weight.

### Community contributions

124. In determining the net economic and social impact of applications of this nature, both the Commission<sup>67</sup> and VCAT<sup>68</sup> 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.
125. The Commission refers to the 2013 application to amend its venue operator's licence as suitable for gaming with 45 EGMs was approved.<sup>69</sup> In that matter, the Commission placed weight on the proffered community contributions in balancing the economic and social impacts of the proposal. As part of that approval, the Commission took into account the promise made by the Applicant to make cash and in-kind community contributions annually, but the submissions noted that such contributions would be made as follows: \$40,000 cash and \$20,000 in-kind (**Historical Contributions**). The Historical Contributions are considered by the Commission at paragraph 150 to 165 below.
126. In the NBA Addendum, Mr Anderson states that "community contributions currently account for approximately \$67,000 per annum, in cash and in-kind donations to local groups and clubs. The proposal will see this increase to \$100,000, approximately a 50% increase". He also states that the Historical Contributions were "somewhat adhoc in nature and not linked to any specific conditional Commission approval save for references to commitments made by previous venue operators back in 2013".<sup>70</sup>
127. Accordingly, Mr Anderson's view is that "this proposal is the opportunity to formalise a program and to create a consistent, yet fluid, community contributions set-up to ensure that support for current beneficiaries and others going forward is ensured annually".<sup>71</sup>
128. As part of this Application, the Applicant has proposed the following conditions relating to community contributions:
- (a) make community contribution in the amount of \$50,000 (increased each year by the increase in CPI) in cash and \$50,000 in-kind contributions to community groups and sporting clubs in the City of Glen Eira whilst the additional 15 EGMs are in operation at the Premises (**Contributions**); and
  - (b) the in-kind contributions and vouchers will be valued in terms of the actual cost of the product to the venue given away plus the lost profit margin to the venue.<sup>72</sup>
129. The Commission notes that the proposed conditions seek to differentiate between cash, vouchers and in-kind donations to ensure that the Applicant appropriately values the actual benefits to the local community groups. However, the Commission does not accept that the "lost profit margin to the venue" should form part of the actual value of the in-kind contributions and vouchers. Furthermore, the Commission does not consider that payments for commercial benefits (eg. sponsorship expenditure) should be counted as community contributions.
130. The Council Report states that it would like to see community contributions allocated to addressing these harms caused by gambling.

<sup>67</sup> See e.g., *Application by Richmond Football Club* [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

<sup>68</sup> 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.

<sup>69</sup> *Application by McKinnon Hotel Pty Ltd* [2013] VCGLR (29 April 2013) (Commissioners Owen and Powell).

<sup>70</sup> NBA Addendum, page 9.

<sup>71</sup> NBA Addendum, page 10.

<sup>72</sup> Proposed Conditions, dated 16 November 2022, paragraphs 1, 2 and 3.

131. Overall, the Commission considers that the effect of the proposed conditions is to commit the Applicant to community contributions in the amount of \$100,000 (i.e. \$50,000 in cash and \$50,000 in-kind donations) to community groups and sporting clubs in the City of Glen Eira. Accordingly, the Commission considers that the Applicant's commitment to formalise the community contribution program and to increase the overall amount would be a positive economic and social benefit and considers it appropriate to attribute marginal to low weight to this impact.

#### *Possibility of increased incidence and impact of problem gambling on community*

132. Wherever accessibility to EGMs is increased there is always a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, relationship breakdowns, emotional harms and other social costs. Associated with these costs, the Commission also has considered the economic cost of providing community support services to assist those experiencing such social harms. Accordingly, the Commission accepts there is potential for negative social costs through possible increased problem gambling.
133. The Commission refers to the evidence and findings set out in paragraphs 97 to 107 with respect to the economic impact of problem gambling on the community.
134. In the NBA Addendum, Mr Anderson state that the "protective factors of the Applicant's gaming industry performance record, the existing RSG measures and the destination location of the venue will serve to mitigate the risk of an increased incidence of problem gambling".<sup>73</sup> He stated that it's his "assessment that the potential for increased problem gambling in this area of McKinnon through the addition of 15 machines to an existing venue is low".<sup>74</sup>
135. In the Council Report, the Council submitted that both the City of Glen Eira and the residents of the Premises' catchment area display indicators of vulnerability to gambling-related harm. In particular, Council submitted that the key features of the City of Glen Eira socio-demographic profile, "namely age, employment status, income levels, mortgage and housing stress, ethnicity, language, and mental health demonstrate there are vulnerable members within the community who may be at risk of further disadvantage when exposed to gambling".<sup>75</sup>
136. Mr Walker gave evidence that there is a strong commitment to ongoing staff training and dedication to RSG practices at the Premises would be conducted in a safe and responsible manner. The Commission notes that the Applicant has proffered harm minimisation conditions set out at paragraph 102 above.
137. This Application will result in the addition of 15 EGMs in McKinnon, and the Commission finds that this will be associated with new expenditure as summarised in paragraph 83(c) above. In the Commission's view, the new expenditure arising from the Application is a modest but not insubstantial level of new expenditure.
138. The Commission is of the view that granting this Application might somewhat increase the incidence and impact of problem gambling in the City of Glen Eira, despite the relatively low signs of economic vulnerability of residents within the identified catchment area. In this respect the Commission nevertheless considers that the proposed harm minimisation conditions identified at paragraph 102 above would mitigate the impact to some extent. The Commission also notes that what will occur in relation to the RSG practices at the Premises should the Application be granted, and the conditions imposed, will be over and above the current legal requirements. As such, the Commission accepts that the disbenefit associated with problem gambling is a negative social impact upon which it places marginal to low weight.

#### *Community attitude*

139. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,<sup>76</sup> 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.

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<sup>73</sup> NBA Addendum, pages 15.

<sup>74</sup> NBA Addendum, page 16.

<sup>75</sup> The Council Report, page 6.

<sup>76</sup> 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.

140. The evidence before the Commission indicates that there has been a mixed community attitude towards the Application. In summary:

- the NBA Report includes correspondence from two local sporting groups in support of the Application;<sup>77</sup>
- the Council has made a submission in opposition to the Application but did not appear at the Hearing;
- the Alliance for Gambling Reform provided submissions to the Commission indicating concerns at the addition of the 15 EGMs, its impact on gambling-related harms and increase the risk of harm to the community;<sup>78</sup> and
- one member of the McKinnon community has made submissions to the Commission in opposition to the Application and indicated that the addition of the 15 EGMs “will only increase losses” in the community. Further, “as a community we should be looking to reduce the number of machines wherever possible”.<sup>79</sup>

141. Mr Anderson noted in the NBA Report that “there is a potential for negative community attitude arising from the granting of the Application”,<sup>80</sup> however he did not identify this as a factor and ascribe it any weight in his table of benefits and disbenefits.

142. The Commission notes that no community survey was conducted by the Applicant or the Council, therefore leaving the Commission without the capacity to further assess the extent of the broader community attitude.

143. Based on the material before it, the Commission is of the view the matters listed above at paragraph 140 represent a mixed attitude by the community of the City of Glen Eira to this Application. In the circumstances, the Commission considers it appropriate to attribute no weight to this social impact.

#### *Conclusion on social impacts*

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

### **Net economic and social impact**

145. 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 23 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.<sup>81</sup>

146. 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 B of these Reasons for Decision), the Commission is satisfied that the social and economic impact on the well-being of the community of the municipal district in which the Premises is located will not be detrimental to the well-being of the community of the LGA. The Commission is satisfied that the approval will result an impact that is finely balanced and marginally above neutral. 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**

147. 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.

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<sup>77</sup> NBA Report, Annexure 7.

<sup>78</sup> Submission from Alliance for Gambling Reform dated 3 November 2022.

<sup>79</sup> Submission from a member of the public, dated 30 October 2022.

<sup>80</sup> NBA Report, page 5.

<sup>81</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 at [52] per Dwyer DP.

148. 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.

149. 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

150. As noted in paragraphs 26 to 28 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.

151. In exercising its discretion whether or not to approve the Application, the Commission may take into account relevant matters.<sup>82</sup> These include broader policy considerations, drawn from the content and objectives of the GR Act as a whole.<sup>83</sup>

152. 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.<sup>84</sup>

153. 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 2013 application to amend its venue operator's licence as suitable for gaming with 45 EGMs was approved and the Historical Contributions (as discussed at paragraph 125 above).

### Applicant submissions

154. The Applicant submitted that it does not seek to draw any distinction between approvals where conditions are put in place or where undertakings are given. However, the Applicant acknowledged that the Community Contributions about which submissions were made in 2013 were "part of the deal".<sup>85</sup>

155. The Applicant submitted that "the business, which between 2013 and 2018 was in the hands of others in part, did its very best to make the contributions it had said it would" and Mr Terence Williams (former Director of the Applicant) "made it clear that the contributions took many different forms".<sup>86</sup>

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<sup>82</sup> Section 3.4.20(1)

<sup>83</sup> *Ocean Grove Bowling Club v Victorian Commission for Gambling Regulation* [2006] VCAT 1921.

<sup>84</sup> Hansard, Legislative Assembly, 6 November 2003 at p 1595 (Hon. John Pandazopoulos, Minister for Gaming).

<sup>85</sup> Applicant Final Submissions, dated 16 November 2022, paragraph 139.

<sup>86</sup> Applicant Final Submissions, dated 16 November 2022, paragraphs 140 and 141.

156. At the Hearing, Mr Williams gave evidence that he was in charge of making all of the contributions, which he recorded in an exercise book. However, he could not find this exercise book but his recollection about it was clear (in summary):

- Mr Williams gave evidence that “he was in charge of making all of the contributions, which he recorded in an exercise book. He has searched for that exercise book but could not find it but his recollection about it was clear”<sup>87</sup>; and
- Mr Williams also gave evidence that “at the end of each year 2013 -2018 he tallied up the 2 columns in “his exercise book” “cash and in kind” and in each year the two columns when added together exceeded \$60,000 in each year”.<sup>88</sup>

157. The Applicant submitted that “when assessing what might otherwise be termed in kind benefits such as dinners/flights not paid for but otherwise monetised by the recipient, the Commission ought to assess the benefit from the recipients’ point of view”.<sup>89</sup> Further, the Applicant did its best and in accordance with practices in other clubs, to satisfy its requirements to make community contributions.

158. The Applicant submitted that “the evidence demonstrates an ongoing dedication to assist its community, a dedication that was clearly communicated to the new management structure of Mr Walker in 2018 and which has been taken up by Mr Walker’s team”.<sup>90</sup>

159. The Applicant submitted that “this is not 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”.<sup>91</sup> Instead, it is an opportunity to formalise what has been in the past somewhat “ad hoc”.<sup>92</sup>

#### *Commission’s view on Applicant’s Submissions*

160. The Commission considers it is not appropriate to assess the value of community contributions as equal to the eventual amount earned by the recipient arising out of the monetization of those contributions. That is not what is meant by assessing the **benefit** (emphasis added) from the recipient’s point of view.<sup>93</sup>

161. In his evidence Mr Williams gave two examples of how the Applicant had valued its in-kind contributions.<sup>94</sup> In one example, a raffle for which a prize had been donated by the Applicant, Mr Williams said that he valued the amount of the contribution not as the cost of the prize, but as being the gross raffle ticket sales revenue. This approach was used by him on a number of occasions over the years he was in charge.

162. Quantifying the *benefit* from the recipient’s point of view in this application, attempts to equate *benefit* with the *value derived* from the contribution. Assessing the value of the benefit in this way entirely ignores the value of the planning, promotion and volunteer efforts of those within the recipient organisation to enhance the value of a contribution. To use the type of example given by Mr Williams, if the Applicant were to purchase a travel, accommodation and meals package for \$1,000 and then donate it to a recipient as a raffle prize, the value of its contribution should be assessed as \$1,000 rather than the gross (or even the net) revenue from the sale of raffle tickets. This is because in such an example, the Applicant would have done nothing to leverage the value of the actual prize beyond its \$1,000 cost. Any leverage in value to the recipient would have been entirely due to the efforts of the recipient itself.

163. Similarly, a community group could itself purchase such a prize for \$1,000 to promote the raffle and earn the same revenue. The only difference is that in one case it receives the prize as a donation (or “benefit”) instead of having to pay for it. The value of the benefit received *from the Applicant* is the amount of the donation (or, of

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<sup>87</sup> Applicant Final Submissions, dated 16 November 2022, paragraph 142.

<sup>88</sup> Applicant Final Submissions, dated 16 November 2022, paragraph 143.

<sup>89</sup> Applicant Final Submissions, dated 16 November 2022, paragraph 145.

<sup>90</sup> Applicant Final Submissions, dated 16 November 2022, paragraph 150.

<sup>91</sup> Applicant Final Submissions, dated 16 November 2022, paragraph 151.

<sup>92</sup> Applicant Final Submissions, dated 16 November 2022, paragraph 152.

<sup>93</sup> 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.

<sup>94</sup> Transcript, Mr Williams, Day 2, page 72.

not cash, its cost of purchase). The value of the donated prize - the community contribution - is therefore, from the recipient's point of view, \$1,000.

164. The Commission intends to adopt this approach to valuing in-kind contributions whenever appropriate. Conditions set out in Appendix A in relation to community contributions spell this out.

165. With regard to the submissions on the Commission's "ultimate discretion", it notes that this Application includes a way of formalising and clarifying the community contributions (both cash and in-kind). Further, the Commission accepts that this case is not 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.

## Decision on review

### CONCLUSION

166. On the material that has been put before it, the Commission has determined that the mandatory pre-conditions for approval set out in section 3.4.20(1) have been satisfied in that the "no net detriment" test has been satisfied and that in exercising its discretion it is appropriate, as stated in paragraph 165, to grant the Application.

167. The Application is therefore granted subject to the conditions set out in Appendix A.

***The preceding 167 paragraphs are a true copy of the Reasons for Decision of Ms Fran Thorn, Chair, and Mr Andrew Scott, Deputy Chair.***



# Appendix A

*The conditions of the Decision are conditions of the venue operator licence dated 13 December 2022 to vary the number of EGMs permitted in the approved premises, McKinnon Hotels Pty Ltd, located at 251 McKinnon Road, McKinnon (the Premises) from from forty-five (45) to sixty (60), imposed under section 3.4.20(3) of the Gambling Regulation Act 2003.*

## 1. Harm Minimisation

- (a) Before the installation of the additional 15 EGMs (**Additional EGMs**) at the Premises the Venue Operator must develop a policy and procedures manual in consultation with the relevant Venue Support Worker designed to adopt best practice and ensure harm minimisation in connection with the use of all EGMs at the Premises (**Policy**).
- (b) The Policy must include:
  - i. steps the venue will take to minimise harm from the operation of all the EGMs, over and above any steps or existing requirements currently detailed in the AHA Code of Conduct, the current VGCCC Gambling Venue Checklist and RSG requirements set out in the GR Act/regulations etc; and
  - ii. relevant nominee, staff and management training on recognising customer distress and intervention techniques over and above existing mandatory RSG training requirements.
- (c) Before the installation of the Additional EGMs at the Premises, the Venue Operator must submit a draft copy of the Policy to the VGCCC. If the VGCCC request changes be made to the draft Policy, then the Venue Operator must provide an updated Policy to the VGCCC.
- (d) The Policy must remain visible and on display in a prominent position in the Gaming Room at all times when the Gaming Room is open to the public.
- (e) The Policy must be implemented and complied with at all times any EGMs are in operation at the Premises.
- (f) The nominee or a senior officer of the Venue Operator must provide an attestation on a yearly basis to the VGCCC that the gaming room is being operated in compliance with the Policy.
- (g) Where the VGCCC determines that the Venue Operator has not implemented or has breached the Policy, and the failure to implement or breach of the Policy is ongoing, the VGCCC may direct the Venue Operator to cease operating any of the EGMs at the Premises until such time as the matter is rectified to the satisfaction of the VGCCC.
- (h) Wherever practicable all entrances to the Gaming Room have frosted glass or other means to obscure vision into the Gaming Room.

## 2. Community Contributions

- (a) The Venue Operator will make cash contributions annually in the sum of \$50,000 (increased each year by CPI) (**Cash Contributions**) and in-kind contributions annually in the sum of \$50,000 (**In-kind Contributions**) for each financial year during which any of the Additional EGMs are in operation at the Premises.
- (b) The Cash Contributions and In-kind Contributions will be allocated each financial year to community groups and sporting clubs in the City of Glen Eira.

- (c) The In-kind Contributions will be valued in terms of the actual cost to the Venue Operator of the goods or services contributed to community groups and sporting clubs.
- (d) The Venue Operator must keep detailed financial records of the Cash Contributions and In-kind Contributions and will provide financial accounts evidencing the contributions to the VGCCC on request.
- (e) The Venue Operator must provide a statutory declaration to the VGCCC confirming the Cash Contributions and In-kind Contributions are allocated in full by 30 June each financial year as required in condition 2(a).
- (f) If the Cash Contributions and In-kind Contributions are not allocated in full each financial year as required in condition 2(a), the operation of the Additional EGMs must cease immediately for so long as those contributions (or part thereof) remain outstanding.

### 3. Other conditions

- (a) The Venue Operator must ensure that food and drink is made available to patrons at all times the gaming room is in operation.
- (b) The Venue Operator will engage an external training organisation to provide Money Laundering (**AML**) and Counter Terrorism Financing (**CTF**) risk awareness training to the nominee, staff and management using a know your customer approach (**AML/CTF Risk Awareness Training Program**).
- (c) The AML/CTF Risk Awareness Training Program must be a written plan that shows how the nominee, staff and management are instructed about the following:
  - i. the Venue Operator's obligations under Australia's AML/CTF law;
  - ii. the consequences of not complying with AML/CTF legislation;
  - iii. the type of money laundering (ML) or terrorism financing (TF) the Premises might face and the consequences of this risk; and
  - iv. how the Venue Operator will meet their obligations, including processes and procedures to identify, manage and mitigate this risk.<sup>95</sup>
- (d) Where the VGCCC determines that the Venue Operator has not complied with conditions 3(a), 3(b) and/or 3(b)(i)-(iv) above, the VGCCC may direct the Venue Operator to cease operating any of the EGMs at the Premises until such time as the matter is rectified to the satisfaction of the VGCCC.

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<sup>95</sup> Source: AUSTRAC webpage '[Employee training: AML/CTF risk awareness training program | AUSTRAC](#)'.

## Appendix B

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>	65 to 68	<p>No capital works are proposed as part of this Application. The Applicant also submitted that it may undertake some changes to the gaming room layout to facilitate the proposed 15 EGMs as needed in the near future if the Application is granted.</p> <p>As there are no works described and no details of what renovations would actually occur should this Application be granted the Commission finds it difficult to ascribe any weight to this impact.</p> <p><b>No weight.</b></p>
	<i>Supply contracts</i>	69 to 74	<p>Applicant's evidence that there will be supply contracts in the amount of approximately \$540 per month per machine which have a positive economic benefit. However, with only \$200 per month able to be identified as going to local suppliers, the benefit to the local municipality is minimal.</p> <p><b>No weight.</b></p>

	Impact	Paragraph numbers	Comment relevant to weight
	<i>Complementary expenditure</i>	75 to 77	<p>A degree of complementary expenditure will occur at the Premises, however it is uncertain on the evidence what this level will be.</p> <p>The Commission notes that no patron survey was conducted at the Premises so the Commission is unable to estimate the level of patronage the Premises attracts predominately from the local area.</p> <p>There is insufficient evidence before the Commission to find that this would change should the application be granted.</p> <p><b>No weight to marginal weight.</b></p>
	<i>Additional employment</i>	78 to 81	<p>Employment benefits include the creation of 2 additional FTE positions.</p> <p>Estimated salary package of \$65-70K per role if the Application is granted.</p> <p>The implementation of these two new roles is considered to be a responsible RGS initiative as well as a commitment to better servicing patrons across the venue overall.</p> <p><b>Marginal to low weight.</b></p>
	<i>Gaming expenditure not associated with problem gambling</i>	82 to 87	<p>The level of additional gaming expenditure generated from the Application would be between 152,771 and \$265,821 in the first 12 months of trade, with a transfer rate of 40% resulting in new gaming expenditure estimated between \$91,663 and \$159,493 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 to medium one with 60 EGMs, and its limited operating hours of the gaming room. The Premises is located in an area of low socio-economic disadvantage, and residents in this community already have access to a number of other close EGM venues.</p> <p><b>Marginal weight.</b></p>

	Impact	Paragraph numbers	Comment relevant to weight
	<i>Increased gaming competition in the City of Glen Eira</i>	88 to 94	<p>The Premises has three gaming competitors within a 2.5km radius and a further 17 gaming competitors within a 5km radius. The range of estimated additional gaming expenditure for the Premises, if the Application is approved, to be between \$152,771 and \$265,821 in the first 12 months of trade post installation of the additional 15 EGMs.</p> <p>A transfer rate of 40% would result in between \$91,663 and \$159,493 new gaming expenditure within the City of Glen Eira. It is also estimated that the grant of the Application would result in a 0.17% 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 15 EGMs at the Premises.</p> <p>The Commission finds that granting approval of the Application will increase gaming competition in the City of Glen Eira by providing an additional venue at which patrons may choose to play EGMs. On the other hand, the evidence shows the transfer rate is likely to be minimal. On balance, the Commission considers the impact of increased competition to be an economic benefit to which it gives low weight.</p> <p><b>No weight to marginal weight.</b></p>
<b>Disbenefits</b>	<i>Gaming expenditure associated with problem gambling and gambling related harm</i>	96 to 107	<p>The socio-economic profile of the Premises' catchment generally reflects that of City of Glen Eira as a whole – being low level of disadvantage.</p> <p>Certain mitigating factors including, importantly, the harm minimisation conditions proffered by the Applicant, the relatively small size of the gaming room, the relatively modest 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><b>Marginal to low weight.</b></p>

	Impact	Paragraph numbers	Comment relevant to weight
	<i>Diversion of trade from other gaming and non-gaming venues</i>	108 to 111	<p>At least 40% of anticipated increased gaming expenditure would be derived from other venues located within the City of Glen Eira, 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 City of Glen Eira.</p> <p>The Applicant submits that a transfer rate of this size is not insignificant, however in light of the competitive market, the closure of two venues and otherwise the relative stability and of the affected venues and maturity of the market, the diversion of trade will have a negligible detrimental economic impact on other venue operators.</p> <p><b>No weight to marginal weight.</b></p>

## Social impacts

	Impact	Paragraph numbers	Comment relevant to weight
<b>Benefits</b>	<i>Improved facilities enabling a greater range of services</i>	114 to 118	<p>No works are being offered to provide additional facilities or services.</p> <p>Only snacks and beverages are to be offered in the bar during all hours that the gaming room is open, thus lessening risks of problem gamblers attending the venue only to play on the machines.</p> <p><b>No weight.</b></p>
	<i>Increased gaming opportunities for those who enjoy gaming</i>	119 to 123	<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><b>Marginal weight.</b></p>
	<i>Community contributions</i>	124 to 131	<p>As part of this Application, the Applicant has proposed the following conditions relating to community contributions in the amount of \$50,000 (increased each year by the increase in CPI) in cash and \$50,000 in-kind contributions to community groups and sporting clubs in the City of Glen Eira whilst the additional 15 EGMs are in operation at the Premises.</p> <p><b>Marginal to low weight.</b></p>
<b>Disbenefits</b>	<i>Possibility of increased incidence and the potential impact of problem gambling on the community</i>	132 to 138	<p>A proportion of total gaming expenditure at the Premises will be associated with problem gambling contributed by gaming patrons at the Premises.</p> <p>Application will result in the increase of 15 EGMS in McKinnon, and this will be associated with new expenditure, the majority of which will come from residents of McKinnon and its immediate surrounds.</p> <p>Both the community of Glen Eira and the residents of the Premises' catchment area exhibit low signs of socio-economic disadvantage and economic vulnerability. However, granting this Application has the potential to somewhat increase the incidence and impact of problem gambling in the City of Glen Eira. The proposed harm minimisation conditions identified above at paragraph 102 above would mitigate and minimise the impact to some extent.</p> <p><b>Marginal to low weight.</b></p>

	Impact	Paragraph numbers	Comment relevant to weight
	<i>Community attitude</i>	139 to 143	<p>There were a number of submissions to the Commission in opposition to the Application from individuals, associations and community organisations.</p> <p>No community attitudes survey was undertaken by the Applicant or Council.</p> <p>Overall, the Commission is satisfied that there is a mixed attitude by the community of the City of Glen Eira.</p> <p><b>No weight.</b></p>



