


# Decision and reasons for decision and Corrigendum

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Action 2003* by Doxa Community Club Inc to amend its venue operator's licence to vary the number of electronic gaming machines at the approved premises, Clocks at Flinders Street Station, located at Shop 17, Flinders Street Railway Station, Melbourne from one-hundred (100) to one-hundred and five (105).

<b>Commission</b>	<b>Andrew Scott, Deputy Chair</b> <b>Claire Miller, Commissioner</b>
<b>Date of decision</b>	22 March 2024
<b>Date of reasons</b>	4 April 2024
<b>Date of corrigendum</b>	4 April 2024
<b>Decision</b>	The application is granted subject to the conditions set out in Appendix B*
<b>Signed</b>	
	Andrew Scott
	Deputy Chair

1. \* At Appendix B of this Decision and Reasons for Decision,
  - a. substitute all references to "the Condition" with "the Additional Condition".
  - b. in Condition 1.5, substitute the words "1.1" with the words "1.2".
  - c. substitute the words in Condition 3.12 with the words 'Not used'.
  - d. In Condition 3.2.4.3, substitute the words "6 am" with "close".

## Background

1. Doxa Community Club Inc (**Applicant**) owns and operates Clocks at Flinders Street Station, located at Shop 17, Flinders Street Railway Station, Melbourne (**Venue**).
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 (**licence**) to vary the number of electronic gaming machines (**EGMs**) operating at the Venue from one-hundred (100) to one-hundred and five (105) (**Application**).
3. The relevant municipal authority is the City of Melbourne (**Council**). Council notified the VGCCC by letter dated 23 January 2024 that, following extensive consultation within the Council, it had decided not to undertake to make a submission opposing the Application under section 3.4.19 of the *Gambling Regulation Action 2003* (**the GR Act**).

## Role of the Commission

4. An application to amend a licence to increase the number of EGMs at a venue is a serious matter. It concerns permission to conduct a legitimate commercial recreational activity which has the potential to present a significant risk to individual players, their families and friends, as well as the wellbeing of the community.
5. Minimising the harm caused by gambling is central to the Commission's functions. The Commission has published a position statement on harm minimisation<sup>1</sup>. Protecting patrons, their families and the community from gambling harm is at the centre of everything the Commission does. The Commission is now embedding a harm minimisation focus into every element of its regulatory activity, including how it evaluates all licencing approvals and applications, including this Application.

## Legislation and the Commission's task

6. This Application must be determined in accordance with the relevant provisions of the GR Act. In summary, the Commission must refuse the Application unless:
  - a. the Commission is satisfied that the net economic and social impact of the amendment to the Applicant's licence will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located (the no net detriment test);
  - b. the Commission is satisfied that the amendment of the licence does not conflict with a ministerial direction, if any, given under section 3.2.3 of the GR Act; and
  - c. 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 granting of the Application<sup>2</sup>.
7. If the Commission is satisfied that all of the criteria listed above, including the no net detriment test, are met, it still has an ultimate discretion as to whether or not to grant the approval<sup>3</sup>. Having regard to the

<sup>1</sup> [https://www.vgccc.vic.gov.au/sites/default/files/our\\_position\\_on\\_gambling\\_harm.pdf](https://www.vgccc.vic.gov.au/sites/default/files/our_position_on_gambling_harm.pdf)

<sup>2</sup> The Commission must also refuse an application 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, unless the Commission is satisfied that the management and operation of the approved venue and the proposed approved venue are genuinely independent of each other. This circumstance is not relevant to this Application.

<sup>3</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

Commission's objective of minimising gambling harm and problem gambling, the level and impact of harm minimisation activities by the Applicant is highly relevant to whether this discretion is exercised. Importantly for this Application, the Applicant gave its acceptance in-principle of the harm minimisation conditions set out at Appendix B (**Conditions**). But for this acceptance, which goes above and beyond the levels of harm minimisation mandated by law, the Commission would have been likely to have attributed greater weight to the gambling harm detriment and thus may have been closer to finding that there was a net detriment associated with the Application.

8. The relevant legislation is set out in **Appendix C**, along with commentary on consideration of that legislation by judicial authorities and decisions of the Victorian Civil and Administrative Tribunal (**VCAT**).

## Material before the Commission

9. The Applicant provided the Commission with materials in support of the Application between 23 October 2023 and 8 March 2024 which the Commission has had regard to when making this decision. The Commission makes reference to the following material in this decision and reasons:
  - a. *Social and Economic Impact Assessment* prepared by Ratio Consultants dated 5 September 2023 (**Ratio Report**).
  - b. *Clocks at Flinders Street Station – Expert's Report in Response of Application to vary the number of Electronic Gaming Machines* prepared by Tim Stillwell dated 13 October 2023 (**SW Report**).
  - c. *Responsible Gambling Compliance Report – August 2023 – Clocks at Flinders Street Station* (**RSG Report**).
  - d. *Letter from Applicant to the VGCCC dated 20240130*.
  - e. *Addendum Report to VGCCC – Clocks at Flinders Street Station* prepared by Ratio Consultants dated 15 February 2024 (**Ratio Addendum Report**).
  - f. *Applicant Addendum Submission 20240308*.
10. The following reports, prepared by VGCCC Officers, were provided to the Applicant and considered by the Commission:
  - a. *Pre-Hearing Inspection and Compliance Report* dated 15 December 2023 (**Compliance History Report**);
  - b. *Pre-Hearing Size, Layout and Facilities Report* dated 13 December 2023 (**VGCCC Venue Report**); and
  - c. *Economic and Social Impact Report – EGM Increase* dated 21 December 2023 (**VGCCC Report**).
11. The Commission received letters from Council dated 23 January 2024 (**Council Letter**) and the Alliance for Gambling Reform dated 29 February 2024 (**AGR Letter**). The Council Letter said that Council supported the imposition of the proposed harm minimisation Conditions on the Applicant's venue operator's licence should the Application be approved.

## Hearing on the papers

12. The *Victorian Gambling and Casino Control Commission Act 2011* (**VGCCC Act**) states that the Commission may conduct meetings and inquiries in public or private. Relevantly, inquiries relating to proposals to amend a venue operator's licence to increase the number of EGMs permitted in an approved venue by more than 10% within a two year period must be determined in public unless special circumstances exist under section 28(3)<sup>4</sup> of the VGCCC Act.

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 of the GR Act).

<sup>4</sup> See section 28(2)(g)(iii)(iv) of the VGCCC Act.

13. As the number of additional EGMs requested in this Application (and within the previous two years) is less than 10% of the existing number of EGMs, (and there have been no other EGM increase applications in the last two years), there is no requirement for public hearing to determine the Application.
14. In the light of the foregoing and having regard to the proposed Conditions that the Applicant and the Council agreed to in-principle (should the Application be approved), the Commission determined to hear this matter in private on the papers.

## The Venue and its surrounding area

### Location

15. The Venue is in the City of Melbourne (**LGA**)<sup>5</sup>, a metropolitan municipality located at the centre of Melbourne that covers an area of 37 square kilometres. The Venue is in Flinders Street Station facing toward Swanston Street and Federation Square.
16. According to the VGCCC Report, the estimated total adult population of the LGA is 197,622 making it the 3<sup>rd</sup> most populous metropolitan municipality<sup>6</sup>. The LGA's annual rate of population growth of 3.68% in 2023 is projected by the Department of Transport and Planning (**DTP**) to be higher than the Victorian average of 1.1%<sup>7</sup>.

### Current gaming in the City of Melbourne

17. Currently, there are nine (9) gaming venues operating within the LGA with approvals to operate a total of 702 EGMs with attached entitlements. The LGA is a partially capped region and the Melbourne CBD, where the Venue is located, is in the 'designated area' part of the LGA which does not have any caps or municipal limits<sup>8</sup>.
18. The LGA is ranked 6<sup>th</sup> of 31 metropolitan municipalities in relation to adults per venue. Gaming venue density is an indicator for which a high result means relatively fewer gaming venues and is considered to be a protective factor or positive result.
19. The VGCCC Report notes that the LGA has an EGM density of 3.55 EGMs per 1,000 adults, which is 18.5% less than the metropolitan LGA average (4.4) and 4.7% less than the State average (4.7). This ranks it as the 23<sup>rd</sup> of 31 metropolitan LGA average in terms of EGM density per 1,000 adults<sup>9</sup>.
20. The VGCCC Report also notes that in the 2022-23 financial year the LGA had an average gaming expenditure (i.e. net losses) of \$436.82 per adult, which is lower than the metropolitan average (\$548.12) and State average (\$542.56). The LGA is ranked 21<sup>st</sup> of 31 metropolitan municipalities for expenditure per adult. Applying the Applicant's estimate of increased gaming expenditure arising from the operation of the additional five EGMs at the Venue, the first year of operation would result in an increase in average gaming expenditure per adult from \$436.82 to \$437.31, which is an increase of 0.11% in the LGA.
21. In the 2022-23 financial year, the expenditure (player losses) on gaming for the LGA was \$86,325,377.17. The LGA is ranked 31<sup>st</sup> of 31 metropolitan municipalities with gaming machines by indexed real adult gaming expenditure, with 1<sup>st</sup> being the LGA with the highest expenditure.
22. In terms of real adult expenditure, the LGA experienced a general decreasing trend from 2010-11 to 2020-21, before experiencing a rapid increase from 2020-21 to 2022-23. This is consistent with metropolitan areas.

### Socio-economic profile of the City of Melbourne

23. The Commission accepts the following extracts from the VGCCC Report as an accurate summary of the socio-economic profile of the LGA:

<sup>5</sup> Where reference is made in these reasons to the LGA, this is a reference to the City of Melbourne.

<sup>6</sup> VGCCC Report, para 6.2.

<sup>7</sup> VGCCC Report, para 6.4.

<sup>8</sup> VGCCC Report, page 7.

<sup>9</sup> VGCCC Report, page 11.

*VGCCC data indicates that the LGA presents as a mixed socioeconomic area compared to other metropolitan areas, based on the social and economic indicators presented in the VGCCC Report. Data indicates a lower concentration of gaming in terms of gaming machines per 1,000 adults, adults per venue, expenditure per adult and index real adult expenditure trend in comparison to other metropolitan municipalities.*

*Socio-economic data indicates that the resident population in the immediate surrounding area (ISA)<sup>10</sup> and the LGA have relatively mixed social and economic conditions in comparison to metropolitan municipalities. Both the ISA and LGA in general have high crime, high levels of housing stress and relatively high rates of homelessness compared to other areas. Equivalised household income and pensions and allowances are positive indicators in the area, given that incomes are typically higher than other metropolitan areas and pensions and allowances are the lowest of all metropolitan areas.<sup>11</sup>*

## Nature of the Venue

24. The Venue (originally known as DOXA Club) commenced trading on 4 March 1993 and was originally approved for use for one-hundred (100) EGMs in the restricted area and five (5) EGMs in the unrestricted area with a total licensed number of one-hundred and five (105)<sup>12</sup>. One-hundred and five (105) EGM is the maximum number of EGMs that can be approved at the premises<sup>13</sup>.
25. The Venue is located at the southern end of the concourse of Flinders Street Railway Station, occupying two tenancies on the ground floor. It currently comprises the following facilities<sup>14</sup>
  - a. Small TAB and bar area with seating for 50 patrons
  - b. Greenlight Restaurant/café with seating for 60 patrons
  - c. Outdoor dining area with seating for 48 patrons (an application to increase the outdoor dining total to 60 patrons is currently with the relevant Commission)
  - d. Gaming room with 100 EGMs.
26. The café/bistro is open from 7 am Monday to Friday and from 8 am on weekends and public holidays. The gaming room is open between 9 am and 5 am every day. The café closes at 9 pm (or 11 pm on a Thursday, Friday and Saturday).
27. The venue holds a full club liquor licence which imposes limitations on the supply of liquor to only club members, authorised gaming visitors or members of the public at functions. Excepting members of the public attending functions, patrons must therefore be members of the club or authorised gaming visitors (who are defined under the *Liquor Control Act 1998* as people that reside more than five kilometres from the licensed premises).

<sup>10</sup> The ISA for the purpose of the VGCCC Report is 2.5 kilometres, which is the standard measure for EGM increase applications in metropolitan areas.

<sup>11</sup> VGCCC Report pages 7 – 8.

<sup>12</sup> VGCCC Venue Report page 3.

<sup>13</sup> See section 3.4.1(1) of the GR Act which states that a venue operator's licence only authorises the licensee to conduct gaming on 105 approved gaming machines in every approved venue operated by the licensee.

<sup>14</sup> Ratio Report page 11.

# Reasons for decision

## Issues for determination

28. As set out in paragraph 6.a 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.
29. Even if the four criteria set out in section 3.4.20 of the GR Act are satisfied, the Commission has discretion to grant or refuse the Application. That discretion may be exercised having regard to the objects of the GR Act and the broader policy principles underpinning it.

### A. The no net detriment test

30. 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 Venue is located. Set out below (and summarised in tabular form at **Appendix A**) is the Commission's assessment of the economic and social benefits and detriment associated with the Application, including the weighting given to each of these impacts.
31. The Commission considers it irrelevant whether impacts of the Application are considered as social or economic impacts, or both, provided such impacts are considered and not double-counted in the ultimate composite test. The Commission has considered the economic and social impacts together as in most instances they are not mutually exclusive.

## Economic and social impacts

### Capital works and related issues

32. The Application concerns the addition of five (5) EGMs to fund the renovation of the basement which is currently being used for storage. The basement is on the concourse next to the Yarra River. The Applicant proposes develop the basement into a bar and function area under an on premises licence for 30-40 patrons, serving light tapas and simple meals. The Applicant proposes that the renovated basement will allow the Venue to be *'more than a place for gambling'*<sup>15</sup> and *'to provide additional non-gaming amenities for its members and their guests'*<sup>16</sup>. There will also be a variation to the existing outdoor dining area to accommodate twelve (12) additional patrons. These changes to the Venue are referred to in this decision as the "capital works".
33. The Applicant submitted that the capital works will not occur if the Application is not approved<sup>17</sup>. The Applicant needs the revenue resulting from the operation of the additional EGMs to pay for the capital works – specifically, to borrow the \$400,000 required<sup>18</sup>. In response to a request for information from the Commission, the Applicant supplied financial information to support this position. The explanation as to the Applicant's financial circumstances referenced the impact of the COVID-19 pandemic lockdowns, past renovation projects that exceeded budget and its financial obligation to support the charity Doxa Youth Foundation (DYF)<sup>19</sup>.
34. The Commission considers the financial position of the Applicant to be a relevant consideration when assessing the weight to give to the assertion that capital works will not occur if the Application is not

<sup>15</sup> Statement of Venue CEO para 30.

<sup>16</sup> Statement of Venue CEO para 25.

<sup>17</sup> Statement of Venue CEO paras 29 – 30.

<sup>18</sup> Ratio Report para 72.

<sup>19</sup> Applicant letter to Commission dated 20240130.

approved<sup>20</sup>. The Commission is satisfied based on the material provided that the Applicant is not in a financial position to fund the capital works without the revenue from the additional EGMs. Therefore, the social and economic impacts associated with the capital works are a positive impact associated with the Application for which the Commission will give weight.

35. The weight given to this impact will take into account all economic and social impacts associated with the capital works including<sup>21</sup>:
- a. the cost of the capital works which is estimated to be \$400,000;
  - b. increased supply and maintenance contracts of \$250,000;
  - c. increased non-gambling expenditure at the Venue through \$575,000 in food and drink sales (comprising \$400,000 in beverage and \$175,000 in drink sales);
  - d. an increase of four (4) full-time equivalent (**FTE**) short term employment positions for subcontractors during construction of the planned renovations;
  - e. an increase of four (4) FTE ongoing employment positions for staff in the bar (2.5 FTE), chef (.75 FTE) and front of house (.75 FTE); and
  - f. the social impact of the additional non-gaming offering at the Venue as a place where members and their guests can go.
36. The Commission notes the Applicant's submission that the economic impacts must be considered in the context of the overall size of the economy of the LGA which is currently valued at \$198.1 billion<sup>22</sup>. Accordingly, the impacts will be diluted when viewed in the context of the community of the LGA, although they might well be a significant benefit or detriment to those who are immediately impacted<sup>23</sup>.
37. The Commission considers that \$400,000 expenditure on capital works is a positive impact but does not give this much weight given the construction cost is not overly significant and is a one-off amount. The \$575,000 in complementary expenditure which will likely be ongoing each year and is therefore more significant. The creation of four new ongoing FTE positions at the Venue is a positive benefit for the LGA. However, no persuasive evidence was given as to whether any of the roles would be filled by people who reside in the LGA. Accordingly, the Commission gives that benefit little weight.
38. There is no evidence before the Commission that the LGA will benefit from increased supply and maintenance contracts and therefore no weight attached to this potential impact. In addition, there is no evidence that the subcontractors in the four short term FTE positions will reside in the LGA and the Commission notes that the construction is expected to go for 2-3 months, so the Commission does not afford any weight to this potential impact either.
39. The Commission accepts the Applicant's submission that the addition of the basement bar – a new non-gaming offering at the Venue – will be a positive social benefit that is associated with the Application.
40. Having regard to the above matters, the Commission has formed the following view in respect of the economic and social benefits associated with the capital works:
- a. Renovation works (capital expenditure): nil to marginal.
  - b. Increased non-gambling expenditure: marginal.
  - c. Increase in long-term employment: nil to marginal.
  - d. Increased supply contracts: nil
  - e. Increase in short-term employment: nil.
  - f. Social and economic benefits from improved non-gambling facilities: marginal to low.
41. The Commission weighs the combined economic and social impacts of, and associated with, the capital works as having a marginal benefit.

<sup>20</sup> In this regard, the Commission follows the approach it took in VGCCC EGM Increase Application for Sayers December 2023, para 45.

<sup>21</sup> Ratio Report, para 78.

<sup>22</sup> Ratio Report, para 226.

<sup>23</sup> Ratio Report, para 227.



## Community contributions

42. The Applicant submitted that it would make further cash contributions of \$25,000 per year to the Salvation Army to fund its homeless programs if the Application is approved. This will be a positive impact associated with the Application.
43. The Application contains details about the relationship between the Applicant and its charitable associate, the DYF. The Applicant provided further information about the relationship in response to a request for information from the Commission. DYF is a charitable organisation established in 1972 and offers programs to assist disadvantaged young people<sup>24</sup>. Pursuant to its Statement of Purposes, the Applicant's sole purpose is to further the charitable aims and purposes of the DYF and do this by applying its assets and income to the DYF<sup>25</sup>. The Applicant provided details of the history of donations made to the DYF. In its submissions the Applicant stated that *'it would like to increase its funding to DYF to assist as many children as possible'*<sup>26</sup>. To that end, the Applicant agreed in-principle to the imposition of a condition requiring the Applicant to make payments of \$750,000 per annum to DYF<sup>27</sup>. The Commission notes that the Applicant submitted that it made contributions to the DYF in the past 10 years of between \$750,000 per year to \$3.5 million per year<sup>28</sup>.
44. For the avoidance of doubt, the Commission does not consider the Applicant's donations to the DYF to be an impact associated with the Application. However, it notes that due to the condition to be imposed on the venue operator's licence to make a minimum contribution to DYF legally binding on the Applicant, that is a positive impact of the Application. The Commission gives that positive impact marginal weight because the Applicant was providing payments to DYF already and did not indicate any intention to stop (regardless of the outcome of the Application) and because the Commission now has a right to take enforcement action if a level of donation to DYF is not achieved.
45. The Commission finds that an additional donation of \$25,000 per year to the Salvation Army is a positive impact associated with the Application. The Salvation Army is a reputable charitable organisation and the evidence suggests that the LGA and the ISA experiences 'relatively high' rates of homelessness<sup>29</sup>. Therefore, additional funding to assist homeless programs of that organisation is a positive impact associated with the Application. The Commission considers that the new contribution to the Salvation Army will inevitably be at the expense of an equivalent donation that would otherwise have gone to the DYF due to the Applicant's Statement of Purposes. But any additional donation to the benefit of an organisation dedicated to the welfare of disadvantaged members of this community (whether the Salvation Army or the DYF) is beneficial. It is a small sum so the Commission gives it marginal weight.

## Gaming expenditure as an economic benefit, improved services and facilities at the Venue and increased gaming opportunities for those who enjoy gaming

46. 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>30</sup>. As Bell J noted 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>31</sup>.

<sup>24</sup> Ratio Report para 48.

<sup>25</sup> Doxa Community Club Incorporated Statement of Purposes, para 2 and para 3(c).

<sup>26</sup> Applicant letter to Commission dated 20240130.

<sup>27</sup> The Applicant's Addendum Submission dated 20240308 para 43 states that *"The donations to DYF are not currently mandatory. An approval of the application will make the contributions compulsory and provide a guaranteed source of revenue for DYF indexed to CPI"*

<sup>28</sup> Applicant letter to Commission dated 20240130.

<sup>29</sup> VGCCC Report pages 7 – 8.

<sup>30</sup> See *Romsey No. 2* [2009] VCAT 2275 [351] per Bell J.

<sup>31</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.



47. Experts engaged by the Applicant estimate that the additional gross gaming expenditure from the new EGMs would be between \$176,654 to \$215,910 in the first 12 months of trade after the new EGMs are installed.<sup>32</sup> Of this, 55% would be ‘transferred’ expenditure from existing gaming venues within the LGA<sup>33</sup> and 45% would be ‘new’ expenditure of between \$79,494 and \$97,160. The SW Report notes that some of the new expenditure would be from patrons at the Venue who do not reside in the LGA. This is consistent with the Applicant’s submissions that patrons of the Venue are drawn from a broad range of Victorian municipalities (and beyond). The calculations leading to those figures are set out in the SW Report.
48. The SW Report adopted the ‘empirical evidence’ methodology as most appropriate in the circumstances to estimate the new gaming expenditure.<sup>34</sup> This methodology involves:
- comparing the new expenditure earned by similar sample venues who have had ‘top-up’<sup>35</sup> applications approved (against their expenditure prior to the new EGMs);
  - developing a ‘ratio’ which sets out the percentage increase in new expenditure for every percentage increase in the additional EGMs in the sample; and
  - applying that ratio to the Applicant’s proposal.
49. The Commission’s predecessor<sup>36</sup> has previously accepted evidence given by Mr Tim Stillwell, an author of the SW Report<sup>37</sup>, as to the appropriateness of the empirical evidence methodology for estimating EGM expenditure<sup>38</sup> in EGM increase applications for metropolitan gaming venues. The Commission does so again for the purpose of this Application.
50. The SW Report found that, for every 1% increase in EGMs operating in a sample venue, gross gaming expenditure would increase by approximately 0.326% at the Venue<sup>39</sup>. Applying that ratio to the additional five (5) EGMs at the Venue against the Venue’s baseline expenditure calculates the midpoint of the estimated new gross gaming expenditure range associated with the Application.<sup>40</sup> In this case, \$196,282 is the midpoint (of \$176,654 to \$215,910) for new gaming expenditure in the first twelve months after the approval of the additional EGMs.
51. The SW Report estimates that 55% of the new expenditure at the Venue will be transferred from other venues in the LGA having regard to factors set out in the SW Report. This includes the number of active competitor venues located within 2kms of the Venue and that they are high performing venues (venues with high expenditure in the circumstances) which means that, with the increased availability of EGMs at the Venue, *‘it is highly likely [patrons] would transfer their gaming patronage from competitor venues to the Club’*<sup>41</sup>.
52. The Commission has no evidence before it to contradict the accuracy of the new gaming expenditure estimates. However, the Commission also notes that the SW Report presents estimates only and both estimates are represented in ‘ranges’ of low – med – high which indicates that precise calculations are not available. For that reason, the Commission has nothing more than a tentative view of a widely varying approximate amount of new expenditure in the LGA which would result from the Application.
53. The Commission accepts that 45% of the new expenditure at the Venue would be new expenditure on EGMs in the LGA. The midpoint of the new gaming expenditure estimate is \$88,327 per year although, for the reasons stated above, the Commission cannot be certain of this figure. To the extent that this new expenditure is not associated with problem gambling (addressed in the next section of these decision and reasons), it would be an economic benefit with the Application that is of nil to marginal weight.

<sup>32</sup> SW Report para 1.4.

<sup>33</sup> SW Report para 1.5.

<sup>34</sup> SW Report para 9.8.

<sup>35</sup> A top up application is an application to increase the number of EGMs at a venue. See SW Report para 9.1.

<sup>36</sup> The Victorian Commission for Gambling and Liquor Regulation.

<sup>37</sup> SW Report para 2.6 – 2.7

<sup>38</sup> See, for example, *VGCCC EGM Increase Application for approved premises Grosvenor Hotel, 19 April 2023*, paras 92 – 93.

<sup>39</sup> SW Report para 9.14.

<sup>40</sup> SW Report para 9.18.

<sup>41</sup> SW Report para 10.5.

## Gaming expenditure associated with problem gambling and potential increased incidence of problem gambling and gambling related harm – social and economic impacts

54. The Commission has taken into account both the economic and social impacts associated with problem gambling and gambling related harm associated with the Application and has given appropriate weight to this impact below.
55. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an adverse social and economic impact on the local community.<sup>42</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 have traditionally been defined as 'problem gamblers', as well as those who may be otherwise regarded as being at 'low-risk' or 'moderate-risk' of harm from gambling.
56. As set out in paragraphs 52 to 53, the Commission is unable to determine with any reliable degree of precision the amount of increased expenditure that will result from the Application. The Commission has considered the Application on the basis that the additional EGMs will result in some increase in new expenditure at the Venue (in addition to any expenditure that will be transferred from other venues).
57. In considering the no net detriment test, the Commission does not include gambling expenditure that is transferred from another venue within the local government area. That is because the transfer of expenditure from one venue to another does not exacerbate the amount attributed to harm.<sup>43</sup> The Commission notes there is risk that some of the new expenditure at Venue will almost certainly lead to additional gambling harm and this will have a negative social and economic impact on the local government area.

### *Vulnerability of the City of Melbourne and the catchment area*

58. The extent to which new gambling expenditure will be associated with problem gambling and the resulting harm, and hence may be regarded as a detriment associated with the Application, will be influenced by the socio-economic status and vulnerability of the local government area and, in particular, those living in the identified catchment area of the Venue. This is because communities characterised by relative socio-economic disadvantage are considered more vulnerable to the financial harms arising from problem gambling. Nonetheless, the Commission acknowledges that anyone who gambles may experience harm (as may those closest to them).

#### *The Catchment Area*

59. As set out in paragraph 23, the LGA and the ISA of 2.5 kilometres around the Venue have relatively mixed social and economic conditions in comparison to metropolitan municipalities. The VGCCC Report highlights the crime rate in the LGA and housing stress and homelessness in the ISA as indicators of socio-economic vulnerability in those areas.<sup>44</sup>
60. For the purpose of determining an appropriate catchment area to measure the vulnerability of the community of the LGA, the Commission notes this Application is atypical. The Venue is located within Flinders Street Railway Station opposite Federation Square in the Melbourne CBD. As a result, its customers are drawn from a wide range of locations throughout Greater Melbourne and beyond and thus it is very difficult to build a profile of the vulnerability of the community. The gaming room usage survey<sup>45</sup> shows patrons from a broad range of municipalities attend the Venue to play EGMs, with the suburb of Melbourne representing the highest concentration (though still a very low percentage of total patrons at

<sup>42</sup> The Commission recognises that, on review, the key likely detriment 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, but without "double counting" any factors as both an economic and social impact that should be considered twice for the purpose of the no-net-detriment test.

<sup>43</sup> *Kilsyth and Mountain District Basketball Association Inc v VCGR* [2007] VCAT 2, [40] per Morris J

<sup>44</sup> VGCCC Report, section 1.

<sup>45</sup> Ratio Report, Appendix G, page 74.

5.6% of the whole). The Commission therefore considers the Venue to be a ‘convenience venue’<sup>46</sup> because it will still attract convenience gamblers who attend the area for other reasons due to its proximity to Flinders Street Station and Federation Square.

61. The Applicant submits that *‘the majority of the Club’s patrons will likely be city users rather than city residents, including those who work in the city.’*<sup>47</sup> Due to the wide geographic spread of patrons to the Venue, they have determined the suburb of Melbourne to be the primary catchment for the purpose of their analysis. However, they submit that as only 5.6% of gaming room patrons are from that suburb (3.2% of who live in the Melbourne CBD itself.<sup>48</sup>) so less weight should be placed on the socio-economic profile of that surrounding area.<sup>49</sup>
62. For the purpose of these decision and reasons, having regard to the evidence available about the patronage of the gaming room, the Commission has assessed the impact on the LGA (as required by the GR Act) and the ISA.

### Applicant’s submissions – problem gambling and harm minimisation

63. Prior to the hearing, at the suggestion of the Commission, the Applicant agreed to the imposition of proposed harm minimisation Conditions on the venue operator’s licence should the Application be approved. Naturally, this does not limit what other conditions might be imposed, but it does serve to reduce the number and extent of new conditions to which the Applicant may object, noting that some go above and beyond mere compliance with the law. Moreover, such preliminary acceptance of the Conditions justifies the Commission having some confidence that the Applicant intends to take its harm minimisation obligations seriously.
64. The Applicant submitted that there is potential for some of the additional expenditure associated with the new EGMs sought under the Application to be derived from problem gambling behaviour.<sup>50</sup> but that the risk is ‘relatively low’.<sup>51</sup> The Ratio Report set out different categories of problem gamblers from a severity perspective and ultimately concluded that it would *‘place greatest weight on impacts experienced by problem gamblers’* given the extent of harm experienced by low-risk gamblers is lower.<sup>52</sup>
65. Having regard to Victorian Responsible Gambling Foundation (VRGF) research about socio economic indicators of gambling harm, the Applicant submitted that there was some vulnerability in the LGA and the patron catchment (the suburb of Melbourne) to harm from problem gambling. In particular, the proportion of Aboriginal and Torres Strait Islanders, residents with low to mid-range income (\$20,800 - \$42,599) and persons aged between 35 and 54 years old.
66. The Ratio Report details the ‘ideals for best practice’<sup>53</sup> which it says are partly encapsulated by the VRGF in its document ‘Venue Best Practice Guide’<sup>54</sup> and then sets out some of the ways the Venue meets the Venue Best Practice Guide. In particular,
- a. The Ratio Report states that location of Venue being in major transport hub and opposite Federation Square would have presented a concern for problem gambling if this was a new premises application, because large numbers of passers-by are exposed to the venue and as such could be at greater risk for convenience gaming<sup>55</sup>. But, as it is an existing venue, residents and users of the precinct are already aware of the Venue and there will be no way to know about the additional 5 EGMs from the outside.<sup>56</sup>

<sup>46</sup> The Commission has previously accepted that convenience gambling is associated with problem gambling and does so again in this decision. See, for example, *Victorian Commission for Gambling and Liquor Regulation – EGM Increase Decision Werribee Football Club Limited – 4 May 2018, paragraph 96.*

<sup>47</sup> Ratio Report paragraph 93

<sup>48</sup> Ratio Report appendix G – Summary Patron Surveys.

<sup>49</sup> Applicant letter to VGCCC dated 20240130 item 18.

<sup>50</sup> Ratio Report paragraph 180.

<sup>51</sup> Ratio Report paragraph 185.

<sup>52</sup> Ratio Report paragraphs 165 – 166.

<sup>53</sup> Ratio Report paragraph 210.

<sup>54</sup> Ratio Report paragraph 212.

<sup>55</sup> Ratio Report paragraph 215.

<sup>56</sup> Ibid.

- b. The Ratio Report notes a further protective factor will be the expansion of the non-gaming offering at Venue if the Application is approved and the basement bar is redeveloped. Because the gaming room will occupy a smaller percentage of the total Venue – from 29.8% to 27.3% - it will be a more rounded venue.

67. The Applicant submitted information from Gamblers Help who stated that 175 people had presented for problem gambling counselling in the period of 1 Jul 2022 – 24 April 2023. Gamblers Help also said, *'in terms of using these figures about possible rates of harm from gambling and impacts on well-being, we would note that it is estimated that only around 10 percent of those who need help due to problem gambling formally seek it... this would mean that the number of active problem gamblers is likely to be at least ten times higher than those seeking help at our services'*<sup>57</sup>.

### Council response and Alliance for Gambling Reform submission - problem gambling and gambling related harm

68. On 23 January 2024 in the Council Letter, Council notified the Commission that it would not make a submission under section 3.4.19 of the GR Act<sup>58</sup>. The Council Letter referred to the City of Melbourne Electronic Gaming Policy (**Endorsed Policy**)<sup>59</sup> which it uses to assess EGM increase applications and new EGM venue applications. The Council Letter included the following further explanation for why it would not make a submission:

*After extensive consultation with various branches across council, City of Melbourne made the decision to not undertake or submit a formal SEIA to the VGCCC. The application was reviewed based on factors relating to experience of the venue Manager and Chief Executive Officer (CEO) in gambling harm reduction, venue operating hours, number of staff trained in responsible service of gaming, assessment of venue plans provided, renovations and infrastructure changes being made to the venue; and harm reduction measures suggested through the Ratio SEIA. We note the venue plans received were of poor quality'*<sup>60</sup>.

69. Council said that it strongly agreed with the inclusion of all of the VGCCC's suggested Conditions.
70. The Commission published details of the Application on its website. Members of the public were permitted to submit material relevant to the Application by 29 February 2024. The Alliance for Gambling Reform (**AGR**) made a submission – the AGR Letter – and the Applicant was invited to respond to that submission.
71. The AGR Letter expressed concern about the Application given the LGA and the Venue already have *'increasing and high levels of gambling harm'* and that an increase in machines does not support the Commission's legislative objective to minimise harm from problem gaming<sup>61</sup>.
72. In response, the Applicant submitted that the AGR Letter did not address the Commission's legislative task in this matter to weight all positive and negative impacts that may be associated with the Application and determine whether the Application satisfies the 'no-net detriment' test.
73. The Commission agrees with Applicant that Council is the representative of the community of the municipality in which the Venue is located for the purpose of the no net detriment test. Therefore, its decision not to object to the Application carries some weight as Council has made this decision, presumably, having regard to its own policy framework as to the impacts of the Application on the community of the LGA.

<sup>57</sup> Ratio Report appendix H – Gamblers Help Response.

<sup>58</sup> GR Act section 3.4.19 in summary allows the municipal council to make a submission to the Commission addressing the economic and social impact of the proposed EGM increase on the well-being of the community of the municipal district in which the approved venue is located and taking into account the impact of the proposed EGM increase on surrounding municipal districts.

<sup>59</sup> The City of Melbourne Electronic Gaming Policy has been endorsed by Council but not yet approved.

<sup>60</sup> Council Letter, page 2.

<sup>61</sup> AGR Letter.

## Conclusion - economic and social impacts of problem gambling and gambling related harm

74. The Commission notes that the Application is for five (5) EGMs only and therefore finds that, as a result, all impacts both positive and negative are negligible.
75. Having regard to the matters in paragraph 54 to 72 above, and weighing the submissions made by the Applicant and other relevant information, the Commission considers that the potential increase of problem gambling arising from the approval of the Application to be negative impact to which nil to marginal weight is given.

## Other social and economic impacts

### Increased gaming competition in the City of Melbourne and diversion of trade from other gaming venues and retail facilities

76. Increased competition in gaming in the LGA is a factor to be considered by the Commission in light of the statutory purposes of the GR Act<sup>62</sup> and the consumer benefits that derive from competition.
77. The material filed by the Applicant does not place any particular weight on any increase in competition that would result from the Application being approved. No evidence was given to suggest that there would be any additional benefit arising from increased competition over and above the additional expenditure.
78. In addition, the Commission notes that the EGMs currently installed at venue have fairly low utilisation rates, with only a few peak periods where over 70% of the EGMs are utilised.<sup>63</sup> This indicates that there are already enough EGMs available at the venue for players who want to use them.
79. On balance, the Commission considers the impact of increased competition to be an economic benefit to which it gives nil weight.
80. The Ratio Report considered the diversion of trade from other gambling venues and retail facilities as a negligible detriment, on the basis that diversion of trade was a reflection of increased competition, and also because the loss of trade would only generate a detriment if it lowered the overall level of service available to the community.
81. The SW Report considered the impact of the approval to be economically neutral.
82. As noted above, the SW Report concludes that 55% of the increased expenditure will be diverted from local competitor venues.
83. There was no evidence put before the Commission that the diversion of trade would lead to an overall reduction in the services available to the community. The Commission considers any diversion of trade to be an economically and socially neutral factor.

### Community attitude

84. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*<sup>64</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 no-net-detriment test.
85. The Commission notes that no community survey was conducted by the Applicant nor the Council, therefore leaving the Commission without the capacity to reliably assess the extent of the broader community attitude to the Application.
86. The Commission notes that Council did not oppose the Application though it submitted a letter that referred to the Endorsed Policy which the Commission assumes was followed when Council determined not to object to the Application. A submission was received from the AGR which opposed the Application.

<sup>62</sup> See GR Act, section 3.1.1(2).

<sup>63</sup> SW Report, paragraph 9.3.

<sup>64</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.



87. In the absence of any further evidence or information about the community's attitude to the Application, the Commission considers there is likely to be mixed community views about the additional EGMs. In any event, it attaches no weight to this inferred community attitude.

### Net economic and social impact

88. 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. 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 an approval of the application on the well-being of a relevant community will be either neutral or positive.
89. After consideration of the material before it, including the evidence provided at the hearing (and weighted as outlined above and in tabular form at Appendix A of these reasons), the Commission is satisfied that the net social and economic impact on the well-being of the community of the municipal district in which the Venue is located will not be detrimental. The Commission is satisfied that the approval will result in an impact that is finely balanced and neutral. Accordingly, the pre-condition set out in section 3.4.20(1)(c) of the GR Act is satisfied.

### Independence from other gaming venues

90. The Application is not proposing to add the Venue 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 Venue. The Applicant has a second venue listed on its venue operator's licence called Central Point Melbourne.
91. The mandatory pre-condition set out in section 3.4.20(1)(d) is not applicable to this Application.

### Directions given under section 3.2.3

92. 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.
93. 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.

### Municipal Cap

94. As noted in paragraph 18, currently, there are nine (9) gaming venues operating within the LGA with approvals to operate a total of 702 EGMs with attached entitlements. The LGA is a partially capped region and the Melbourne CBD, where the Venue is located, is in the 'designated area' part of the LGA which does not have any caps or municipal limits<sup>65</sup>.
95. The granting of this Application will result in the number of EGMs increasing by five (5) but will not cause the number of EGMs in the relevant area to exceed any municipal caps, because none apply in this instance.

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<sup>65</sup> VGCCC Report, page 7.



## General discretion of the Commission

96. As noted 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.
97. In exercising its discretion whether or not to approve the Application, the Commission may take into account relevant matters<sup>66</sup>. These include broader policy considerations, drawn from the content and objectives of the GR Act as a whole<sup>67</sup>.
98. 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:
- a. 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;
  - b. developing and maintaining the state's commitment to the highest standards of probity for gambling service providers;
  - c. 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;
  - d. ensuring that the legitimate financial benefits of gambling (both private and public) are transparent, appropriately recognisable and fairly distributed to the Victorian community;
  - e. that to the extent possible consistent with the other principles, gaming service providers operate in a competitive environment; and
  - f. 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>68</sup>.
99. The stated purposes of Chapter 3 of the GR Act include to 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<sup>69</sup>. As noted above, the Venue is located in an uncapped area of the LGA.
100. The Commission has not identified any matters to justify it using its discretion to refuse the Application.

<sup>66</sup> GR Act, section 3.4.20(1).

<sup>67</sup> *Ocean Grove Bowling Club v Victorian Commission for Gambling Regulation* [2006] VCAT 1921.

<sup>68</sup> Hansard, Legislative Assembly, 6 November 2003 at p 1595 (Hon. John Pandazopoulos, Minister for Gaming).

<sup>69</sup> GR Act, section 3.1.1(2)(a).

# Decision

## Conclusion

101. On the material that has been put before it, the Commission has determined that the mandatory pre-conditions for approval are set out in section 3.4.20(1) have been satisfied in that the no-net-detriment test has been satisfied, and that exercising its discretion to grant the application is appropriate.
102. The Application is therefore granted subject to the conditions set out in Appendix B.

**The preceding 102 paragraphs are a true copy of the Reasons for Decision of Mr Andrew Scott, Deputy Chair and Ms Claire Miller, Commissioner.**

# Appendix A

	Impact	Factors relevant to weight
<b>Benefits</b>	<p>This category captures the impact of the capital works (excluding gaming expenditure not associated with problem gambling as an economic benefit, and enhanced access to EGM facilities for residents and visitors). This category includes the:</p> <ol style="list-style-type: none"> <li>Renovation works (capital expenditure): nil to marginal.</li> <li>Increased non-gambling expenditure: marginal.</li> <li>Increase in long-term employment: nil to marginal.</li> <li>Social and economic benefits from improved non-gambling facilities: marginal to low.</li> </ol> <p>Marginal.</p>	<p>\$400,000 capital works</p> <p>\$575,000 food and beverage sales</p> <p>Four (4) additional jobs</p> <p>New hospitality venue in desirable location on the Yarra River.</p>
	<p>The economic and social benefits of the community contributions which are captured in the Conditions attached to the approval of the Application and the confirmation of a minimum amount of funding to the DYF upon which the Commission can take action if the Condition is not met.</p> <p>The weight given is related to the impact on the community. On the available evidence, the Applicant has as its sole purpose application of funds to the DYF. Without making a finding as to whether the Applicant is permitted to donate to other organisations, the proffered amount will either go to the Salvation Army, or to the DYF. Either way, the amount that will go to the community will be \$25,000 per annum greater.</p> <p>Marginal.</p>	<p>See Conditions attached.</p>
	<p>Gaming expenditure not associated with problem gambling as an economic benefit, and enhanced access to EGM facilities for residents and visitors.</p> <p>Nil to marginal.</p>	<p>Some of the \$79,494.00 and \$97,160 is associated with safe gambling. In any event, the amount of the expenditure is minimal.</p>

	<p>Increased gambling competition.</p> <p>Nil.</p>	<p>Only five (5) EGMs in an otherwise under-utilised gaming room.</p>
<b>Total weight of social and economic benefits</b>	<b>Marginal.</b>	
<b>Detriments</b>	<p>Increased expenditure associated with problem gambling and increase in problem gambling and associated social impacts.</p> <p>Nil to marginal.</p>	<p>Some of the \$79,494.00 and \$97,160 will be associated with gambling harm based on their submissions. In any event, it is likely to be very small.</p>
	<p>Community attitude</p> <p>Nil.</p>	<p>Council determined not to oppose the Application. Submissions from the public not yet received. The only submission received was from the Alliance for Gambling Reform.</p>
	<p>Diversion of trade from other gambling venues</p> <p>Nil.</p>	<p>55% transfer rate from other venues but of a very small additional expenditure.</p>
	<p>Diversion of trade from retail facilities or other businesses</p> <p>Nil to marginal.</p>	<p>Ratio assesses as possible negligible detriment associated with the Application.</p>
<b>Total weight of social and economic detriments</b>	<b>Nil to marginal.</b>	

# Appendix B

## 1. Community Contributions

- 1.1 Doxa Community Club Incorporated (**Venue Operator**) will make additional cash contributions in the sum of \$25,000 per annum (indexed annually to CPI) (**the Additional Contribution**) for as long as any of the additional five (5) gaming machines (**the Additional EGMs**) are operational at the Premises.
- 1.2 The Additional Contribution will be allocated each year to the Salvation Army to support its work combatting homelessness in the City of Melbourne.
- 1.3 If the Additional Contribution is not allocated in full each year in accordance with this condition, the Venue Operator must notify the Victorian Gambling and Casino Control Commission (**the Commission**) of that fact as soon as reasonably practicable, and the operation of the Additional EGMs must cease immediately until the Commission is satisfied that the Additional Contribution for that year is no longer outstanding.
- 1.4 The Venue Operator will continue to make existing cash contributions (**Existing Contributions**) in the sums of:
  - 1.4.1 At least \$750,000 per annum to the Doxa Youth Foundation.
  - 1.4.2 At least \$100,000 per annum to the Salvation Army.
- 1.5 If there is any legal barrier to the contributions in 1.2 and 1.4.2 being made to the Salvation Army then these contributions must instead be made to the Doxa Youth Foundation.
- 1.6 The Venue Operator may apply to the Commission to consider a pause on the Existing Contributions if the venue is not open due to an industry-wide shut down and the entire gaming industry is granted a reprieve from community contribution requirements.
- 1.7 The Venue Operator must keep detailed financial records of its payment of the Additional Contribution and Existing Contributions and will provide financial accounts evidencing payment of the Additional Contribution and the Existing Contributions to the Commission on request.
- 1.8 The Venue Operator must submit an annual attestation to the Commission confirming that the Additional Contribution and Existing Contributions have been made in full for that year. The attestation must be signed off by a senior representative of the Venue Operator (either at Board or Director level) as being true and correct.

## 2. Works

- 2.1 The works must generally accord with the floor plan of the Premises prepared by Studio Nine Architects (**the Works**).
- 2.2 The Works must be substantially completed to the satisfaction of the Commission by the date that is six (6) months after the date of this decision.
- 2.3 The commencement of the operation of any of the Additional EGMs at the Premises must not occur until after the Commission has confirmed the Works have been substantially completed.
- 2.4 If any officer or director of the Venue Operator forms the view that it is probable, or reasonably likely, that the Works will not be substantially completed by the date contemplated in condition 2.3, then the Venue Operator must notify the Commission within 7 days.
- 2.5 The Commission may, upon request of the Venue Operator, agree to extend the time for completion of the Works. Any request for an extension of time must:

- 2.5.1 Be made no later than 30 days prior to the date for completion of Works at 2.1 above.
- 2.5.2 demonstrate compliance by the Venue Operator with condition 2.3; and
- 2.5.3 include an explanation as to why the Works have not been substantially completed.

### 3. Harm minimisation

#### ***Gambling harm risk assessment and controls***

3.1 Before the installation of the Additional EGMs at the Premises the Venue Operator must:

- 3.1.1 undertake and document a gambling harm risk assessment for the Premises' EGM gambling activities, based on the Australian Standard AS/NZS ISO 31000 Risk Management (**Risk Assessment**), to be made available to the Commission;
- 3.1.2 develop a venue-specific gambling harm risk management plan which responds to the Risk Assessment, detailing controls for each risk, including actions that can manage the likelihood of an event occurring, and actions that can manage the consequences of an event (**Risk Management Plan**), to be made available to the Commission; and
- 3.1.3 submit to and have approved by the Commission a harm minimisation policy and procedures manual (**the HM Manual**), which gives effect to the gambling harm risk controls and operational practices specified in the Risk Management Plan.

3.2 The HM Manual must:

- 3.2.1 include steps that the Venue Operator will take to minimise harm arising from EGM use (over and above any existing requirements detailed in the Premises' Code of Conduct, the current VGCCC Gambling Venue Checklist and harm minimisation strategies set out in the Gambling Regulation Act 2003 and/or relevant Regulations);
- 3.2.2 include an obligation on the Venue Operator to communicate to adults with minors accompanying them on the premises that minors must:
  - 3.2.2.1 be monitored; and
  - 3.2.2.2 must not approach or enter the Gaming Room.
- 3.2.3 prohibit the service of food and beverage to patrons whilst using an EGM;
- 3.2.4 confirm the Venue Operator's minimum EGM staffing levels as follows:
  - 3.2.4.1 after 5.00 pm until 9:00 pm on Thursday, Friday and Saturday: a minimum of three (3) staff on duty in the Gaming Room at all times the Gaming Room is operational;
  - 3.2.4.2 a minimum of two (2) staff on duty in the Gaming Room at all other times the Gaming Room is operational; and
  - 3.2.4.3 from 9.00 am until close the following day on any day, one (1) security guard will be rostered on for duty at the main entrance on Swanston Street; and
  - 3.2.4.4 after 10.00 pm until close on any day, one (1) RSG trained security guard will be rostered on for duty at the main entrance on Swanston Street.
- 3.2.5 prohibit staff from using EGMs at the venue at any time; and
- 3.2.6 prohibit patrons from reserving EGMs to use another EGM.



- 3.3 Submit the HM Manual for approval by the Commission. Following approval, the HM Manual may only be amended with the approval of the Commission.
- 3.4 Once approved by the Commission, the HM Manual is to be:
- 3.4.1 implemented at the Premises to the satisfaction of the Commission; and
  - 3.4.2 provided to the Premises' Venue Support Worker; and
  - 3.4.3 made available to the venue's customers, including by
    - 3.4.3.1 publication on the venue's website; and
    - 3.4.3.2 display in the Gaming Room in a manner that invites public attention at all times the Gaming Room is open to the public.
- 3.5 The Venue Operator must confirm in writing to the Commission annually whether the Gaming Room is being operated in accordance with the HM Manual.
- 3.6 If the HM Manual is breached, the Venue Operator must keep a register of the breaches that must be made available to the Commission for inspection upon request. The Venue Operator must enter the nature of the breach together with steps to be taken to remedy each breach in the register.
- 3.7 If the Commission determines that the Venue Operator has not implemented or complied with the HM Manual, the Commission may direct the Venue Operator to cease operating any of the Additional EGMs at the Premises until:
- 3.7.1 such failure to implement or comply with the HM Manual is rectified to the satisfaction of the Commission; and
  - 3.7.2 the Commission is satisfied that the Venue Operator has adopted such practices, procedures, policies and systems as are necessary to prevent the breach of the HM Manual from occurring again.
- 3.8 The Venue Operator must implement and maintain venue management disciplines providing for the effective coordination and management of gambling related harms to support operation of the HM Manual, including specified meeting, record keeping and information sharing requirements;
- 3.8.1 convening regular, monthly harm minimisation coordination meetings of staff who participate in EGM monitoring;
  - 3.8.2 ensuring that responsible gambling officers and staff rostered for duty in the gaming room meet with the venue's nominated venue support worker at least once every six months;
  - 3.8.3 ensuring that all staff involved in gaming room operations are trained in and able to access and keep required records, including RG Register records; and
  - 3.8.4 ensuring that all staff involved in gaming room operations participate in arrangements to coordinate management of gambling harm risk, including between shifts.

***Resourcing of harm minimisation and RGO functions***

- 3.9 The Venue Operator must:
- 3.9.1 develop and manage an effective venue self-exclusion program (**SEP**);
  - 3.9.2 implement and maintain measures to prevent and minimise gambling related harm;

- 3.9.3 maintain minimum resourcing requirements, including gaming related staffing and 'primary duty' requirements, staff training requirements; and
  - 3.9.4 implement and maintain venue management disciplines addressing gambling related harms, including specified meeting, record keeping and information sharing requirements.
- 3.10 The Venue Operator must ensure there is a full time role of Responsible Gambling Officer (**RGO**). The RGO must have completed both 'foundation' (Victorian Government RSG Module 2) and 'advanced' (Victorian Government RSG Module 4) RG Training within the last 2 years.
- 3.11 The RGO role is to:
- 3.11.1 coordinate operation of the venue's self-exclusion program;
  - 3.11.2 coordinate implementation and maintenance of harm reduction measures and staff training; and
- 3.12 Not used.
- 3.13 Any staff member rostered in the Gaming Room must:
- 3.13.1 be trained in 'YourPlay', be able to assist a patron to enrol with 'YourPlay', and be able to set EGM time and spend pre-commitment settings; and
  - 3.13.2 participate in venue management activities addressing gambling related harms, including monthly meetings, record keeping and information sharing practices.

#### 4. Other Conditions

- 4.1 The Venue operator must ensure that the EGMs closest to the entry are screened in accordance with the Screen Plan submitted to the Commission on 29 February 2024.
- 4.2 The Venue Operator must not display any EGM advertising visible from outside the new basement bar.
- 4.3 The Venue Operator will engage an external training organisation to provide Anti-Money Laundering (**AML**) and Counter Terrorism Finance (**CTF**) risk awareness training to one (1) Director of the Venue Operator, the nominee, managers and all Gaming Room staff using a know your customer approach (AML/CTF Risk Awareness Training Program).
- 4.4 The AML/CTF Risk Awareness Training Program must be a written plan that shows how the Venue Operator, the nominee, managers and all Gaming Room staff are instructed about the following:
- 4.4.1 the Venue Operator's obligations under Australia's AML/CTF legislation;
  - 4.4.2 the consequences of not complying with AML/CTF legislation;
  - 4.4.3 the type of AML/CTF activity staff may see at a gaming premises and the consequences of the risk of this activity; and
  - 4.4.4 how the Venue Operator will meet its obligations, including processes and procedures to identify, manage and mitigate this risk.
- 4.5 This training must be undertaken by the Venue Operator at the Premises once every two (2) years.
- 4.6 If the Commission determines that the Venue Operator has not complied with this condition 4, the Commission may direct the Venue Operator to cease operating any of the Additional EGMs at the Premises until such time as compliance is rectified to the satisfaction of the Commission.

## Appendix C – Relevant legislation

1. In July 2022, the *Casino and Liquor Legislation Amendment Act 2022* (Vic) (**Act**) came into effect.
2. 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* (Vic) (**VGCCC Act**) and clarified the objectives of the VGCCC, including a specific reference to minimising gambling harm and problem gambling.
3. 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.”*
4. 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.*
5. In effect this has strengthened the Commission’s focus on minimising gambling harm and has led to an increased expectation on venue operators to minimise such harm.
6. Section 9(1)(i) of the VGCCC Act provides that the functions of the Commission will include, among other things “to undertake activities to minimise gambling harm.”
7. 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

8. 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.
9. 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;*
- (a) *to promote tourism, employment and economic development generally in the State.*

10. 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.*

11. The relevant provision concerning the Application is section 3.4.17(1)(b) of the GR Act, which states that variation of the number of EGMs permitted in an approved venue may be amended in accordance with Division 2, Part 4 of Chapter 3 of the GR Act.

12. Sections 3.4.18 to 3.4.19 of the GR Act provide for the manner in which requests for amendments under section 3.4.17(1)(b) are to be made. Relevantly for the Application, section 3.4.18 provides, inter alia, that:

(1) *A request by a venue operator for an amendment of licence conditions—*

...

- (c) *in the case of ... an amendment to increase the number of gaming machines permitted in an approved venue, must be accompanied by a submission—*
  - (i) *on the net economic and social benefit that will accrue to the community of the municipal district in which the approved venue is located as a result of the proposed amendment; and*
  - (ii) *taking into account the impact of the proposed amendment on surrounding municipal districts—*

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

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

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

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

(1) Without limiting the matters which the Commission may consider in deciding whether to make a proposed amendment the Commission must not amend a venue operator's licence unless—

- (a) *the Commission is satisfied that the amendment of the licence does not conflict with a direction, if any, given under section 3.2.3; and*
- (b) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the regional limit or municipal limit for gaming machines for the region or municipal*

*district in which the approved venue is located will not be exceeded by the making of the amendment; and*

- (c) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the net economic and social impact of the amendment will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located; and*
- (d) *if Venues are proposed to be added to the licence as an approved venue and the Venue are situated within 100 metres of an approved venue of which the applicant for the amendment, or an associate of the applicant, is the venue operator, the Commission is satisfied that the management and operation of the approved venue and the proposed approved venue are genuinely independent of each other.*

15. 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>70</sup>

16. 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:

- (1) the likely economic impacts of approval;
- (2) the likely social impacts of approval; and
- (3) the net effect of those impacts on the well-being of the relevant community.<sup>71</sup>

17. 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>72</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.

18. The Commission recognises that the task of identifying likely benefits and detriments 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>73</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>74</sup>

19. The Commission also notes the position taken by VCAT that,

*A table of likely economic and social benefits and disbenefits, and with some comments relevant to the relative weight to be given to particular factors ... is a useful way of transparently dealing with the 'no net detriment' test, and might perhaps be considered for wider application.<sup>75</sup>*

<sup>70</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [52] per Dwyer DP.

<sup>71</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>72</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>73</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [57] per Dwyer DP.

<sup>74</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.

<sup>75</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [60] per Dwyer DP.



20. 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>76</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>77</sup>
21. In considering the exercise of this discretion:
- (1) 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>78</sup>
  - (2) 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>79</sup>
22. The Commission notes the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*<sup>80</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.
23. 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.

<sup>76</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>77</sup> GR Act, section 3.4.20

<sup>78</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [98] per Dwyer DP.

<sup>79</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>80</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [98].