



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 Portarlington Golf Club Inc for amendment of its venue operator's licence to vary the number of electronic gaming machines permitted in the approved premises, the Portarlington Golf Club, located at 130 Hood Road, Portarlington, from fifty-five (55) to sixty-five (65).

Commission:

Mr Ross Kennedy, Chair
Dr Dina McMillan, Commissioner

Appearances:

Ms Sarah Porritt, Counsel for the Applicant (instructed by BSP Lawyers)
Mr Lewis Whittington, Counsel Assisting the Commission

Date of Hearing:

26 September 2017

Date of Decision:

20 October 2017

Date of Reasons:

20 October 2017

Decision:

The application is granted subject to the conditions set out in paragraph 152 of these reasons for decision.

Signed:

A handwritten signature in black ink, appearing to read 'R Kennedy', with a long horizontal flourish extending to the right.

Mr Ross Kennedy
Chair

REASONS FOR DECISION

INTRODUCTION

1. This is an application by the Portarlington Golf Club Inc (**the Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) to amend its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) permitted in the Portarlington Golf Club, located at 130 Hood Road, Portarlington (**the Premises**), from fifty-five (55) to sixty-five (65) (**the Application**).
2. The relevant municipal authority is the City of Greater Geelong (**the Council**). By correspondence dated 31 July 2017 to the Commission, the Council stated that it intended to make an economic and social impact submission in relation to the Application, and did so on 25 August 2017.
3. The Commission considered the Application by way of a public inquiry.¹ To this end, a public hearing was conducted on 26 September 2017 (**the Hearing**). The Applicant was represented by Ms Sarah Porritt of Counsel, instructed by BSP Lawyers. The Council had previously informed the Commission by email on 12 September 2017 that the Council would not be appearing at the Hearing.²

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. 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.
5. The objectives of the GR Act are set out at section 1.1, which provides:

...

(2) *The main objectives of this Act are—*

¹ A public inquiry is required to be conducted by the Commission in relation to the Application pursuant to section 28(g)(iii) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (**VCGLR Act**). As to the manner in which the Commission is to conduct an inquiry, see generally Pt 3 Div 2 VCGLR Act (Inquiries), see also Pt 2 Div 3 VCGLR Act (Performance and exercise of the Commission's functions, powers and duties).

² This meant that the writer of the Council's the economic and social impact report was not called to give evidence at the Hearing and was not available to be cross-examined by the Application. This necessarily affected the weight that could be given to the Council Report by the Commission.



- (a) *to foster responsible gambling in order to-*
 - (i) *minimise harm caused by problem gambling; and*
 - (ii) *accommodate those who gamble without harming themselves or others;*
- (ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*
- (b) *to ensure that gaming on gaming machines is conducted honestly;*
- (c) *to ensure that the management of gaming equipment and monitoring equipment is free from criminal influence and exploitation;*
- (d) *to ensure that other forms of gambling permitted under this or any other Act are conducted honestly and that their management is free from criminal influence and exploitation;*
- (e) *to ensure that-*
 - (i) *community and charitable gaming benefits the community or charitable organisation concerned;*
 - (ii) *practices that could undermine public confidence in community and charitable gaming are eliminated;*
 - (iii) *bingo centre operators do not act unfairly in providing commercial services to community or charitable organisations;*
- (f) *to promote tourism, employment and economic development generally in the State.*

6. Chapter 3 of the 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.*

7. The relevant provision concerning the Application is in 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.
8. 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.

9. Section 3.4.18(2) provides that if the request is for an amendment to increase the number of gaming machines permitted in an approved venue, the venue operator must give the relevant municipal council a copy of the proposed request before submitting the request to the Commission.³

10. 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.

...

11. Section 3.4.20 sets out matters that are required to be considered by the Commission with respect to such a proposed amendment. Relevantly for this Application, that section provides:

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

...

(b) if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the regional limit or municipal limit for gaming machines for

³ The Applicant provided the Commission with a Toll fast proof of delivery receipt dated 13 June 2017, which the Commission regarded as sufficient evidence for the purposes of s 3.4.18(2) of the GR Act.



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;*

...

12. 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.⁴
13. 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.⁵
14. 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.⁶ 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.
15. 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

⁴ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [52] per Dwyer DP.

⁵ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [42]-[43] per Warren CJ, Maxwell P and Osborn AJA (‘**the Romsey case**’).

⁶ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey No. 2)* [2009] VCAT 2275, [332], [348] per Bell J (‘**Romsey No. 2**’) cited in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [58] per Dwyer DP.

consequences, and vice versa.⁷ 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.⁸

16. The Commission has adopted the same approach as VCAT in setting out a table of likely economic and social benefits both to enhance clarity of Commission decisions and facilitate greater consistency between the Commission and VCAT.⁹
17. 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.¹⁰ 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.¹¹
18. 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;¹² 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.¹³

⁷ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [57] per Dwyer DP.

⁸ See *Romsey No. 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.

⁹ See e.g., *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [60] per Dwyer DP.

¹⁰ See *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M; see also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [97] and following per Dwyer DP (with respect to section 3.3.7 GR Act).

¹¹ GR Act, section 3.4.20(2).

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

¹³ *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M. As to policy principles identified for consideration, see the *Romsey* case (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.



19. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*¹⁴ that, if all of the mandatory considerations under the 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.
20. Finally, 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. Additionally, pursuant to section 9(4) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)*, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation.
21. There is no relevant direction issued pursuant to section 3.2.3 of the GR Act that relates specifically to this Application.¹⁵

MATERIAL BEFORE THE COMMISSION

22. The Applicant provided the Commission with the following material in support of its Application:
 - (a) Application form – Amendment to venue operator licence – vary gaming machines received by the Commission on 15 June 2017 (**the Application Form**);
 - (b) Social and Economic Impact Statement prepared by Ms Colleen Peterson, Managing Director of Ratio Consultants Pty Ltd (**Ratio**) dated June 2017 (**the Ratio Report**). Ms Peterson was a witness at the Hearing, adopted the Ratio Report as her evidence and provided oral evidence to the Commission;
 - (c) report of ShineWing Australia, accountants and advisors dated 9 June 2017 (**the ShineWing Report**). Mr Tim Stillwell, partner of ShineWing Australia, was a witness at the Hearing, adopted the ShineWing Report as his evidence and provided oral evidence to the Commission;

¹⁴ [2013] VCAT 101, [98].

¹⁵ For the sake of completeness, the Commission has considered both the Decision-Making Guidelines entitlement 'Approval of Premises as Suitable for Gaming' dated 13 February 2017 (*Victorian Government Gazette*, S30, 14 February 2017), which relate to locating gaming machines in a building with permanent residential accommodation, and the Decision-Making Guidelines entitled 'Assessment of children's play areas in gaming premises' dated 14 October 2013 (*Victorian Government Gazette*, S361, 16 October 2013). As neither the current Premises (nor the Premises after the proposed renovations) contain a children's play area or residential accommodation, the Commission is satisfied that both Guidelines are not relevant for this particular Application.



- (d) a report prepared by Mr Andrew Jeynes entitled 'Portarlington Golf Club RSG Management Report' dated April 2017 (**the PVS Report**). Mr Jeynes, a compliance manager for Progressive Venue Services (**PVS**), was a witness at the Hearing, and, apart from minor corrections to the dates he attended the Premises, adopted the PVS Report as his evidence and provided oral evidence to the Commission;
 - (e) witness statement of Mr Ronald Stockdale, Chief Executive Officer (**CEO**) of the Applicant, dated 5 June 2017. Mr Stockdale was a witness at the hearing, adopted his witness statement as his evidence and provided oral evidence to the Commission;
 - (f) witness statement of Ms Marilyn Mooney, President of the Applicant, dated 5 June 2017. Ms Mooney was a witness at the hearing, adopted her witness statement as her evidence and provided oral evidence to the Commission;
 - (g) witness statement of Ms Jacqueline James, a gaming supervisor employed by the Applicant, dated 5 June 2017. Apart from correcting that the Applicant now has 152 people on its self-exclusion register instead of 151 when her statement was drafted,¹⁶ Ms James was a witness at the hearing, adopted her witness statement as her evidence and provided oral evidence to the Commission;
 - (h) a copy of the Toll fast proof of delivery dated 13 June 2017 (described at footnote 3 above);
 - (i) a copy the public notice appearing in the Herald Sun newspaper dated 15 June 2017;
 - (j) proposed conditions to attach to approval of the Application, were the Commission to so approve the Application, provided on 22 September 2017;
 - (k) a proposed plan prepared by Round 6 Architects for project R0160012, drawing No SD A2.03 revision C4, which the Applicant provided to Council on 27 July 2017, which depict the proposed screening of the gaming room (**the Revised Plan**);
 - (l) a letter from Ratio to BSP Lawyers dated 21 September 2017 entitled 'Portarlington – Housing Stress Calculation'; and
 - (m) a letter from Ratio to BSP Lawyers dated 22 September 2017 entitled 'Portarlington – Patron Survey Clarifications'.
23. On 25 August 2017, the Council provided the Commission and the Applicant with an economic and social impact submission in respect of the Application, which included a Social and Economic Impact Assessment (**the Council Report**) and a summary of resolutions at the ordinary Council meeting on 22 August 2017, where the Council resolved to endorse the Council Report. In the

¹⁶ Ms James noted that three out of the 152 are familiar and relate to the Applicant: Statement of Ms James, p.2 [16].



economic and social impact submission form, the Council noted that no surrounding municipal districts objected to the Application.

24. The following material, prepared by Commission staff, was provided to the Applicant and the Council and considered by the Commission:
 - (a) a report titled *Economic and Social Impact Report* dated September 2017 (**the VCGLR Report**);¹⁷ and
 - (b) a report titled *Pre-Hearing Inspection and Compliance Report* dated 30 August 2017 (**the Pre-Hearing Report**).
25. In addition, the Commission received correspondence in opposition to the Application from two community organisations and a number of individuals:
 - (a) a letter from Church by the Bay Portarlington dated 19 August 2017, enclosing nine individual submissions from members of its congregation; and
 - (b) a submission on behalf of the Geelong Interchurch Social Justice Network (**GISJN**) (undated) prepared by Dr Michael Leahy and provided to the Commission on 17 August 2017 (**GISJN Submission**). The Commission granted Mr Ian Yule's, current President of the Network, request to provide short oral submissions in relation to the GISJN Submission at the Hearing.
26. At the Hearing, the Applicant provided the following further material to the Commission in relation to the Application:
 - (a) written submissions for the Application dated 26 September 2017 prepared by Ms Porritt;
 - (b) a letter from DBQS Consulting Pty Ltd addressed to Round 6 Architects Pty Ltd dated 30 March 2017 entitled 'Re: Stage 2 refurbishment works: Portarlington Golf Club Stage A Cost Plan' (**the DBQS Consulting costing**), referred to in the oral evidence of Mr Stockdale at the Hearing; and
 - (c) a graph entitled 'Historical Yearly Gaming Turnover', referred to in the oral evidence of Mr Stockdale at the Hearing.
27. After the Hearing, and at the Commission's request, the Applicant provided the Commission with:

¹⁷ The VCGLR Report was first provided to the parties on 11 September 2017, and was further amended and provided to the parties on 12, 18, and 25 September 2017, to update section 11, which relates to housing stress.



- (a) a letter from BSP Lawyers dated 2 October 2017, clarifying that the period for which data was obtained for Appendix 6 of the ShineWing Report was 11 December 2016 to 22 January 2017; and
- (b) a letter from Ms Colleen Peterson of Ratio dated 2 October 2017 entitled 'Portarlington – Appendix G and Tables 5.1 and 5.2 clarifications';
- (c) a spread sheet, where the file name was 'Copy of Revised Parton Surveys - local and non-local_REV B';
- (d) a spread sheet, where the file name was 'Copy of 13900P_Portarlington Golf Club_Patron Surveys_Appendix G_RevBgg'; and
- (e) a letter from BSP Lawyers dated 10 October 2017, enclosing marked up draft conditions.

28. Prior to the determination of this matter, Chairperson Kennedy visited the Premises.

DECISION AND REASONS FOR DECISION

Background

Location

29. The Premises are located on Hood Road in the City of Greater Geelong¹⁸ on the south-western outskirts of the township of Portarlington. The Premises' site includes golf club facilities, a clubhouse, pro-shop, storage sheds, parking area and an 18 hole golf course. The land to the south is primarily used as farmland, with the land to the north experiencing some residential development.
30. The City of Greater Geelong is a regional Local Government Area (**LGA**) located 75 km south-west of Melbourne and covers an area of 1,248 square kilometres. Major centres in the City of Greater Geelong include Geelong, Lara, Ocean Grove and Leopold. According to the VCGLR Report, the City of Greater Geelong has an estimated adult population of 185,673, which ranks it as the most populous of the 13 regional municipalities. The annual rate of population growth projected by the Department of Environment, Land, Water and Planning is 1.6% as compared with the Victorian average of 1.8%.¹⁹
31. A regional cap of the maximum permissible number of gaming entitlements made under a

¹⁸ Where reference is made in these reasons to the City of Greater Geelong, this is a reference to the local government area (**LGA**).

¹⁹ Note however Ms Peterson's evidence as to the expected population growth of the secondary catchment, discussed at paragraph 1(a) below.

Ministerial Order pursuant to sections 3.2.4 and 3.4A.5(3A) of the GR Act applies to the City of Greater Geelong and the Borough of Queenscliffe. The maximum permissible number of gaming machine entitlements in the area covered by the local government areas of the City of Greater Geelong and the Borough of Queenscliffe as at 12 October 2006 is 1,421.²⁰ Currently, there are 26 gaming venues operating within the City of Greater Geelong with approvals to operate a total of 1,450 EGMs (but with 1,365 attached entitlements).²¹

32. The VCGLR Report notes that the City of Greater Geelong has an EGM density of 7.2 EGMs per 1000 adults, which is 5% lower than the regional LGA average (7.6) and 31.5% more than the State average (5.5).²² This ranks the City of Greater Geelong as the 9th highest of 13 regional LGAs in terms of EGM density per 1000 adults. Also as stated in the VCGLR Report, in the 2016-17 financial year, the City of Greater Geelong had an average gaming expenditure of \$614.70 per adult (based on the 2016 population estimate), which is 1.9% more than the regional LGA average (\$603) and 13.4% higher than the State average (\$542). Applying the estimate of increased gaming expenditure as received from the Applicant in the first year of operation of the additional 10 EGMs, approval of this Application would result in an increase in average gaming expenditure per adult of 0.1%.
33. The Commission notes that the Applicant holds a club venue operator's licence within the meaning of the GR Act, and so is established for a community purposes.²³ The Commission also notes the Application is premised upon the Applicant sourcing the EGMs from the Geelong Football Club, located at Latrobe Terrace, Kardinia Park, Geelong, which is licensed to operate 100 EGMs and has 70 attached entitlements but which has ceased operation. As such, the EGM density in the City of Greater Geelong will not be affected by this Application.

²⁰ See the Ministerial Order under sections 3.2.4 and 3.4A.5(3A) of the GR Act dated 9 August 2017 and taking effect on 1 September 2017 (*Victorian Government Gazette* S280, 18 August 2017). While the number of attached entitlements (**AEs**) operating within a particular region or municipality is capped, the Commission notes that there is nothing to preclude the aggregate number of EGMs for which approved venues may be licensed from exceeding the regional cap. The Commission also notes that there are new region and municipal district caps, which come into effect on 3 November 2017 (see the Ministerial Order under sections 3.2.4 and 3.4A.5(3A) of the GR Act dated 20 November 2017, *Victorian Government Gazette* S318, 20 September 2017). However, the new caps do not effect this Application: See paragraphs 47 and 48.

²¹ AEs indicates the number of EGMs actually operating. The collective number of AEs cannot be greater than the regional cap in the area. In the ShineWing Report, Mr Stillwell gives the figure of 1,275 EGMs in operation, noting that the 70 entitlements held by the Geelong Football Club are notionally attached entitlements but are no longer in operation and not including the 30 EGMs in the Borough of Queenscliffe: ShineWing Report, p.7 [7.8].

²² Note that the rates of gaming machines per adult and percentage variations are presented to one or two decimal places for ease of comprehension, whereas the calculations have been made using the real underlying numbers, which explains any discrepancy in the percentages.

²³ In the GR Act, 'community purpose', when not used in Division 2 of Part 6 of Chapter 3 means, amongst other things, any sporting or recreational purpose, including the benefiting of any sporting or recreational club or association. Also, the constituting document of a club must contain provisions prohibiting the distribution of any annual profit or surplus to its members: See GR Act, s 3.4.8(1A).

Nature of the Premises

34. The Premises itself currently comprises:
- (a) an entry foyer, with access to the TAB area;
 - (b) a gaming room with 55 EGMs, open daily from 10 am to 1 am but which often closes earlier during mid-week and quieter times;
 - (c) a bistro area, which can accommodate approximately 250 people, open daily between 12 pm and 2 pm and 6 pm to 8.30 pm. Last summer, the Applicant used a marquee from December to April, which provides additional seating for approximately 70 people;²⁴
 - (d) a function room, which can accommodate approximately 80 people;
 - (e) a members' lounge;
 - (f) a bar area, which is open daily between 10 am and 1 am but which often closes earlier during mid-week and quieter times, and a gaming servery;
 - (g) a private dining room with access to an outdoor smoking terrace; and
 - (h) back of house facilities, including a kitchen, cool rooms, storage areas, and administrative offices.
35. The golf course and pro-shop are also open daily, operating between 7 am and 5.30 pm in non-daylight hours and 6.30 am to 7 pm in daylight hours.
36. The Applicant has 4,458 members, an increase of 2,699 since 2010, with the majority of members 'social members', currently surpassing golf membership at a ratio of 5 to 1. Ms James stated that the majority of the Premises' patrons are elderly. Ms Mooney also explained that the Applicant provides a family environment where people can enjoy themselves with their children.
37. According to Mr Stockdale, the Applicant has approximately 52 employees, 18 of which are full time and 34 are part time or casual. Ms James noted that 17 staff have gaming experience.
38. Both Ms Peterson and the Council agreed that the Premises is a destination venue, given its location on the outskirts of Portarlington and not being located in a neighbourhood of residential dwellings.²⁵

²⁴ Were the Application to be successful, the Applicant would no longer use the marquee after the proposed renovations due to the increased size of the bistro. Even with the temporary marquee, Mr Stockdale said the Applicant was constantly turning away people every weekend from the bistro.

²⁵ See e.g., Council Report p.5 and the Ratio Report, p.22 (5.1.1).



Catchment area of the Premises

39. The ‘*no net detriment*’ test refers 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’.²⁶ The determination of the likely catchment area in this instance is important in the Commission’s consideration of the identity of those residents which will be most affected by the Application in terms of gambling-related benefits and harms.
40. All of Ms Peterson, Mr Stockdale, Ms James and Ms Mooney gave evidence that tourists came from both within and outside the City of Greater Geelong to the Premises, especially during peak times. Mr Stockdale gave evidence at the Hearing that during peak seasons (Christmas, Easter, school holidays and most weekends), the majority of patrons were tourists. In the Ratio Report, given the role of the Bellarine Peninsula as a tourist destination and increased demand for EGMs during peak holiday periods, Ms Peterson expected a significantly higher percentage of patrons would come from outside the 5 km radius generally used for the catchment area for regional venues.
41. Ms Peterson noted that the Portarlington caravan park effectively doubles the size of the local population during peak season. Similarly, Mr Stockdale noted the Port Phillip Ferry Service, operating between Melbourne Docklands and Portarlington, has been ‘a huge game-changer’ for the Applicant, and statistics from the Applicant’s courtesy bus, which picks up patrons from the ferry dock, recorded over 1,000 people coming to the Premises since February 2017, which does not count those that make their way to the Premises by other means.
42. The Applicant, under Ratio’s guidance, conducted hourly gaming patron surveys during the peak season periods 9 January to 22 January 2017, and 7 to 20 April 2017 (to align with Easter school holidays), and during off-peak season periods between 11 December to 24 December 2016, and 18 to 29 May 2017. From analysis of this gaming room surveys, Ms Peterson termed the ‘primary’ catchment as accounting for approximately 61% of patrons using the venue at peak times, such as Christmas, Easter and School holidays, as coming from outside the 5 km radius from the Premises (or ‘non-locals’), with the ‘secondary’ catchment area accounted for the remaining approximate 39% of patrons, and coming from within the 5 km radius, from Portarlington, St

²⁶ 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).

Leonards and Indented Heads (or 'locals').²⁷ During off-peak season, the gaming patron surveys revealed that the split between non-local and local was approximately 49% to 51% respectively.

43. Due to the difficulty of analysing the social and economic profile of the primary catchment, and the '*no net detriment*' test relating to the municipal district in which the approved premises is located, Ms Peterson only analysed the potential effect of the Application on the 'secondary' catchment area. In terms of patrons from the City of Greater Geelong, Ms Peterson noted that 33% of patrons during non-peak times and 43.7% during peak times come from outside the City of Greater Geelong.²⁸ Ms Peterson noted that the percentage of non-local patrons identified in the gaming surveys is also similar to non-local membership numbers, accounting for roughly 50% of the Applicant's membership. Ms Peterson suspected that this was likely due to the high percentage of weekend tourists visiting the Premises, and expected this number to increase with the increasing future success of the ferry.
44. In the Council Report, the Council accepted that during peak times the EGM density ratio relative to the resident population would be reduced.²⁹ The Council was however concerned as to the increased EGM density on the local population during non-peak times. The Council otherwise agreed with the inclusion of St Leonards and Indented Heads, seemingly in relation to the 'secondary' catchment area.³⁰
45. Having regard to the material and evidence put forward by the Applicant and the Council, and noting the VCGLR Report analysing the immediate surrounding area as a radius of 5 km around the Premises, the Commission accepts the distinction between the 'primary' and 'secondary' catchment areas in this Application for both peak and non-peak times, and that the secondary catchment is made up of Portarlington, St Leonards and Indented Heads.

Issues for determination

46. Pursuant to section 3.4.20 of the GR Act, the Commission cannot grant the Application unless it is satisfied of the following two matters:³¹

²⁷ The Commission notes that the Ratio Report identified the catchment area as including Drysdale and Clifton Springs also. Ms Peterson, at the Hearing and by letter dated 2 October 2017 subsequent to the Hearing, clarified that this was an incorrect reference, and the 'local area' is defined as patrons coming from the townships of Portarlington, St Leonards and Indented Heads.

²⁸ The Ratio Report, p.23 (5.1.14).

²⁹ The Council Report, p.18 (6.1.1).

³⁰ Ibid (4.3.3).

³¹ The Commission also considered and was satisfied as to the matters set out in section 3.4.20(1)(a) and (d) of the GR Act.

- (a) that the relevant regional or municipal limit for EGMs applicable to the City of Greater Geelong will not be exceeded by the making of the amendment the subject of the Application; and
- (b) that the net social and economic impact of the increase in EGMs permitted in the Premises will not be detrimental to the well-being of the community of the City of Greater Geelong (the '*no net detriment*' test).

If having determined 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.³²

A. *Municipal and regional limit*

- 47. As noted in paragraph 31 above, the City of Greater Geelong and the Borough of Queenscliffe is subject to limits on the number of EGMs under a Ministerial Order under sections 3.3.4 and 3.4A.5(3A) of the GR Act. Without repeating all of paragraphs 31 and 33 above, as the current attached entitlements in the region is 1,365 where the limit is 1,421 and as the Applicant has an in-principle agreement with the Geelong Football Club to transfer 10 gaming machine entitlements, there will be no net increase in the number of EGMs operating in the City of Greater Geelong.
- 48. On that basis, the Commission is satisfied that granting the Application would not cause the relevant municipal limit for gaming machines for the City of Greater Geelong to be exceeded, and hence considers this aspect of the statutory test set out in section 3.4.20 of the GR Act to be satisfied.³³

B. '*No net detriment*' test

- 49. The Commission must be satisfied that if this 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 are located. Set out below (and summarised in tabular form at Appendix One) is the Commission's assessment of the economic and social benefits and disbenefits associated with this Application, including the weighting given to each of these impacts.

³² An amendment may be made subject to any conditions the Commission thinks fit: GR Act, section 3.4.20(3).

³³ While the number of entitlements operating within a particular region or municipality is capped (see footnote 20), the Commission notes that there is nothing to preclude the aggregate number of EGMs for which approved venues may be licensed from exceeding that cap.

Economic Impacts

50. The materials before the Commission, including the evidence adduced at the Hearing, either referred specifically to, or provided the evidentiary basis for, a range of economic benefits and disbenefits associated with this Application.

Expenditure on capital works

51. A potential economic benefit associated with this Application is that arising from the expenditure on the proposed renovation of the Premises and the associated economic stimulus in the LGA.
52. Mr Stockdale said that the additional EGMs would allow the Applicant to undertake Stage 2 of its 7 stage Master Plan. Stage 2 involves:
- (a) reconfiguration and extension of the bistro (adding approximately an additional 100 seats), which would remove the need for the marquee;
 - (b) relocation of the administrative offices and TAB;
 - (c) creation of a soft lounge with approximately 24 seats;
 - (d) upgrading the electrical supply, air conditioning and improving fire services; and
 - (e) providing new equipment throughout the bistro and upgrading the bar in the bistro.
53. Mr Stockdale summarised that if the Application succeeds, the Applicant proposes to undertake renovations at an estimated cost of \$1,450,000, costed by DBQS Consulting Pty Ltd, comprising of \$1,365,000 of building works and external works and services, with the remainder largely for contingencies and cost escalations. The DBQS costing noted the estimate excluded various items, including 'soft' costs such as furniture and equipment. Mr Stockdale explained that with the addition of such, his own estimate was approximately \$1,500,000.
54. Mr Stockdale explained that without approval of the Application, the Applicant would not be in a position to implement the Stage 2 works or any other stages of the Master Plan. Were the Application to be granted, Mr Stockdale estimated that the works for Stage 2 would commence within 12 to 24 months from approval, would take approximately 6 months, and take place over the winter months while the Premises remained open, with the bistro and gaming room remaining operational although at a reduced rate. Although he could not estimate how many contractors would be involved in the Stage 2 refurbishment, he noted that for the Stage 1 works (which involved refurbishing the Premises' kitchen at a cost of \$800,000), involved 40 to 50 tradespeople. In relation to the subcontractors employed during the works, Ms Peterson noted that while the



figure could not be verified, in the order of 19 FTEs would be created during the construction period, with a reasonable proportion expected to be local, especially given the Premises' location. Mr Stockdale noted these would likely be local tradespeople from the City of Greater Geelong, as per the Applicant's policy.

55. The Commission, on the evidence of Mr Stockdale, accepts that the Stage 2 works are premised on this Application being granted and is satisfied that the expenditure is not insignificant. The Commission is also satisfied that if the Application is granted, especially given the location of the Premises in a relatively rural area, a large proportion of the renovation expenditure of approximately \$1.5 million would occur within the City of Greater Geelong. As such, the Commission considers that this benefit should be given a low weight. Further, the Commission is wary that benefits associated with the renovation expenditure are not double counted, having regard both to the estimated employment impacts of the proposed renovations and to the social impact that may result from the improved facilities. These aspects are considered further below at paragraphs 60 to 64 and 116 to 118 respectively.

Complementary expenditure

56. Complementary expenditure is a potential benefit where it results in increased economic activity in the municipal district in which the premises the subject of an application are located. 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 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. The Commission notes the evidence of tourists coming to the Premises from outside the City of Greater Geelong, referred to in the evidence of various witnesses and summarised at paragraphs 40 to 44 above.
57. Mr Stockdale estimated a \$140,344 increase in sales of the bistro in the first year as a result of the proposed works (an approximate 10% increase in current bistro sales), as a result largely of the larger bistro and the creation of a soft lounge area. Ms Peterson said that she expected this figure to be higher but it was likely a reflection that the marquee likely allows the Applicant to capture extra-over patronage during summer peak periods. Mr Stockdale also gave evidence that the Applicant supports local businesses in the City of Greater Geelong, particularly in the seafood industry, and its menu included items specifically related to the Bellarine area. Mr Stockdale estimated that the 60% to 70% of the companies from which the Applicant sources produce are

local.

58. While the Commission considers there is limited evidence on this hypothetical impact, which relies on an estimate of the increase in trade in the bistro as a result of the proposed renovations, the Commission accepts the Applicant's figure of \$140,344 as a reasonable estimate of the new complementary expenditure likely to arise if the Application is granted, and accepts that a portion of the new complementary expenditure that would result following the introduction of the additional 10 EGMs were the Application to be successful would be new complementary expenditure in the City of Greater Geelong (as compared to expenditure simply transferred from other venues within the municipality of the City of Greater Geelong).
59. The Commission is of the view that the amount of new complementary expenditure is small in the context of the LGA as a whole. As such, while this factor represents a positive economic impact of the Application, and the Commission attributes this benefit marginal weight.

Additional employment

60. Employment benefits associated with the Application may involve short term employment benefits associated with Stage 2 works and longer term benefits following the introduction of the 10 EGMs at the Premises.
61. The Applicant provided only limited evidence in relation to the short term employment benefit associated with the renovation activities (related to, but separate from, the economic benefit associated with the expenditure on capital works considered above). Ms Peterson also noted that maintenance and services agreements would be updated and their value increased as a result of the proposed works, with the works currently carried out by a local contractor, which was expected to remain the case. Given that the expenditure associated with this work has already been separately considered and captured, based on the evidence before it, in this instance the Commission accords this particular benefit of additional employment created by the renovation no to marginal weight.
62. In relation to longer term employment benefits, Mr Stockdale estimated that the operation of an additional 10 EGMs at the Premises would result in 2.3 equivalent full time (**EFT**) employees, comprised of 1 full time and 2 casual positions. Responding to the Council's criticism that it was not clear how the 2.3 EFT equivalent positions had been calculated,³⁴ Mr Stockdale noted that the calculation was difficult and was, in part, based on additional staff required for the expected additional complementary expenditure (see paragraphs 56 to 59 above) post renovation, and so

³⁴ The Council Report, p.37 (8.3).

the additional staff would be based in the bistro, bar and gaming areas. Mr Stockdale was of the view that the 2.3 figure was a conservative number. In relation to whether those employees would be sourced from the City of Greater Geelong, Mr Stockdale noted that 87% of the current 52 members of the Applicant's staff come from the local area, and that the Applicant would definitely be looking for local people as it tries to employ local people wherever it can. Ms James also noted that, given the Premises' location, the vast majority of employees come from within the local area and the City of Greater Geelong.

63. The Council was of the view that employment impacts at a proposed EGM venue should be limited to those that relate specifically to gaming activity at the venue.³⁵ Ms Peterson responded that she assesses the consequences of the whole Application, and so it was fair and reasonable to consider the employment created by the Application in total, as further employment would be generated by the expected increase in trade due to the proposed renovations. While agreeing that the most relevant employment impact here is the jobs that will be created in the gaming room, the Commission agrees with the latter approach and gives weight to the non-gaming related new jobs created as a consequence of granting the Application.³⁶
64. Given that introducing 10 EGMs is associated with relatively low levels of transferred expenditure (see paragraphs 73 and 74 below), the Commission agrees with the Applicant and finds that the economic impact arising from this Application would be the employment of 2.3 EFT workers. The Commission is also satisfied these employees will be sourced from the City of Greater Geelong. While the Commission regards this as a positive impact, given its scale, the Commission considers it is a benefit to the community to which it should attribute marginal weight.

Community contributions

65. In determining the net economic and social impact of applications of this nature, both the Commission³⁷ and VCAT³⁸ 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. In assessing the weight

³⁵ See the Council Report, p.37 (8.3). The Council was also concerned that those employed in gaming venues are more likely to develop problem gambling issues themselves, which the Commission has also considered.

³⁶ This accords with the VCAT's reasoning in *Monash CC v L'Unico Pty Ltd (Review and Regulation)* [2013] VCAT 1545 (4 September 2013), [79].

³⁷ See e.g., *Application by Richmond Football Club* [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

³⁸ 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.

to be placed on such a benefit, it is important that the Commission does not conflate this benefit with the social benefit associated with such contributions.

66. Having regard to the evidence and submissions made with respect to the community contributions that are set out in paragraphs 119 to 131 below, such contributions can also have a positive economic impact. With particular emphasis on the contributions arising as a result of this Application, the Commission considers the community contributions (distributed in accordance with conditions of any approval of this Application) and the impact on local community organisations to be an economic benefit which is given low weight.

Gaming expenditure not associated with problem gambling

67. To the extent that gaming expenditure is not associated with problem gambling, it has been recognised that such expenditure can be treated as an economic positive.³⁹ 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.⁴⁰
68. Mr Stillwell, in the ShineWing Report and his oral evidence, gave evidence regarding the likely increase in gaming expenditure should the Application be granted.
69. First, Mr Stillwell's figures for the average net EGM expenditure per adult, based on spending in the 2015/6 financial year, \$613, which is higher than the average for the State of \$553,⁴¹ which is similar to the figures in the VCGLR Report (which is based on the 2016/2017 financial year).⁴² Based on a 2016 adult population estimate, were the Application to be granted, after the installation of the additional 10 EGMs, Mr Stillwell expected the figures for the City of Greater Geelong to increase to \$614 in the first 12 months of trade and \$615 post renovations.⁴³
70. Secondly, Mr Stillwell gave two estimates for expenditure, the first being for the first 12 months and prior to the completion of the proposed works at the Premises, and the second being for post the completion of the proposed works.
71. In relation to the first estimate, Mr Stillwell used the utilisation survey method, which looks at the utilisation of the current EGMs, where utilisation of over 70% is indicative of periods when

³⁹ See *Romsey No. 2* [2009] VCAT 2275 [351] per Bell J.

⁴⁰ 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.

⁴¹ Mr Stillwell noted that these figures represent where expenditure occurs and not necessarily where the people generating expenditure reside: p.10 (7.13).

⁴² See paragraph 32 above.

⁴³ ShineWing Report, p.11 (7.15).



additional gaming expenditure is potentially foregone by a venue due to limited capacity and access to an appropriate choice of EGMs. Here, Mr Stillwell assumed peak utilisation at 60% of the 55 EGMs in the gaming room, as with venues with comparatively smaller gaming rooms, the condensed nature of the room and reduced range of differentiated products lowers the utilisation rate. Mr Stillwell noted that the month by month expenditure of the Premises shows the gaming room performing better at certain times of year (December and January). So, to 'seasonally adjust' the figures,⁴⁴ Mr Stillwell used two utilisation surveys to obtain utilisation at peak periods and non-peak periods, 11 December 2016 to 22 January 2017 and 7 April to 20 April 2017 respectively. Finding the 'peak' utilisation rate of 11.98% (the per cent of time where the 55 EGMs were 60% utilised or above) and adjusting for each month, Mr Stillwell estimated that the 10 additional EGMs would notionally generate \$75,221 for the first 12 months. Finding the non-peak utilisation rate of 8.29% (the per cent of time where the 55 EGMs were 60% utilised or above) and adjusting for each month, Mr Stillwell estimated that the 10 additional EGMs would notionally generate \$61,417 for the first 12 months. Using this figure as his low estimate, the \$75,221 figure as his medium estimate and applying an additional 20% to allow for any figure incremental expenditure during peak periods, Mr Stillwell gave \$90,265 for his high estimate.

72. In relation to the second estimate, the anticipated expenditure for the 10 additional EGMs post the renovations, Mr Stillwell detailed that the best approach for estimating future revenue was the empirical evidence method, which looks at similar venues that have recently introduced additional EGMs, and analyses the impact the introduction of the additional EGMs on the expenditure in those venues. In adopting the empirical evidence methodology, Mr Stillwell determined what he regarded was an appropriate sample group of the most relevant clubs, listing a series of factors he considered, including club venues undertaking renovations that had increased not more than 25% of EGMs in 2013FY, 2014FY or early 2015FY, and similar gaming expenditure per adult and Socio-Economic Indexes for Areas (**SEIFA**)⁴⁵ ranking in the LGA. Mr Stillwell identified the Koorringal Golf Club and the Bentleigh RSL, and, after adjusting expenditure from 2012FY by approximately 2.74% based on permanent disruption caused by transitional issues in the industry, derived factors of 0.37% and 0.26% expenditure increase per each 1% of EGM increase. On the basis largely that the renovations at the Bentleigh RSL were on a lower scale than the proposed renovations, Mr Stillwell adopted the figure derived from analysis of the Koorringal Golf Club, and believed that post renovations, for every 1% increase in EGMs, gross gaming expenditure would increase by approximately 0.37% at the Premises, or, when multiplied by the 2015/16 financial

⁴⁴ Transcript of the Hearing, p-11, ln 23-24.

⁴⁵ SEIFA is a product developed by the Australian Bureau of Statistics (**ABS**) that ranks areas in Australia according to relative socio-economic advantage and disadvantage. It consists of four different indexes, including the Index of Relative Socio-economic Disadvantage.



year gross expenditure, expenditure of \$275,489 per annum for the additional 10 EGMs. Using this as the medium estimate, and applying a 10% margin either way, Mr Stillwell estimated the range of expenditure for the venue at \$247,940 to \$303,038 per annum post renovations.

73. Thirdly, in relation to expenditure that would be transferred from other venues, Mr Stillwell adopted a notional transfer rate of 20%. This was on the basis that:
- (a) the Premises only has one competitor within a 10 km radius (the Clifton Springs Golf Club);
 - (b) some patrons of the Premises would not be transferring expenditure from other venues. In this respect, Mr Stillwell noted that just because approximately 50% to 60% of patrons were not from the local area during peak and non-peak periods did not mean that those patrons were necessarily EGM players and transferring expenditure from their local venue of choice;
 - (c) the Premises' location on the Bellarine Peninsula, as well as the gaming locality survey, suggested that a number of patrons frequenting the Premises do not reside in the City of Greater Geelong, and such patrons may be conducting incidental gaming that they may otherwise have conducted at their local or preferred venue of choice; and
 - (d) also on the basis of the patron locality survey, some patrons who visit the Premises do not reside in Portarlington but do reside in the City of Greater Geelong, suggesting that some patrons travel further than 10 km to visit the venue.
74. Mr Stillwell therefore estimated that 10% of expenditure would be transferred from venues within the City of Greater Geelong and 10% from outside the LGA, and so 90% of gross expenditure would be new to the Premises. So, Mr Stillwell estimated the new expenditure for the City of Greater Geelong in relation to his first estimate as between \$55,274 and \$81,239 and for his second estimate as between \$223,146 and \$272,734. For new expenditure generally (ie 80% of gross expenditure), Mr Stillwell, in relation to his first estimate, believed that \$49,132 to \$72,212 would result due to the Application and in relation to his second estimate, believed that \$198,352 to \$242,431 would result due to the Application.
75. Mr Stockdale noted that the Applicant, in order to approach lenders for potential finance for the proposed Stage 2 renovations, had prepared its own estimates, which substantially accorded with Mr Stillwell's estimates.⁴⁶ Ms Peterson was of the view that the additional new expenditure in the first 12 months of trade for the additional 10 EGMs of in the region of \$80,000 was minor compared to the overall local economy and noted again that she expected the majority of this new

⁴⁶ Transcript of the Hearing, p-49.

expenditure to come from outside the LGA.⁴⁷ Ms Peterson's view was not changed if she adopted Mr Stillwell's second estimate.

76. The Council Report did not directly address or lead any contrary evidence to Mr Stillwell's gross gaming expenditure figures for the additional 10 EGMs.
77. At the Hearing, the Commission asked Mr Stillwell about whether he had conducted any analysis as to the accuracy of his previous expenditure reports in other Commission matters. Mr Stillwell noted that he had prepared a table for the Commission in previous matters, which showed that his past estimates were broadly accurate, apart from those where EGMs were introduced into other venues after his estimate was made. Mr Stillwell did however note that his other estimates had not given two estimates such as his present analysis, one for the first 12 months and another for the post renovation expenditure.
78. The Commission is of the view that Mr Stillwell's analysis is not unreasonable and adopts his first and second estimates. At the Hearing, the Commission also asked Mr Stillwell which of his estimates, the first or the second, the Commission should rely on for the purposes of the '*no net detriment*' test. Mr Stillwell indicated that the second estimate should be used, although Counsel for the Applicant pointed out that the Application Form asked for the anticipated net expenditure arising from the Application over the first 12 months, and, while the Commission could probably have regard to both figures, the Commission was obliged to put more weight on the first 12 month estimate.⁴⁸ The Commission notes that Mr Stillwell prepared the second estimate as he believed it was worthwhile to assess likely expenditure implications following the State 2 renovations and to 'fully assess the impact of this application'.⁴⁹ The Commission agrees with this approach. The Commission is of the view that, in terms of assessing the '*no net detriment*' test for this particular Application, it should have greater reliance on Mr Stillwell's second estimate, as that estimate more accurately reflects the anticipated expenditure were the Application to be granted. The Commission notes this approach accords with how the impact of additional employment, complementary expenditure⁵⁰ and other impacts, which focus on the impact post renovation, are considered. That said, the Commission has still had regard to Mr Stillwell's first estimate, noting especially the relatively low utilisation rates involved in that estimate. The Commission also accepts Mr Stillwell's evidence as to transferred expenditure of 20%, comprising 10% from the City of Greater Geelong and 10% from outside the LGA, which is reasonable given the lack of

⁴⁷ Ratio Report, p.65 (Table 15.2).

⁴⁸ Transcript of the Hearing, p-96.

⁴⁹ Transcript of the hearing, 26 September 2017, P-11, In 5-9. See also *ibid*, p-16, In 26-30. Similarly, Ms Peterson was of the view that it was fair into account Mr Stillwell's second estimate: Transcript of the Hearing, p-84.

⁵⁰ In this respect, the Commission notes that the Application Form also requests an applicant to estimate complementary expenditure for the next 12 months.

nearby competitor venues.

79. In assessing the extent of the benefit associated with this increased gaming expenditure, the Commission has had regard to the evidence outlined in paragraphs 80 to 98 below with respect to gambling expenditure associated with problem gambling. Generally the Commission considers that the portion of new expenditure not attributable to problem gambling is an economic benefit. Having regard to factors outlined above and in the sections below related to problem gambling, the Commission considers that the majority of new expenditure would not be associated with problem gambling, especially due to the evidence that a large proportion of that expenditure is from clientele who come to the Premises from outside the municipality of the City of Greater Geelong. However, given the relatively low estimated levels of new expenditure that the Commission considers will result if this Application is granted, and, the Commission considers this benefit to be one to which it attributes marginal to low weight.

Gambling expenditure associated with problem gambling

80. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an economic disbenefit.⁵¹ 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.
81. In assessing the extent of this disbenefit, the Commission has regard to the expenditure evidence set out in paragraphs 67 to 79 above. In doing so, the Commission recognises that in considering this aspect of the '*no net detriment*' test it does not include consideration of transferred expenditure because such expenditure cannot be said to exacerbate problem gambling.⁵²

The vulnerability of the City of Greater Geelong and the catchment area

82. The extent to which it can be considered that new expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with this Application, will be

⁵¹ 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.

⁵² 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.

influenced by the socio-economic status and vulnerability of the community of the City of Greater Geelong, and particularly those living in the catchment area surrounding the Premises. This is because communities characterised by socio-economic disadvantage and greater vulnerability are more susceptible to the harms arising from problem gambling.⁵³

83. Keeping in mind the distinction between the 'primary' and 'secondary' catchment areas,⁵⁴ Ms Peterson, in her oral evidence and in the Ratio Report, set out that the SEIFA indices scores indicate there are areas of significant disadvantage located within close proximity to the Premises, with the Council Report noting that significant portions of the secondary catchment are characterised by low SEIFA scores, with Portarlington having an index in the 2011 SEIFA of 953.4 and contained in the 26th percentile for the municipality, and St Leonards having an index of 946.9 in the 23rd percentile for the municipality.⁵⁵
84. However, based on the following, and mindful that the Premises already operates 55 EGMs and so focusing on the additional risk that is likely to result from the introduction of 10 additional EGMs, Ms Peterson was of the view that the risk of an impact of gambling expenditure associated with problem gambling was likely to be low, as:
- (a) the SEIFA scores were likely influenced by higher than average numbers of empty nesters, retirees, seniors and elderly people residing in the secondary catchment, as items such as internet access at home, levels of car ownership and income tend to be lower in retirees but are not necessarily signs of disadvantage as such;⁵⁶
 - (b) the City of Greater Geelong is expected to experience higher population growth than the Country Victorian average, and a similar level to the Victorian average, from 2016 to 2031. Looking at the suburbs of Portarlington and St Leonards/Indented Heads,⁵⁷ the population is expected to increase between 2011 and 2026 by 31% and 49% respectively. Ms Peterson suspected that an increase on the SEIFA score for the secondary catchment area may occur, with a large proportion likely commuting families and retirees;⁵⁸

⁵³ This common-sense approach accords with the VCAT's treatment of this issue in *Molwin Pty Ltd v Mornington Peninsula SC* [2015] VCAT 1982 (23 December 2015), [68].

⁵⁴ See paragraph 42 above.

⁵⁵ As the VCGLR Report explains, the SEIFA index of relative socio-economic disadvantage data for Victoria SA1s from the 2011 Census range from 429 to 1,194, however most values lie within the range of 800 to 1200. A low score indicates a high proportion of relative disadvantaged people in an area, while a high score indicates a lack of disadvantage: VCGLR Report, p.16.

⁵⁶ Ratio Report, p.59 (12.4.5)

⁵⁷ Ms Peterson uses .id consulting for these statistics and does note that the suburb boundaries used by .id consulting differ from those used in the Census 2011 (SSC).

⁵⁸ Ms Peterson believed that retirees that move to the secondary catchment would improve its SEIFA index as they will have a higher income profile due to the significant increase in price of land in the Bellarine peninsula over time: Transcript of the Hearing, p-91, ln 30-40.



- (c) based on parameters of social disadvantage and profile of problem gamblers as set out in the Department of Justice 2009 report⁵⁹ and the Victorian Responsible Gambling Foundation Longitudinal Study,⁶⁰ the general indicators of social and economic status showed a mixed socio-economic profile of the secondary catchment area, with indicators both above (such as a higher proportion of home ownership) and below (such as medium weekly household income) the Country Victorian average, and a mixed socio-economic profile when considering the indicators of problem gamblers. Overall, and slightly different to the SEIFA analysis, analysis of key social and economic indices indicated to Ms Peterson that the secondary catchment is typically characterised by a socio-economic profile showing some signs of disadvantage but above the Country Victorian average on a majority of indicators;
- (d) analysing housing stress, based on households with housing costs (ie renting or paying a mortgage) exceeding 30% of their income and in the bottom 40% of income distribution,⁶¹ looking at the suburbs of Portarlington and St Leonards, indicates approximately 16.4% of households in stress, as compared to regional Victoria, where approximately 13.9% of houses are in stress. Ratio took issue with the Commission approach in the VCGLR Report, which does not include households that are owned outright (which Ratio calculated as 50.7% of all households). Also, while housing stress was a factor to consider in assessing the level of vulnerability a community may have as a consequence of additional expenditure associated with the 10 additional EGMs, Ms Peterson was of the view that this factor was not of as much importance here as the additional expenditure would not come from the local community but instead from tourists;
- (e) contact with the Victorian Responsible Gambling Foundation (**VRGF**) sought details of gambling and financial services in Portarlington. The VRGF were only able to provide information in relation to the City of Greater Geelong, noting that the Foundation provides funding to the Bethany Community Support, which delivers such services in the Barwon catchment, covering Colac-Otway, Queenscliff, Surf Coast and the City of Greater Geelong. In the 2015/2016 financial year, the service had 200 unique clients, with an average wait

⁵⁹ Victorian Department of Justice, 'A study of gambling in Victoria – Problem gambling from a public health perspective', September 2009, pp.87-88 (profile of problem gamblers).

⁶⁰ Billi, R., Stone, C.A., Marden, P., Yeung, K., (2014). 'The Victorian Gambling Study: A longitudinal study of gambling and health in Victoria, 2008–2012.' Victoria, Australia: Victorian Responsible Gambling Foundation.

⁶¹ The Ratio Report does not analyse housing stress based on income distribution but Ratio acknowledged that the National Summit on Housing Affordability suggested that households should be regarded as suffering housing stress if housing costs exceed 30% of their income and they are in the bottom 40% of income distribution. To assist the Commission, in its letter described at paragraph 22(l) above, Ratio performed both types of housing stress analyses.

time of 2.79 and 3.12 days for therapeutic and financial counselling respectively. Ms Peterson noted that this broadly compared to the State average of 3.3 and 3.0 respectively;

- (f) net machine revenue (**NMR**) for the 2015/6 financial year was \$203.43 per machine per day, compared to the country club and metropolitan club averages of \$187.87 and \$201.18 respectively. However, the Premises' NMR sits well below the Victorian Country Club averages with the exception of the Christmas and Easter periods. When viewed with the patron gaming surveys, Ms Peterson suspected a correlation between the popularity of the EGMs at peak times and the higher than average NMR. As roughly 39% of patrons come from within the secondary catchment area during peak periods, Ms Peterson was satisfied that the level of expenditure and level of peak utilisation do not indicate any significant concerns in relation to problem gambling;
- (g) the levels of problem gambling at the Premises would be unlikely to change as there are a range of other entertainment options for patrons besides gaming that would be enhanced were the Application to be granted, including golf, the bistro, soft lounge and function areas. Also, Ms Peterson believed what she termed 'modest' opening hours of the Premises, closing at 1 am and earlier during non-peak periods, assisted in reducing risks to problem gamblers;
- (h) as gaming was already present at the Premises, Ms Peterson was of the view that it was unlikely that the additional EGMs would create new problem gamblers;
- (i) while the introduction of the 10 additional EGMs did have the potential to change the attractiveness of the venue to problem gamblers, potentially increasing anonymity of players in the gaming room, increase in staffing will partly offset this element; and
- (j) given the relatively low levels of additional expenditure anticipated from the 10 additional EGMs and as demand for the additional EGMs will generally only occur during peak, tourist periods, it is likely that any increase in expenditure associated with problem gambling would not be from the secondary catchment area.

85. In summary, Ms Peterson was of the view that problem gambling arising from granting the Application was a disbenefit, which, albeit uncertain in size, may result in higher costs to health and service providers and lower spending on goods and services. However, Ms Peterson believed such costs were likely to be felt outside the City of Geelong given that more non-locals were likely to use the additional 10 EGMs and so according this impact a neutral negative impact on the

municipality.⁶² Indeed, the Applicant's Counsel argued that EGM expenditure from tourists in the area should not be considered a detriment as it is unlikely that those with sufficient discretionary expenditure to be holidaying in the area spending beyond their means.⁶³

86. In contrast, according to the Council Report, the Council argued that various social and economic factors suggest that the risk of increased incidence and economic impact of problem gambling at the Premises are likely to be increased should this Application be granted, including (apart from those already covered by Ms Peterson above) that:
- (a) the Council was concerned that the burden of increased EGM density on the secondary catchment during non-peak, low tourist time;⁶⁴
 - (b) low income households, again based on 2011 Census data, being those with a combined gross income of \$600 per week before tax, make up 33.2% (482 households) and 32.4% (427 households) of Portarlington and St Leonards/Indented Heads respectively, compared to the LGA average of 23.2% and the State average of 19.1%;
 - (c) lone person families comprise 32.4% and 30.2% of Portarlington and St Leonards/Indented Heads respectively, compared with the LGA average of 26.4% and the State average of 23.5%;
 - (d) in relation to the impact on the secondary catchment area, from the Productivity Commission Report estimates, between 20% and 60% (an average of 40%) of EGM expenditure comes from those who can be considered as problem gamblers;⁶⁵ and
 - (e) the Council noted that the Application involves the potential purchase of gaming machine entitlements from the Geelong Football Club, and so would involve effectively a transfer of EGMs from the Geelong Football Club to the Premises. The Council noted that the catchment surrounding the Geelong Football Club has a lower level of disadvantage than the Premises' secondary catchment.⁶⁶
87. In her oral evidence, Ms Peterson made a number of comments with respect to the Council Report, including that:
- (a) in relation to the criticism that effectively moving EGMs from the Geelong Football Club to the Premises effectively moves machines from a less disadvantaged to a more disadvantaged area in terms of the SEIFA indexes, Ms Peterson noted it would be very

⁶² The Ratio Report, p.65 (Table 15.2).

⁶³ Written submissions for the Application dated 26 September 2017 prepared by Ms Porritt, p.6 [21].

⁶⁴ Council Report, p.18 (6.1.1).

⁶⁵ The Council Report, p.11 (4.5), citing *Productivity Commission (2010) "Gambling – Inquiry Report Volume 1"*, 5.1 (p.203).

⁶⁶ See the Council Report, p.32 (7.1)



difficult to justify on that test alone. However, when one looks at the Application in its totality, Ms Peterson was of the view that the '*no net detriment*' test was satisfied here. A central tenet to this view was that the additional 10 EGMs will be played predominately by non-local people;

- (b) while the low income households do sit below the average for the secondary catchment area, it was likely largely driven by a substantial number of people over the age of 65 who were either self-funded retirees or pensioners;
- (c) in relation to the Productivity Commission estimates of the proportion of expenditure associated with problem gambling, there is no information to understand how the figure of approximately 40% might be broken down at a more localised level. Simply put, Ms Peterson was of the view 'there is no way of collecting data that enables us to determine where problem gambling occurs'.⁶⁷ The best guide Ms Peterson could use was looking at the levels of expenditure at the Premises as compared to State averages for regional club venues, and look at the NMR of the existing EGMs, which sits below those averages except for periods of peak use. This gave Ms Peterson confidence that the risk of problem gambling at the Premises is not currently high.

RSG practices at the Premises

88. In considering the extent to which any new expenditure may give rise to an increased risk of problem gambling, the manner in which gaming is to be conducted at the Premises is also a relevant consideration. Specifically in relation to the Premises' Responsible Service of Gaming (**RSG**) practices:

- (a) Ms Peterson was of the view that the Premises has sound best practices in place to manage its RSG code of conduct requirements, including by operating the Community Clubs Victoria Responsible Gambling Code of Conduct, staff conducting daily compliance materials checks, operating a self-exclusion program, having a senior member of staff undertake the role of Responsible Gaming Officer for each shift. Ms Peterson also did not consider that the increased number of EGMs and extensive redevelopment of the Premises would increase the attractiveness of the venue for problem gamblers;⁶⁸
- (b) Mr Andrew Jaynes of PVS, who provided an RSG Management Report for the Premises dated April 2017 and who gave oral evidence at the Hearing. Mr Jaynes interviewed each staff member who worked in the gaming room and performed a compliance check of RSG

⁶⁷ Transcript of the Hearing, p-92, ln 4-6.

⁶⁸ The Council Report, p.60 (13.1.4).



requirements. Mr Jeynes concluded that the Applicant 'has sound best practices in place to manage all responsible gambling code of conduct requirements'⁶⁹ and staff demonstrated high levels of staff knowledge of the code of conduct and self-exclusion program and good understanding of responsible gambling material requirements and problem gambling identification and intervention techniques, including customer engagement strategies. Mr Jeynes noted that the Applicant had instituted all of his recommendations, which included a board compliance reporting process and training protocol. Mr Jeynes also noted that the Applicant has 85 customers signed up to YourPlay;⁷⁰

- (c) Mr Stockdale also noted the Premises had adopted an in-house gaming policy to which all staff adhere, all staff undertake RSG training prior to working in the gaming room, all directors of the Applicant similarly hold RSG certificates, the Applicant requires prospective directors to complete RSG training, and gaming staff and managers also attend all VCGLR Yourplay seminars; and
- (d) Ms James, a full time gaming supervisor employed by the Applicant, noted that all gaming staff attend (essentially on a rotating basis) Gamblers' Help sessions conducted by Bethany Community Support approximately twice a year. Ms James also gave evidence as to the day-to-day workings of RSG at the Premises. The Applicant has three employees in the gaming room at all times when it is open. Ms James knows most of the patrons at non-peak times as locals, and uses her RSG training to approach patrons who may have been at the Premises frequently or over a long period. Ms James noted that the Applicant has at least three staff members in the gaming room at all times, with the ability to call upon more if and when required. Ms James also gave further detail as to the Applicant's Gaming Incident Register Book.

89. The Commission also notes that the Pre-Hearing Report detected no issues from recent gaming and liquor inspections. The Commission considers that the Applicant is conscious of its RSG requirements and believes that this assists to mitigate any risk of an increase in the incidence of problem gambling that the Application could cause.

Other factors

90. There is a range of other factors applicable to this Application that the Commission considers relevant in assessing the potential risks associated with problem gambling.

⁶⁹ PVS Report, [10].

⁷⁰ 'YourPlay' is a personal gaming card allowing a player to track their play over time, where players can also time and/or money limits.

91. First, the Commission notes that Ms Peterson, with whom the Council agreed, characterised the venue as a ‘destination venue’, in requiring a conscious decision on the part of a visitor to attend the Premises and enter the gaming area, and the Commission notes the Premises’ location as not on a busy road and on the outskirts of Portarlington. As the Premises would require a conscious decision of patrons to attend, the Commission agrees with the characterisation of the Premises as a ‘destination venue’, and, as such, this further mitigates the risk of an increase in problem gambling that granting the Application would cause.
92. Secondly, an issue as to the visibility of the gaming room from other parts of the Premises was raised. Mr Stockdale gave evidence as to the Revised Plan (described in paragraph 22(k) above), which contained details of screening of the various entrances to the gaming room and the remainder of the Premises. The Commission notes that at the Hearing, Mr Stockdale confirmed that the Applicant would install the screening regardless of the outcome of the Application.⁷¹ While the Commission notes that this screening is proposed to be visual only, and will not prevent sound from the gaming room being heard by other patrons at the proposed lounge area beside the gaming room, the Commission is satisfied that the screening assists again to mitigate the risk of an increase in the incidence of problem gambling caused by granting the Application and including the exposure of minors to the gaming room.
93. Thirdly, the Commission has taken into account the submissions received from community organisations opposed to the grant of the Application. The Commission notes the submission from GISJN and the Church by the Bay Portarlington, both of the view that the additional 10 EGMs would likely increase harm caused to the City of Greater Geelong residents who are already experiencing and dealing with gambling-related harm.
94. In response to these community group submissions, the Applicant noted that the submissions were directed more to a concern regarding gaming in the State generally and not to problem gambling at the Premises.⁷²

The Commission’s view

95. Having regard to all of the circumstances, should this Application be granted, the Commission considers that there is a risk of increased problem gambling expenditure associated with this Application. That increased expenditure would come from the additional, new expenditure the additional 10 EGMs would generate, discussed in paragraphs 67 to 79 above.

⁷¹ Transcript of the Hearing, p-53, ln 41.

⁷² The Commission also refers to its comments in relation to issues raised by some of those the submissions at paragraphs 139 and 140 below.



96. While the Commission accepts that the SEIFA indices indicate that residents in the secondary catchment area have a level of socio-economic disadvantage and financial vulnerability that would make them more susceptible to gambling-related harms, the Commission is persuaded by the evidence of Ms Peterson, particularly in relation to the likelihood that during peak times when the additional 10 EGMs are more likely to be utilised, the additional EGMs would be used by tourists, a significant number of whom will be from outside the City of Greater Geelong. As the '*no net detriment*' test focuses on the community of the municipal district in which the approved venue is located, the risk of an increase in problem gambling outside the City of Greater Geelong is not captured by this. Further, specifically in relation to the risk of an increased incidence in problem gambling to the community of the City of Greater Geelong that may arise were the Application to be granted, the Commission is persuaded by Ms Peterson that any impact on such residents, especially in the secondary catchment area, is likely to be mitigated due to the factors listed above at paragraph 84.
97. Considered along with the Premises being a destination venue, the high levels of home ownership in the secondary catchment, the Premises' RSG practices and history (with the Commission particularly impressed by the number of patrons signed up to YourPlay) and the current level of exposure of the local community to EGMs to some degree mitigates the potential risk of an increase in gaming expenditure associated with problem gambling.
98. Accordingly, and having regard to all circumstances and factors, the Commission considers with respect to this Application that the potential expenditure associated with problem gambling is a negative economic impact upon which it should place a low weight. Issues relating to the negative social impacts associated with problem gambling are considered further in paragraphs 132 to 137 below.

Diversion of trade from other gaming venues

99. Mr Stillwell gave evidence that the introduction of EGMs at the Premises would cause a diversion of trade from other gaming venues within the municipality. More specifically, he estimated 10% of the additional gaming expenditure would be transferred from other venues in the City of Greater Geelong and 10% transferred from venues outside the City of Greater Geelong. He did not specify the extent to which other retail expenditure may be diverted. Ms Peterson was of the view that this disbenefit should be given little weight, given the competition objective of the GR Act and the low level of transferred expenditure.
100. Given that the introduction of an additional 10 EGMs is associated with relatively low levels of transferred expenditure (see paragraphs 73 and 74 above), the Commission considers that there



may be some impact on other venues (in particular, the closest venue to the Premises, the Clifton Springs Golf Club) that any diversion of trade would be minor. Having regard to these factors, and focusing on the City of Greater Geelong, the Commission assigns no weight to this negative impact.

Diversion of trade from non-gaming businesses

101. Ms Peterson noted that a potential disbenefit as a result of granting the Application might be lower spending and job losses from local, non-gaming businesses. The Commission, while being careful not to double count this impact with the impact of gaming expenditure associated with problem gambling, notes that Ms Peterson found this impact difficult to determine and could be partially offset by ‘trigger[ing] innovation by or improvements in other venues’.⁷³
102. The Commission is of the view that the maximum impact that could be felt by local non-gaming businesses is the value of the new expenditure from this Application, discussed at paragraphs 67 to 79 above. However, the Commission agrees with the Applicant that whether that expenditure would necessarily have been spent elsewhere is difficult to determine. As such, the Commission finds that there is an economic disbenefit associated with the diversion of trade from retail facilities within the City of Greater Geelong as a result of this Application, and so places marginal weight on this factor.

Increased gaming competition in the City of Greater Geelong

103. Increasing competition in gaming in the City of Greater Geelong is a factor to be considered by the Commission in light of the statutory purposes of the Act⁷⁴ and the consumer benefits that derive from competition.
104. Mr Stockdale notes that granting the Application would allow the Applicant to be more competitive, and that the Applicant’s main competitors are the hospitality businesses The Grand Hotel Portarlington and the Portarlington Bowls Club. Ms Peterson believed that this benefit carries some weight but, as the number of machines is small in relation to the overall market, gave it low weight.
105. The Commission notes that granting approval of the Application could be considered to increase gaming competition in the City of Greater Geelong by providing an additional EGMs in the Premises but notes that the Premises currently already has 55 EGMs. Also, the Commission notes that neither The Grand Hotel Portarlington nor the Portarlington Bowls Club have EGMs

⁷³ The Ratio Report, p.65 (Table 15.2).

⁷⁴ See GR Act, s 3.1.1(2).

currently and so the Application cannot be said to increase competition between these premises and the Applicant in the relevant market.

106. In relation to an increase in gaming competition, the Commission refers to and relies on the evidence set out in paragraphs 73 to 74 in relation to the anticipated transfer of gaming expenditure within the City of Greater Geelong.
107. On the basis of an estimated adult population in the City of Greater Geelong for 2016, the Commission notes that this Application, if approved, would:
- (a) increase the total number of approvals for EGMs in the municipality by 10, to 1,460 EGMs licensed to operate in the City of Greater Geelong and the Borough of Queenscliffe (approximately a 0.68% increase);⁷⁵
 - (b) increase EGM density in the municipality from 7.2 to 7.3 per 1,000 adults, as compared with the regional average of 7.6 and the State average of 5.5 EGMs per 1,000 adults;⁷⁶
 - (c) on the basis of Mr Stillwell's figures, would result in an increase of approximately between \$223,146 and \$272,734 per annum post renovations of new expenditure to the LGA, a small percentage when compared with the expenditure on gaming for the City of Greater Geelong for 2016/2017 financial year of \$114,136,381.
108. The Commission notes the low transfer rate of 10% within the City of Greater Geelong and, as such, is of the view that granting the Application will only increase gaming competition in the City of Greater Geelong in a minor way. The Commission also considers the number of additional EGMs, 10, is small compared to the overall market in the City of Geelong and the location of the Premises, which is separated by distance from other venues within the LGA, may result in the Premises having less impact on competing gaming venues than may otherwise be expected. Further, the utilisation rates of the 55 EGMs at the Premises (referred to in paragraph 71 above) do not indicate that demand for gaming is outstripping supply for significant periods of time during the survey, nor does the anticipated additional expenditure at the Premises suggest a substantive increase in gaming competition in the municipal district. Accordingly, the Commission attributes no weight to this benefit.

⁷⁵ The Commission notes that, as it is proposed that the gaming machine entitlements will be sourced from the Geelong Football Club, there effectively be no increase in EGMs operating within Geelong: See paragraph 47 above.

⁷⁶ VCGLR Report, p.26-7 (14).

Increased tourism in the City of Greater Geelong

109. Despite the Applicant, in the Application Form, being unable to accurately determine the estimated impact of gaming on tourism resulting from the Application for the first 12 months, various witnesses gave evidence that tourism in the City of Greater Geelong would be assisted by the granting the Application, including:

- (a) Mr Stockdale, who noted that the Applicant provides an important offering for tourists, providing food, social, entertainment and sporting facilities, and is currently struggling to keep up with the demand placed on many of these facilities. To Mr Stockdale, granting the Application would allow the Applicant to continue implementing its Master Plan and therefore improve and increase the offering for tourists visiting during peak periods;⁷⁷ and
- (b) Ms Peterson, who was of the view that the Premises' ability to attract and provide facilities for the increasing tourism industry, resulting in a higher spend within the City of Greater Geelong, represents an economic benefit.

110. In the Council Report, the Council noted that the Premises serves as a tourist destination offering a variety of facilities.⁷⁸

111. The Commission notes that promoting tourism, employment and economic development generally in the State is one of the objects of Chapter 3 of the GR Act,⁷⁹ and is of the view that the Premises' improved facilities have the potential to contribute to attract and increase tourism spend in the municipality. However, the Commission is careful not to double count this benefit with the economic impact of complementary expenditure considered above and the social impact of improved facilities considered below. Also, given the venue can be characterised as a destination venue and given the Premises' location, the Commission is of the view that any increase in tourism caused by granting the Application will likely only result in a small spend by tourists in other parts of the City of Greater Geelong aside from at the Premises. As such, the Commission gives this economic benefit marginal weight.

Conclusion on economic impacts

112. After considering the economic benefits of the Application and balanced against the detriments, the Commission considers that, on balance, the Application is likely to have a net small positive economic impact.

⁷⁷ Statement of Mr Stockdale, p.7 [49] to [50].

⁷⁸ Council Report, p.6 (3).

⁷⁹ GR Act, s 3.1.1(e).

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.

Increased gaming opportunities for those who enjoy gaming

114. This is a positive impact if the Application will better serve the needs of gaming patrons through providing additional opportunities and choice for those who choose to play EGMs. Several witnesses gave evidence that the proposed addition of 10 EGMs would improve enjoyment and choice in machines of current patrons, including:

- (a) Mr Stockdale, who said that granting the Application would allow the Applicant to provide a wider variety of machines;⁸⁰
- (b) Ms James, who noted that at peak times certain EGMs are heavily utilised, with patrons often asking whether the Applicant was getting more machines or a certain type of machine. Ms James also noted that different people liked different machines, so the greater variety of machines the Applicant could provide, the happier its patrons would be;⁸¹ and
- (c) Ms Peterson, who herself was of the view that this was a negligible benefit given the primary beneficiaries during peak times will be non-locals.⁸²

115. The Commission finds that granting approval of the Application will better serve the needs of gaming patrons through providing additional EGMs. However, given the current number of EGMs in the City of Greater Geelong, and the likely expenditure arising from the Application set out at paragraph 74 above, and as peak utilisation tended to occur most often when the Premises has approximately 61% of players from outside the secondary catchment area, the Commission agrees with Ms Peterson and considers this to be a negligible social benefit to the community in the City of Greater Geelong itself, and hence one on which it places no to marginal weight.

Improved facilities enabling greater range of services

116. Separate from the economic benefit that may be associated with expenditure involved in capital works at a venue, 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.

117. As noted at paragraph 52 above, the proposed renovation works include an expansion of the

⁸⁰ Statement of Mr Stockdale, p.5 [37].

⁸¹ Statement of Ms James, p.3 [21] and [22]

⁸² The Ratio Report, p.64 (Table 15.1).

bistro, creation of a soft lounge area and improvement to fire and electrical services, with the updated facilities are not solely associated with gaming. Mr Stockdale noted that granting the Application would allow the Applicant to continue implementation of its Master Plan, which would provide significant benefits to the members of the Applicant and the local community.⁸³ Ms Peterson gave low weight to the proposed positive changes to the Premises' layout and the additional facilities.⁸⁴ The Council was of the opinion that the improved facilities provided modest benefits in terms of recreational and social opportunities although noted the proposed renovations involved expansion and improvement of existing facilities rather than the introduction of any new facilities.⁸⁵

118. The Commission refers to its findings at paragraph 55 that the proposed redevelopment of the Premises would only proceed were the Application to be granted, and that it is appropriate to consider the social benefits arising from the community's access to and use of the improved facilities resulting from granting this Application. While providing a benefit to the local community of the City of Greater Geelong, the Commission notes that the Application was largely put on the basis of improving the Applicant's ability to attract and provide facilities for the increasing tourism industry.⁸⁶ While being careful not to conflate this impact with the economic benefit of tourism considered above, and focusing on the well-being of the community of the City of Greater Geelong, the Commission considers the improved facilities will provide a social benefit to the community of the City of Greater Geelong for the purposes of the '*no net detriment*' test. However, given the proposed renovations largely only improve existing facilities, the Commission places marginal weight on this factor.

Social benefit derived from increased community contributions

119. Related to the economic impact associated with increased community contributions, such contributions can also have a positive social impact by improving the social fabric of the community in which they are made. In assessing the weight to be placed on such a benefit, it is important that the Commission does not conflate this benefit with the economic benefit associated with such contributions.

⁸³ Statement of Mr Stockdale, p.7 [50].

⁸⁴ Ibid.

⁸⁵ The Council Report, p.39 (Table 12). The Commission notes that the Council Report refers to the Valley Inn Venue instead of the Premises, and that additional facilities that the proposed renovations entail include the creation of a soft lounge and additional bistro seating.

⁸⁶ See paragraph 109

120. The Applicant detailed how it currently makes in-kind contributions, in the form largely of charity golf days and for community groups use, free of charge, of its facilities for meetings and lunches, in excess of \$28,000 for the 2015/2016 financial year, as well as providing a courtesy bus.
121. In relation to these types of contributions (in particular in-kind donations) while the Commission does regard such contributions as important, particularly for clubs, which have an obligation to provide community benefit statements,⁸⁷ the Commission has reservations as to whether this proposed form of community contribution is in fact dependent upon the granting of this Application. Such contributions are, however, illustrative of how the Applicant currently assists the community.
122. The Applicant suggested that its main community contribution was the provision of high-quality golf club and associated facilities at a subsidised rate, when compared to facilities of a similar standard in the region. The Applicant estimated that subsidising golf membership accounted for approximately \$266,000 in the past financial year, excluding capital costs. Mr Stockdale noted that the Applicant's golfing membership is currently in trouble and without the revenue from other facilities, the Applicant would not be able to keep fees at the level that they are currently set,⁸⁸ and even then, Ms Mooney noted that the Applicant needs to increase members' fees each year.
123. The Commission is satisfied that such a subsidy benefits the community, albeit only to local members and local patrons who play golf. Again, the Commission has reservations whether this subsidy is dependent upon the Application, especially as Mr Stockdale notes that the current other revenue streams allow the Applicant to subsidise fees. That said, the Commission is of the view that were the Application to be granted, the Applicant would be further able to continue subsidising its primary community purpose of golf.
124. More specifically in relation to the Application, the Applicant proposed conditions were this Application to be granted, which included a community contribution condition to:
- (a) Donate \$10,000 in cash (increasing each year with CPI) annually from the commencement of the operation of the additional EGMs at the Premises up to 15 August 2022; and
 - (b) maintain its current cash contributions to a range of community and sporting groups in the City of Greater Geelong in the sum of not less than \$10,725 per annum, and continue to do so while and so long as any of the any of the additional EGMs at the Premises.

⁸⁷ See GR Act, s 3.6.9.

⁸⁸ Mr Stockdale's witness statement, p.3 [19].

125. The Commission sought clarification from the Applicant as to whether it intended the community contributions to operate for as long as the additional EGMs are in operation at the Premises, and whether operation of the 10 additional EGMs would cease for as long as the additional contribution remains outstanding. Such terms are commonly conditions for applications to increase EGMs in approved venues or for the approval of venues.⁸⁹ The Applicant believed that the latter condition, essentially that if the contributions are not made the additional EGMs would cease to operate, was applied in the *Highlands Hotel* matter⁹⁰ in circumstances where there had previously been concerns as to whether the venue operator had made previous community contributions. The Applicant was also of the view that given it is a club with a proven track record as contributor to the community, such a condition was unnecessary. However, out of good faith, and to demonstrate its commitment to contributing funds to the local community, the Applicant amended its proposed conditions to make it clear that community contributions would operate for as long as the additional EGMs were in operation at the Premises and operation of the additional EGMs would cease for as long as the community contribution remained outstanding. The Commission notes that such amendments affect the weight that the Commission accords to this factor in this instance.
126. In relation to the second category, the Applicant provided details of the organisations that currently receive the \$10,725 worth of community contributions, which include the Red Cross, the Portarlington Primary School and the Royal Children's Hospital Appeal. Ms Mooney noted that in 2016, the Applicant was awarded the Business of the Year by the Portarlington Business Development Association 'in recognition of its importance to the town and the contribution the club makes financially and in kind to the community'.⁹¹ The Commission is satisfied that, in accordance with any conditions of approval of this Application, it will result in funds being distributed to not-for-profit community groups and sporting organisations providing services and facilities to residents of the City of Greater Geelong. However, the Commission is not satisfied that these contributions will only occur if the Application is granted, especially as such contributions are based off those that occurred in the 2015/2016 financial year.
127. The Council Report commented that the details of the proposed community funding appeared unclear, with no specific details in relation to the funding as to who would be selected, who would

⁸⁹ See e.g., *Wangaratta RSL Sub-Branch Inc at Sydney Hotel premises (Gaming - new premises)* [2017] VCGLR 23 (12 July 2017) (in relation to if more than 32 EGMs operate) and *Doxa Social Club Inc at the Meeting Place premises (Gaming-EGM increase)* [2016] VCGLR 47 (30 December 2016). While such community contribution conditions apply for as long as any of the EGMs are in operation of the premises, here the Commission is of the view that this addition is unnecessary due to the Applicant's circumstances.

⁹⁰ *Highlands Hotel Craigieburn Pty Ltd at Highlands Hotel premises (Gaming-EGM increase)* [2017] VCGLR 15 (28 April 2017).

⁹¹ Ms Mooney's Statement, p.2 [13].

be entitled to apply and what criteria would be used to determine the projects to be funded.⁹² As such, the Council was of the view that there were insufficient information from which to draw definitive conclusions in relation to this community contribution. That said, the Council did note that contributions towards community programs and services that focus on counteracting the harm caused by problem gambling would assist in creating a modest benefit to the local community.⁹³ The Council also took issue with the proposed amounts being 0.5% of all estimated EGM expenditure at the Premises.⁹⁴

128. In response, the Applicant proposed draft conditions in relation to the contribution, which, summarised set out that:

- (a) The additional contribution would be allocated to not-for-profit community and sporting organisations in the City of Greater Geelong;
- (b) The additional contribution would be distributed according to a determination by a committee, comprising a representative from the Applicant, a community representative nominated by the Applicant and one representative of the Council;⁹⁵ and
- (c) The committee would advertise annually in a newspaper circulating in the City of Greater Geelong for submissions from not-for-profit and sporting organisations regarding the distribution of the additional contribution and the committee would assess requests for cash contributions in accordance with the guidelines to be established by the committee.

129. Ms Peterson did not believe it was fair to look at the size of the community contributions as a proportion of overall gaming revenue as the focus should be on the benefits arising from the contribution attached to the particular application, especially as clubs are inherently invested in providing community facilities.

130. The Commission notes that the Applicant has not only set out the proposed amount to be paid but also a suggested process for determining who should receive those amounts. So, in relation to this particular community contribution, and relying on the proposed conditions and taking the organisations that receive the current contributions as a guide to where the additional contributions might be made, the Commission is satisfied that these contributions will result in funds being distributed to not-for-profit community groups and sporting organisations providing

⁹² The Council Report, p.36, 36-38 (7.5, 8.4).

⁹³ Ibid.

⁹⁴ Ibid (Table 12).

⁹⁵ In the event that the Council is unwilling to provide a representative, there would be a second representative from the Applicant.



services and facilities to residents of the City of Greater Geelong. Further, the Commission is satisfied that these contributions will only occur if the Application is granted.⁹⁶

131. Having particular regard to the proposed amount of community contributions that will occur were the Application to be granted, and that these contributions will be made to a variety of community groups operating in the City of Greater Geelong (in accordance with conditions of any approval of this Application), the Commission determines such contributions to be a positive economic benefit to which it accords a low weight.

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

132. Wherever accessibility to EGMs is increased, there is a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, family breakdowns and other social costs. Accordingly, the Commission accepts that there is potential for a negative social impact through possible increased problem gambling expenditure.
133. The Commission refers to and relies upon the evidence set out in paragraphs 80 to 98 with respect to the economic impact of problem gambling on the community, which equally apply to the social impact of problem gambling. As is concluded there, the Commission is satisfied that there is potential for increased risk in problem gambling as a result of this Application. This gives rise to a negative social impact. The Commission accepts (as outlined in paragraph 80 above) that harms associated with the incidence of problem gambling are wide-ranging and attributable to all categories of gamblers ('low-risk', 'moderate-risk' and 'problem gamblers') and across the community more broadly.
134. Ms Peterson noted the impact on community health and connectedness was a disbenefit, and believed there would be limited, if any, impact given the existing access to 55 EGMs at the Premises and the likelihood that the additional 10 EGMs would be used by tourists or non-locals.⁹⁷
135. In the Council Report, the Council note:

*The impact of problem gambling, on both individuals and communities, is well documented and widely accepted. A brief summary of social impacts associated with problem gambling is provided in the following table...*⁹⁸

⁹⁶ As to the conditions that the Commission has determined to apply in this matter, see paragraph 152 below.

⁹⁷ The Ratio Report, p.64 (Table 15.1).

⁹⁸ The Council Report, p.14 (4.5.4).

136. The table⁹⁹ lists personal impacts, interpersonal impacts (including family violence and child neglect), financial impacts and community impacts (including crime, fraud). However, the Council otherwise provided no evidence as to how such impacts will result from or be exacerbated by the Application, and, as noted above, the author of the Council Report did not attend the hearing to elucidate any of the items listed in its table.
137. Here, and referring to and relying on its findings in relation to the economic impact of problem gambling at paragraph 98 above, the Commission accepts that the risk of increased incidence and potential impact of problem gambling on the community in this Application is less than would otherwise be the case for the municipality given both the location of the Premises within the City of Greater Geelong, its RSG practices, and the patronage of the gaming room at peak times being predominately non-locals. As such, the Commission considers this impact it is one upon which it places marginal weight in this Application.

Community attitude

138. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,¹⁰⁰ 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 particular social impact within, and as part of, the ‘no net detriment’ test.
139. The evidence before the Commission with respect to the community attitude is largely found in the Council Report,¹⁰¹ and is as follows:
- (a) the Council, as the representative body of the relevant community and charged with statutory duties under various pieces of legislation, made a submission in opposition to the Application;¹⁰²
 - (b) the results of a ‘Have Your Say’ portal on the Council’s website, which attracted 143 page views, six on-line responses and three emailed responses. Of the nine responses, two were in favour and seven were against the granting of the Application. The ‘in favour’ responses noted points such as the Premises’ location outside of town (presumably Portarlington) and not readily accessible, the Applicant being supportive of community groups and bringing in business to town. Points in the six ‘against’ responses included that there should be less

⁹⁹ Ibid, table 1, taken from The South Australian Centre for Economic Studies (2008), ‘*Social and Economic Impact Study into Gambling in Tasmania: Volume 1*’, pp. 225-235.

¹⁰⁰ 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.

¹⁰¹ The Council Report, p.10-11 (4.3.3.1).

¹⁰² See also *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [42]; *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275 at [249] and [288]-[321].



EGMs in the community, EGMs will divert tourist dollars away from local businesses, and EGMs are damaging to vulnerable members of the community;

- (c) an information session at Portarlington Neighbourhood House, where a Council officer and a representative of the Applicant was in attendance. This session attracted one individual, who sought further information. Otherwise, the Council Report did not contain any further detail about this session; and
- (d) as noted above, two community groups objected to the Application: GIJSC and the Church by the Bay Portarlington, which itself attached nine submissions from individuals in its congregation opposing the Application. Summarised, the GIJSC's concerns seemed directed towards gambling in the community at large and made only limited comments in relation to this Application. Those sections that did comment on the Application argued that granting the Application would in fact distort competition between the Applicant, which has EGMs, and others, and that principally the Applicant, rather than the wider community, benefits from the Application. The GIJSC also took issue with aspects of the Ratio Report, saying it was based on the assumption that granting the Application might increase the risk of problem gambling, and that the GIJSC was also concerned that the likely patronage of families to the Premises' bistro would contribute to the normalisation of gambling for children. The Church by the Bay Portarlington and the attached individuals' concerns were the negative impacts of problem gambling, referencing academic research as to the effects of EGMs on communities, particularly in relation to domestic violence, and provided anecdotal accounts of instances of members of the community gambling away government benefits at the Premises.

140. In response in particular to GIJSC's concerns, the Applicant noted that the State had already made the decision complained about, to legalise EGMs under certain circumstances. Otherwise, the Applicant was of the view that it had dealt with the concerns in its submissions on each of the different social and economic impacts. In response to the Church by the Bay's concerns, the Applicant was of the view it too fails to differentiate the concerns with gaming per se including the existing access to such at the Premises. The Applicant too noted that research in relation to domestic violence did not establish a causal connection between EGMs and domestic violence and here, there was no evidence of a heightened extent or evidence of domestic violence that would result from granting the Application. The Commission agrees with the Applicant's views.

141. The Applicant did not provide any evidence as to the community's attitude in relation to the Application. Ms Peterson did not believe that the additional 10 EGMs would have any impact on

the psyche of residents, as residents already have exposure to gaming at the Premises and also at other venues within the City of Greater Geelong, and so the introduction of the additional machines will only have a small, incremental impact. Ms Peterson noted that the Application essentially seeks to cater for the tourist trade.¹⁰³ Ms Peterson was of the view that the responses received by the Council in relation to its 'Have Your Say' portal and information session reinforced her view that the community was less concerned about the Application as access to gaming already exists.

142. Overall, the Commission is satisfied that the responses received from the community suggest there is a negative attitude in small portions of the community of the Premises to this Application. However, due to the small number of community survey responses, the Commission is not persuaded that these views represent the views of the community in the City of Greater Geelong generally. In all of these circumstances, and taking into account Council's position in relation to the Application, the Commission considers it appropriate to attribute no to marginal weight to this negative social impact.

Increased exposure of children to gambling activity

143. A further, yet distinct, impact that the Application may have on the community of the City of Greater Geelong is in relation to the increased exposure of children to gambling activity.
144. The Council Report noted that minors seated at the bistro currently have direct visual and auditory contact with the gaming rooms, although correspondence between the Council and the Applicant has indicated that it will address this through the provision of additional screens to the gaming room and the reduction of Keno screens in the bistro area. The Commission notes that at the Hearing, the Applicant proposes to install screening regardless of the outcome of this Application, discussed at paragraph 92 above.
145. As the screening is not therefore dependent on whether the Application is granted, the Commission therefore places no weight on this factor.

Conclusion on social impacts

146. After considering the social benefits of the Application and balanced against the disbenefits, the Commission considers that, on balance, there is likely to be a small positive social impact of the Application.

¹⁰³ Ratio Report, p.62 (14.1.1 to 14.1.3).



Net economic and social impact

147. The ‘*no net detriment*’ test in section 3.4.20(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 approval on the well-being of a relevant community will be either neutral or positive.¹⁰⁴
148. 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 1 of these Reasons for Decision), the Commission is satisfied that the social and economic impact to the well-being of the community of the municipal district in which the Premises are located if the Application is approved will be slightly positive.

Determination of Application

149. On the material that has been put before it, the Commission has determined that the ‘*no net detriment*’ test has been satisfied and that the total number of EGMs will be under the relevant municipal limit.¹⁰⁵ The Commission notes that there remains a discretion to determine whether or not to grant the Application. As part of this general discretion, the Commission has considered the effect of granting the Application on *other* municipalities, apart from the City of Greater Geelong. Largely on the basis of Mr Stillwell’s evidence that only 10% of expenditure will be transferred from other municipalities, the Commission does not believe the effect on other municipalities is such that it warrants refusing the Application.
150. The Commission is satisfied that the Applicant understands and will continue to act in accordance with its obligations to, so far as is reasonable, take measures to prevent problem gambling. Further, the Commission is not aware of any other matter that would warrant it to refuse to grant this Application. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the Application
151. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the Application and make the proposed amendment to the Venue Operator’s licence to vary the number of EGMs permitted in the Premises from fifty five (55) to sixty five (65) subject to conditions which for the purposes of clarity are contained in paragraph 152 below.

¹⁰⁴ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 at [52] per Dwyer DP.

¹⁰⁵ See paragraphs 47 and 48 above.



152. The conditions are as follows:

1. Works

- (a) The Works (as defined in condition 1(b) below) at the Premises must be substantially completed to the satisfaction of the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) by the date that is two (2) years after the commencement of the operation of any of the 10 additional EGMs (**the Additional EGMs**).
- (b) For the purposes of this clause '**Works**' comprise the works referred to in section 4 of the Social and Economic Impact Statement dated June 2017 prepared by Ratio Consultants Pty Ltd.
- (c) If the Works referred to in condition 1(b) are not substantially completed by the date that is two (2) years after the commencement of the operation of any of the Additional EGMs, then the approval to operate the Additional EGMs at the Premises will lapse.
- (d) The Commission may, at the request of the Venue Operator, agree to extend the time for the completion of the Works referred to in condition 1(b). Any request for an extension of time must include an explanation as to why the Works have not been substantially completed.

2. Community Contributions

- (a) The Venue Operator will establish the Portarlington Golf Club Community Contributions' Fund (**the Fund**) and undertake to do the following:
 - i. Make cash contributions annually in the sum of \$10,000.00 (increased each year by the increase in CPI) (**the Additional Contribution**) for as long as the Additional EGMs are in operation at the Portarlington Golf Club.
 - ii. The Additional Contribution will be allocated each year to not-for-profit community and sporting organisations in the City of Greater Geelong.
 - iii. Distribute the Additional Contribution in accordance with condition 2(a)(i) would be determined by a Committee (**the Committee**) established by the Venue Operator comprising:
 - A. One representative nominated by the Venue Operator;
 - B. A community representative nominated by the Venue Operator;
 - C. One representative of Council or, in the event that Council is unwilling to provide a representative, a second representative of the Venue Operator.



- iv. The Committee will advertise annually in a newspaper circulated in the City of Greater Geelong area for submissions from not for profit community and sporting organisations, providing services and facilities to residents within the City of Greater Geelong regarding the distribution of the Additional Contribution to be made by the Venue Operator each year. The Committee will assess requests for cash contributions in accordance with guidelines to be established by the Committee.
- v. If the distribution of the Additional Contribution is not allocated in full each year by the Committee as required in condition 2(a), the operation of the Additional EGMs must cease immediately as long as the Additional Contribution (or part thereof) remains outstanding.
- vi. The Venue Operator makes cash contributions to a range of community and sporting groups in the City of Greater Geelong in the sum of not less than \$10,725.00 per annum (**Existing Contributions**). The Venue Operator will continue to pay each Existing Contributions whilst and so long as any of the additional EGMs are in operation at the Portarlington Golf Club.

3. Screening

- (a) Prior to the installation of any of the Additional EGMs, the Venue Operator will install screening substantially in accordance with the proposed plan R0160012 SD A2.03 C4.

The preceding 152 paragraphs and the following Appendix are a true copy of the Reasons for Decision of Mr Ross Kennedy, Chair, and Dr Dina McMillan, Commissioner.



Appendix One

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	Expenditure on capital works	51 to 55	<p>The Applicant proposes to undertake renovation at an estimated cost of \$1,500,000. The Commission is satisfied that if the Application were granted, a proportion of the renovation expenditure would occur within the City of Greater Geelong. The amount of the renovation expenditure is not insignificant. The Commission is also mindful not to double count the benefits associated with the renovation expenditure in relation to both the estimated employment impacts and the social impact that may result from improved facilities.</p> <p>Positive impact, low weight.</p>
	Complementary expenditure	56 to 59	<p>Potential benefit where resulting in increased economic activity in the municipality. Evidence of tourists coming from outside the City of Greater Geelong. The Commission is satisfied that a proportion of the anticipated increase in sales in the Premises' bistro of 10%, or \$140,344, would result if an additional 10 EGMs were permitted would be new complementary expenditure but is a small amount in the context of the LGA as a whole.</p> <p>Positive impact, marginal weight.</p>



	Impact	Paragraph numbers	Comment relevant to weight
	Additional employment	60 to 64	<p>In relation to the short term employment benefits associated with renovation activities, as the expenditure associated with the renovation is separately considered (see 'expenditure on capital works' above), the Commission gives this benefit no to marginal weight.</p> <p>In relation to the longer term benefits following the introduction of the proposed 10 EGMs, the employment of the equivalent of 2.3 EFT employees, the Commission is satisfied the employees will be sourced from the City of Greater Geelong. However, given the scale, the Commission gives this impact marginal weight.</p>
	Community contributions	65 to 66	<p>Having regard to the evidence and submissions made with respect to the community contributions that are set out in paragraphs 119 to 131 below, such contributions can also have a positive economic impact. Emphasising the contributions arising as a result of this Application, the Commission gives this positive impact, low weight.</p>
	Gaming expenditure not associated with problem gambling	67 to 79	<p>The portion of new expenditure not attributable to problem gambling is an economic benefit. The Commission adopts Mr Stillwell's first estimate, derived from the utilisation survey method, and Mr Stillwell's second estimate, derived from the empirical evidence methodology. For the purposes of assessing the '<i>no net detriment</i>' test, the Commission places greater reliance on Mr Stillwell's second estimate. The Commission also accepts Mr Stillwell's evidence as to transferred expenditure.</p> <p>Having regard to the evidence with respect to the gambling expenditure associated with problem gambling and the factors outlined therein, the Commission considers that it is likely the majority of new expenditure will not be associated with problem gambling. Given the estimated level of new expenditure, and the evidence that a considerable proportion is from clientele from outside the City of Greater Geelong, this factor is allocated marginal to low weight.</p>
	Increased gaming competition in the City of Greater Geelong	103 to 108	<p>Factoring in the low transfer rate of 10% in the City of Greater Geelong, the Commission is of the view that granting the Application will only increase gaming competition in a minor way. Also taking into account the small number of additional machines compared to the overall market in the City of Greater Geelong, the location of the Premises, the utilisation rates of the current 55 EGMs, and anticipated additional expenditure does not suggest a substantive increase in gaming competition in the municipal district. No weight to this benefit.</p>



	Impact	Paragraph numbers	Comment relevant to weight
Disbenefit	Increased tourism in the City of Greater Geelong	109 to 111	<p>The Applicant provided evidence that were the Application to be granted, it could improve and increase the offering for tourists visiting during peak periods. The Commission is of the view that Premises' improved facilities have the potential to attract and increase tourism spend in the municipality. While careful not to double count the impact of complementary expenditure considered above, the Commission is of the view that, given the Premises' location, any increase in tourism will only result in a small spend by tourists in other parts of the municipality.</p> <p>Positive benefit, marginal weight.</p>
	Gambling expenditure associated with problem gambling	80 to 98	<p>While the Commission accepts the SEIFA indices indicate that residents in the secondary catchment area have a level of disadvantage and financial vulnerability that would make them susceptible to gambling-related harms, the Commission is persuaded by evidence that during peak times, the additional EGMs would likely be used by tourists, a significant number of whom will be from outside the municipality. The Commission is persuaded that any increased incidence in problem gambling in the City of Greater Geelong that would arise were the Application to be granted is likely mitigated by factors such as the Premises' being a destination venue and its RSG practices.</p> <p>Having regard to all factors and circumstances, the Commission considers there is a risk of increased problem gambling expenditure associated with this Application, which it regards as a negative economic impact of low weight.</p>
	Diversion of trade from other gaming venues	99 to 100	<p>In relation to the expenditure resulting from the 10 additional EGMs, Mr Stillwell estimated 20% of expenditure would be transferred, with 10% of the additional gaming expenditure would be transferred from other venues in the City of Greater Geelong and 10% transferred from venues outside the City of Greater Geelong. The diversion of trade is likely to be minor. No weight to negative impact.</p>
	Diversion of trade from non-gaming businesses	101 to 102	<p>The maximum impact that could be felt by local non-gaming businesses is the value of the new expenditure from this Application, and the amount diverted from non-gaming businesses difficult to determine. An economic disbenefit with marginal weight.</p>



Social impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	Increased gaming opportunities for those who enjoy gaming	114 to 115	Granting the Application will better serve the needs of gaming patrons through providing additional opportunities and choice for those who choose to play EGMs. Given current number of EGMs in the City of Greater Geelong, and that utilisation issues tended to occur most often at peak periods when 61% of patrons were tourists, the Commission considers this a negligible positive social impact to the City of Greater Geelong. Positive impact, no to marginal weight.
	Improved facilities enabling greater range of services	116 to 118	The social benefits arising from the community's access to and use of improved facilities resulting from granting the Application. The Commission is careful not to conflate this impact with the economic benefit of tourism considered above. Positive factor, marginal weight.



	Social benefit derived from increased community contributions	119 to 131	<p>The positive social impact of community contributions by improving the social fabric of the community in which they are made.</p> <p>The Applicant detailed its in-kind contributions and provision of a courtesy bus. The Applicant also noted its main community contribution was providing golf at a subsidised rate. While the Commission regards such contributions as important, the Commission has reservations as to whether these forms of community contribution is in fact dependent upon the granting of the Application.</p> <p>The Applicant's proposed conditions were the Application to be granted included:</p> <ul style="list-style-type: none">(i) a proposed cash contribution of \$10,000 (increasing each year with CPI) annually from the commencement of the operation of the additional EGMs at the Premises; and(ii) current cash contributions to a range of community and sporting groups in the City of Greater Geelong in the sum of not less than \$10,725 per annum, which it will continue to pay while and so long as any of the any of the additional EGMs at the Premises. <p>In relation to the second category, the Commission is satisfied that these contributions (distributed in accordance with the conditions of the approval of this Application) will result funds being distributed to not-for-profit community groups and sporting organisations providing services and facilities to residents of the City of Greater Geelong. However, the Commission is not satisfied that these contributions will only occur if the Application is granted.</p> <p>In relation to the first category, the Commission is satisfied that these contributions (distributed in accordance with the conditions of the approval of this Application) will result funds being distributed to not-for-profit community groups and sporting organisations providing services and facilities to residents of the City of Greater Geelong. The Commission is also satisfied these contributions will occur only if the Application is granted.</p> <p>Having particular regard to the proposed amount of community contributions that will occur were the Application to be granted, the Commission determines such contributions to be a positive benefit, which it accords a low weight.</p>
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	Impact	Paragraph numbers	Comment relevant to weight
Disbenefits	Possibility of an increased incidence and potential impact of problem gambling on the community	132 to 137	For the reasons set out with respect to “Gambling expenditure associated with problem gambling”, the Commission is satisfied there is a disbenefit in the potential for increased risk of problem gambling, however the risk is less than would otherwise be the case for the City of Greater Geelong given the Premises' location within the municipality and the patronage of the gaming room at peak times being predominately tourists. Negative impact, marginal weight.
	Community attitude	138 to 142	Due to the lack of evidence presented by the Applicant as to the community's attitude to the Application, overall, the Commission is satisfied that the responses received from the community suggest there is a negative attitude in small portions of the community of the Premises to this Application. Due to the small number of community survey responses, the Commission is not persuaded that these views represent the views of the community in the City of Greater Geelong generally. Negative social impact, no to marginal weight.
	Increased exposure of children to gambling activity	143 to 145	The increased exposure of children to gambling activity. The Applicant proposes to install screening, as discussed at paragraph 92. As the screening is not therefore dependent on whether the Application is granted, the Commission therefore places no weight on this factor.