



Victorian Commission for Gambling and Liquor Regulation

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 CJSV Nominees Pty Ltd for amendment of its venue operator's licence to vary the number of electronic gaming machines at the approved premises, the West Waters Hotel, located at 10-20 Lake Street, Caroline Springs, from eighty (80) to ninety (90).

Commission:

Mr Ross Kennedy, Deputy Chair
Mr Des Powell, Commissioner

Appearances:

Ms Nicola Collingwood of Counsel for the Applicant (instructed by Bazzani Scully Priddle)

Ms Brooke Hutchins of Counsel as Counsel Assisting the Commission

Date of Hearing:

18 August 2015

Date of Decision:

1 September 2015

Date of Reasons:

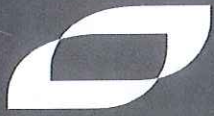
1 September 2015

Decision:

The application is granted subject to the conditions outlined at Paragraph 92 of these Reasons for Decision.

Signed:

Ross Kennedy
Deputy Chair



REASONS FOR DECISION

INTRODUCTION

1. This is an application by CSJV Nominees Pty Ltd (**the Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the West Waters Hotel, 10-20 Lake Street, Caroline Springs, Victoria (**the Premises**), from 80 to 90 (**Application**).
2. The Premises is located in the City of Melton (**Melton**) and the relevant municipal authority is the Melton City Council (**the Council**). By letter dated 20 July 2015 to the Commission, the Council indicated that it did not oppose the Application. On that basis, the Council did not make a submission or appear at the hearing of the Application.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Gambling 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* (**Act**). The 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 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.
4. The objectives of the Act are set out in s 1.1, which provides, inter alia:

...

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

(a) *to foster responsible gambling in order to-*

(i) *minimise harm caused by problem gambling; and*

(ii) *accommodate those who gamble without harming themselves or others;*

(ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*

(b) *to ensure that gaming on gaming machines is conducted honestly;*

(c) *to ensure that the management of gaming equipment and monitoring equipment is free from criminal influence and exploitation;*

(d) *to ensure that other forms of gambling permitted under this or any other Act are conducted honestly and that their management is free from criminal influence and exploitation;*

(e) *to ensure that-*

(i) *community and charitable gaming benefits the community or charitable organisation concerned;*



- (ii) *practices that could undermine public confidence in community and charitable gaming are eliminated;*
- (iii) *bingo centre operators do not act unfairly in providing commercial services to community or charitable organisations;*
- (f) *to promote tourism, employment and economic development generally in the State.*

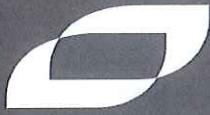
5. Chapter 3 of the Act deals with the regulation of gaming machines. Section 3.1.1 of the Act sets out the purpose of Chapter 3 as follows:

- (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.*

6. The relevant provision concerning this Application is to be found in s. 3.4.17(1)(b) of the Act, which states that variation of the number of EGMs permitted in an approved venue may be amended in accordance with this Division.

7. Section 3.4.20 sets out matters that are for consideration before the Commission with respect to a proposed amendment. Relevantly for this Application that section provides, inter alia:

- (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 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;*



...

8. Paragraph 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.¹
9. The Act does not specify the matters which the Commission must consider in deciding whether this '*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.²
10. As such, the '*no net detriment*' test is a composite test requiring consideration of a single net impact in economic and social terms on well-being of the community.³ 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.
11. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues, and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.⁴ 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.⁵
12. The Commission also notes that on review, it has been indicated by VCAT that:

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

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

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

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

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



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

This approach has been adopted in a number of VCAT decisions.⁷ The Commission has adopted the same approach in this instance to add clarity to its decision making process.

13. If the Commission is not satisfied that the 'no net detriment' test is met, then an application must fail in accordance with the opening words of s 3.4.20(1) of the Act. The test is a mandatory precondition to approval. However, although s 3.4.20(1) sets out certain mandatory considerations for the Commission, the provision is not cast in exhaustive terms. If the Commission is satisfied that the 'no net detriment' test is met, it still has an ultimate discretion as to whether or not to grant the approval.⁸ The Commission must decide whether to make the proposed amendment, with or without any changes from that proposed by the Applicant, even where the applicant has satisfied the minimum threshold of the 'no net detriment' test.⁹
14. In considering the exercise of this discretion:
 - (a) it must be exercised having regard to the purposes of the Act and, in particular, the specific purposes of Chapter 3 of the Act dealing with the regulation, supervision and control of gaming machines;¹⁰ and
 - (b) it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the Act as a whole.¹¹
15. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*¹² that if all of the mandatory considerations under the Act favour the grant of an approval, one would expect

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

⁷ See, for example: *Darebin CC v Victorian Commission for Gambling and Liquor Regulation & Anor* [2013] VCAT 1389; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Monash CC v L'Unico Pty Ltd* [2013] VCAT 1545; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

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

⁹ *Gambling Regulation Act 2003*, section 3.4.20(2).

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

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

¹² [2013] VCAT 101, [98].



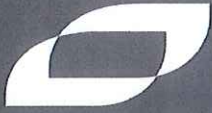
that the ultimate discretion will commonly favour approval - other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.

MATERIAL BEFORE THE COMMISSION

16. The Applicant provided the Commission with the following material in support of its Application:
- (a) Social and Economic Impact Assessment Report, prepared by Ratio Consultants Pty Ltd (**Ratio**), dated April 2015;
 - (b) Addendum to the Social and Economic Impact Assessment Report, prepared by Ratio, dated 12 August 2015;
 - (c) Expenditure Report, prepared by Progressive Venue Services Pty Ltd (**PVS**), dated January 2015;
 - (d) Addendum Expenditure Report, prepared by PVS, dated August 2015;
 - (e) Witness Statement of Joseph Paul Gauci, Director of the Applicant, dated May 2015;
 - (f) Witness Statement of Lynnette Knight, Gaming Compliance Manager of the Premises, dated May 2015; and
 - (g) Letter from Leigh Barrett, of Leigh Barrett and Associates Pty Ltd (**Leigh Barrett and Associates**) dated 15 April 2015.
17. The following material, prepared by Commission officers, was provided to the Applicant and considered by the Commission:
- (a) a report titled *Economic and Social Impact Report*, dated August 2015; and
 - (b) a report titled *Pre-Hearing Inspection and Compliance Report*, dated 4 August 2015.

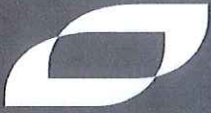
CITY OF MELTON AND THE WEST WATERS HOTEL

18. The Premises is located on the eastern side of Lake Street on the north-western banks of Lake Caroline in Caroline Springs. The area has a variety of land uses, with the Caroline Springs Square Shopping centre and the Central Shopping Centre in the immediate vicinity, and residential use around the periphery.
19. The Premises currently comprises:



- (a) 400 seat bistro area including alfresco seating;
 - (b) cafe and lounge bar;
 - (c) three function rooms;
 - (d) gaming room with 80 EGMs;
 - (e) sports bar;
 - (f) 58 hotel rooms; and
 - (g) on-site car parking for 400 cars.
20. Melton is a metropolitan Local Government Area (**LGA**) located approximately 40 kilometres west of the City of Melbourne, and covers approximately 528 square kilometres. Major centres within Melton include Melton, Diggers Rest and Hillside. Melton has an estimated adult population of 94,779 and the annual rate of population growth was projected by the then Victorian Department of Transport, Planning and Local Infrastructure to be 4.1% for the period 2011 to 2016, as compared with the Victorian average of 1.81%.
21. Melton is subject to a municipal limit of 659 EGMs.¹³ Currently, there are 7 gaming venues within the municipality with approvals to operate a total of 851 EGMs. However, the number of EGMs actually in operation in these venues, as opposed to the number permitted to be operated, is 493 EGMs. The Commission is satisfied in accordance with s.3.4.20(1)(b) that approval of this Application would increase the number of licensed EGMs within Melton to 503 and, as a result, the municipal limit would not be exceeded.
22. Melton has an EGM density of 5.2 EGMs per 1000 adults, which is 3.8% less than the metropolitan average (5.4) and 9% less than the State average (5.7). This ranks Melton as the 18th highest of 31 metropolitan municipalities in terms of EGM density per 1000 adults. If the Application is approved, this would rise by 2% to 5.3 EGMs per 1000 adults.
23. Melton has an average gaming expenditure of \$605 per adult, which is 4.8% higher than the metropolitan average (\$557) and 9.3% higher than the State average (\$554). Applying the estimate of increased gaming expenditure as received from the Applicant, approval of this Application would result in an increase in average gaming expenditure per adult of 0.05%. Overall gaming expenditure within Melton has increased by 2.27% in real terms over the past

¹³ Pursuant to section 3.4A.5(3A)(b) of the Act, the Victorian Commission for Gambling and Liquor Regulation determined, in accordance with the criteria specified in the Minister for Gaming's Order on 15 August 2012, the maximum permissible number of gaming machine entitlements under which gaming may be conducted in each region.



five years, which is in contrast to the metropolitan average which has experienced a decrease by 21.51% in real terms over the past five years.

24. In relation to the area immediately surrounding the Premises (i.e. within 2.5km), 33.3% of SA1s within 2.5km of the Premises are in the most disadvantaged quintile of the SEIFA¹⁴ index of relative socio-economic disadvantage scores, 15.2% are in the second most disadvantaged quintile and 51.6% are in the third to fifth quintiles.
25. The unemployment rate in Melton is 7.8%, which is above the metropolitan unemployment rate of 6.71%. Unemployment in Melton has increased from 6.5% to 7.8% over the past 12 months.

APPLICANT WITNESSES AND SUBMISSIONS

Mr Joseph Paul Gauci

26. Mr Gauci provided a witness statement and oral evidence to the Commission regarding the operation and financial position of the Premises. Mr Gauci is a director of the Applicant which is the lessee and licensee of the Premises. The Applicant was described as a joint venture between Mr Gauci, his brother Mr Edward Gauci and the Hawthorn Football Club (**the Club**). The Club holds a majority 73% share and the Gauci brothers hold a 13.5% share each through their respective companies. Mr Joseph Gauci and Mr Edward Gauci are responsible for the operation of the Premises through their operating company, Seachange Management Pty Ltd (**Seachange**).
27. The Applicant opened the Premises for trade on 17 December 2010. The fit out costs incurred by the Applicant at this time was approximately \$5,500,000 against a budget of \$3,000,000. Mr Gauci described to the Commission that the Premises is intended to be a high quality venue that provides many lounges and open air spaces, designed to take advantage of its location on Lake Caroline. It is a multipurpose venue, currently offering a bistro with seating for 400 patrons, a cafe and lounge bar, a gaming room with 80 EGMs, a large sports bar, three function rooms and hotel accommodation with 58 rooms.
28. The hotel accommodation was described by Mr Gauci as having a stronger performance than anticipated. During the last financial year it had an occupancy rate of 82%. The majority of guests are corporate and business clients, with peak demand from Monday to Thursday. Mr Gauci told the Commission that he believes there is a growing demand for accommodation and the Applicant is looking to construct an additional 40 hotel rooms. He believes that the additional



rooms would enable the Applicant to promote to new sectors, such as airline staff and larger groups who would also utilise the function rooms.

29. Mr Gauci told the Commission that the increase in the number of EGMs is desired to assist the Applicant increase revenue to enable the construction of an additional 40 hotel rooms. The Applicant has received planning approval for the additional rooms from the Council.
30. The land on which the Premises is located has recently been purchased by Mr David Feldman (**Landlord**). The Applicant told the Commission that it is currently investigating whether the Landlord will support the costs of construction of the new accommodation, or whether they will be borne by the Applicant. In either circumstance, the Applicant will incur additional expense, either in the form of increased rent payable to the Landlord or direct expenditure on construction.
31. A feasibility study was undertaken by the Applicant in 2014, with the estimated cost of construction of the additional hotel rooms and their fit out identified at \$4,500,000. Mr Gauci told the Commission that the Applicant has current debt levels of approximately \$10,300,000. The Club, being the majority shareholder of the Applicant, are reluctant to commit to the increased costs without increased growth in the Premises' revenue through approval of the additional machines.
32. Mr Gauci told the Commission that, should the accommodation be built, it was expected to require an additional 10 to 15 full time equivalent employees at the Premises. In the absence of the accommodation being constructed, should the Application be granted, an additional two full time equivalent staff members will be employed on the gaming floor.
33. The Applicant has an existing commitment in place to make annual contributions in the sum of \$155,000 (indexed to CPI) for a period of ten years from the commencement of the operation of the Premises. \$55,000 is paid directly to the Council each year, with \$20,000 being allocated to welfare purposes and \$35,000 to the provision of problem gambling services in the Eastern Corridor of Melton. The distribution of the remaining \$100,000 is determined by a committee of the West Waters Hotel Community Grants Program. The committee is comprised of two representatives from the Council, two from the Premises and one local community resident representative.
34. Mr Gauci explained to the Commission difficulties currently experienced in distributing the

¹⁴ Socio-Economic Indexes for Areas (SEIFA) is a product developed by the 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.



entirety of the \$100,000 commitment. These difficulties were said to arise as a result of the strict guidelines the Council has implemented for the types of groups and programs it considers support should be provided to. Despite the Council members being a minority of the committee membership, Mr Gauci described the practice by the other member's as deferring to the Council's position out of respect for their position. An example provided to the Commission of an existing hurdle in distributing funds, was that the Council representatives have adopted the view that donations to sporting clubs do not serve the Eastern Corridor community as a whole, but rather only the members of that club.

35. Provision has been made by the Applicant in its financial records for the unallocated funds, enabling distributions from the fund immediately upon committee approval. As at 17 December 2014, \$129,000 of undistributed funds were available.
36. Mr Gauci committed to the Commission that, should the application be granted, the Applicant will provide an additional \$20,000 per annum (indexed to CPI) into the community contribution fund for the life of the EGM entitlements. It was proposed by the Applicant that moving forward, should community contribution funds remain unallocated, the Applicant will allocate the entire unpaid sum, at its discretion, to not-for-profit community and sporting organisations in the Eastern Corridor.
37. Mr Gauci gave evidence at the hearing regarding the responsible service of gaming processes adopted at the Premises. Mr Gauci told the Commission that he works closely with Ms Lynnette Knight, the gambling compliance manager, on this issue. Mr Gauci was said to be present at the Premises on an almost daily basis and, as the venue manager, was responsible for raising any issues with the Applicant.
38. During questioning by the Commission, Mr Gauci conceded that a more structured reporting procedure between Seachange and the Applicant could be implemented. This has recently been identified as an area for improvement by a Club audit of the Applicant's processes and more regular reporting of gambling matters is being implemented at the Club's request.
39. Mr Gauci told the Commission that there is a real commitment by the Applicant and its staff at the Premises to adhere to responsible gambling practices, and this is seen through the Premises' history of compliance in this regard.

Ms Lynette Anne Knight

40. Ms Knight is the current gaming compliance manager for Seachange. In addition to overseeing all gaming operations in the Premises, she is also responsible for the Phoenix Hotel located in



Point Cook and the Bridge Inn located in Mernda.

41. Ms Knight's responsibilities include overseeing all gaming operations, maintenance of financial records and reconciliations, overseeing responsible service of gambling (**RSG**) and responsible service of alcohol (**RSA**) training and implementation and auditing in relation to RSG and RSA.
42. All gaming staff at the Premises must hold a current gaming industry employee license, which although no longer mandatory, Ms Knight considers is best practice. All gaming room staff are also required to have completed RSG and RSA training and hold current certificates of the same.
43. Ms Knight told the Commission that, while there are not formal procedures in place regarding reporting RSG and RSA to the Applicant, she regularly reports to Edward and Joseph Gauci in relation to matters relating to RSG and RSA. Ms Knight described her practice of regularly meeting with the Premises' venue manager and gaming manager for updates on gaming issues including review of the incident register and audits by Leigh Barrett and Associates.
44. Ms Knight described the staff culture in the gaming room as one of constant active consideration of RSG requirements led strongly by venue management. Ms Knight said that she conducts unannounced audits of the Premises' registers and books every few weeks to check for compliance. She believes the culture of compliance is evident in the level of detail of incidents recorded in the incident record.
45. Seachange engaged Leigh Barrett and Associates to undertake independent auditing and compliance in relation to Seachange's RSG and RSA requirements. Further, Mr Barrett conducts quarterly compliance audits at the Premises. Ms Knight also told the Commission she liaises with Gambler's Help and has monthly meetings with the Gambler's Help venue support worker each month.

Mr Leigh James Barrett

46. Mr Leigh Barrett, director, told the Commission that Seachange engaged Leigh Barrett and Associates in March 2013 to provide regulatory compliance services including a review of RSG and customer care policies, professional staff development sessions in respect of RSG, regular auditing of regulatory compliance and provision of ongoing support regarding implementation of RSG initiatives.
47. Mr Barret gave evidence that comprehensive responsible gambling policies and procedures have been implemented at the Premises and responsible professional development sessions



have been conducted on a half-yearly basis since March 2013. Regulatory compliance audits conducted at the Premises have consistently found the Premises to be strongly compliant with its RSG and Code requirements. Regulatory compliance audits were said to have been conducted at the Premises on a quarterly basis since February 2013. The most recent audit was conducted on 10 February 2015.

48. Mr Barrett told the Commission that his main points of contact at the Premises are the gaming manager Jack Cook and the venue manager Tony Wilson. Further, Mr Barrett meets informally with the directors of Seachange at least once every three months and compliance is discussed. During questioning by the Commission, Mr Barrett noted that he did not deal with the Applicant directly regarding RSG but understood Seachange reported to the Applicant on any RSG issues.
49. Mr Barrett told the Commission that he viewed the Premises as an “extremely well run gambling operation”, both from a regulatory compliance perspective and a responsible practices perspective. He attributed this to Seachange’s strong leadership in the area of RSG.
50. Mr Barrett told the Commission that aspects of the Premises’ layout give him confidence that the potential for problem gambling to occur is minimal. These aspects include the “open” layout of the gaming room with good lines of site allowing easy surveillance, the constant presence of staff on the gaming room floor and the broad range of offerings at the Premises. During questioning by the Commission, Mr Barrett conceded that the gaming room was darker than the other areas of the Premises during daylight hours, however the lighting was adequate from a compliance perspective.

Mr Richard Anthony Whitehouse

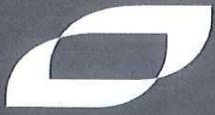
51. Mr Whitehouse is a director of PVS, a firm of gaming industry consultants. Mr Whitehouse has over 17 years’ experience in the gaming industry and, in that time, has provided gaming industry advisory services including expert opinion on gaming expenditure predictions. The Commission accepts that Mr Whitehouse is qualified to give expert opinion on gaming expenditure predictions.
52. Mr Whitehouse gave evidence regarding the accuracy of his initial gaming expenditure prediction provided to the Commission for the Premises in 2007. In the first three financial years of trading, the financial years ending 2011 to 2013, the Premises’ actual revenue was less than what was predicted. Only the 2014 financial year saw actual revenue increasing to 1% higher than the predicted expenditure. Mr Whitehouse told the Commission this data can be used to show that the Geotech model is reasonable and reliable.



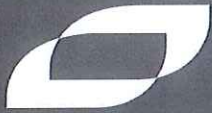
53. Mr Whitehouse expressed his opinion that, should the Application be granted, an additional ten EGMs at the Premises is likely to result in increased expenditure at the Premises of \$378,448 annually. It was estimated further that expenditure within Melton will increase by \$281,417 annually, or 0.52%.
54. Of the increased expenditure at the Premises, Mr Whitehouse told the Commission that he predicts that \$112,059 will be new expenditure and \$266,389 (being 70.4%) is likely to be transferred expenditure. This is a higher percentage of expected transfer than in the 2007 predictions, which Mr Whitehouse attributed to the following reasons:-
- (a) an additional 12 EGMs are operating in the area;
 - (b) the Premises is now established and is trading central to two competitors; and
 - (c) the area surrounding the Premises is significantly more established than it was at the time of the prior prediction.
55. Mr Whitehouse told that Commission that, in reaching his conclusions, the 2015 financial year figures released by the Commission during August 2015 were taken into account.

Ms Colleen Yvonne Petersen

56. Ms Peterson, director of Ratio, prepared the Social and Economic Impact Assessment Report. Ms Peterson is a qualified town planner with over 20 years' experience in the area. The Commission accepts that Ms Peterson has the broad experience to undertake and provide expert opinion on the level of combined socio-economic review that she has done for this Application.
57. Ms Peterson told the Commission that she considers that the benefits associated with the Application, including greater accessibility to gaming for recreational gamblers, increased employment and an increase in community contributions, will outweigh any disbenefits, including the risk of increased problem gambling. Ms Peterson told the Commission that she considered that these benefits would exist in the event that construction of the new accommodation did not proceed. Although, should the accommodation be built, the strength of the benefits would be greater.
58. Ms Peterson told the Commission that she considers that the Premises serves as a destination venue due to its relative isolation from other gaming venues and its superior quality and attractiveness compared to its competitors.



59. A survey was conducted by Ms Peterson of the patronage of the gaming room, the bistro and café during the two week period between 8 October 2014 and 21 October 2014. This survey found that the primary patron catchment of the gaming rooms comes from the suburbs of Caroline Springs, Taylors Hill and Burnside Heights (which accounts for 31.8% of the patrons in the gaming room) with the secondary patron catchment comprising of patrons from the suburbs of Kings Park, St Albans, Hillside and Burnside (which accounts for 22%).
60. Ms Peterson gave evidence that the suburbs of Caroline Springs, Taylors Hill and Burnside Heights that comprise the primary catchment of the Premises have SEIFA scores well above the median SEIFA score for Victorian suburbs, sitting between the 6th and 8th deciles. Ms Peterson noted that the more disadvantaged areas proximate to the Premises are closer to other gaming venues including the St Albans Sports Club, St Albans Hotel, Deer Park Club and Deer Park Hotel. As such, any resident from an area that experiences significant disadvantage are driving past these closer venues and making the conscious decision to attend the Premises. Mr Peterson expressed the opinion that this is likely to occur for reasons other than gambling.
61. Ms Peterson told the Commission that an EGM utilisation study she conducted over a two week period, based upon a patron head count survey, showed that the Premises experienced 60% utilisation for 21 hours, including 10 hours of peak utilisation. The highest utilisation of 100% was recorded on a Saturday night between 8pm and 9pm.
62. Ms Peterson gave evidence that a review of the NMR at the venue, which sits at \$358 for the last financial year, places it below the Metro Hotel average of \$365. This was said to indicate that given the fairly consistent use of EGMs throughout the day, problem gambling is not likely to be a significant issue at the Premises.
63. On the issue of housing stress, Mr Peterson said that the income profile of residents of the primary catchment indicates that higher levels of housing stress experiences within this area are largely voluntarily and offset, in part, by the average weekly household incomes being substantially higher than the Metro average. This was described as being consistent with the high growth rate seen in the area.
64. Ms Peterson told the Commission that 10 additional EGMs are not likely to materially alter the attractiveness of the Premises or the ability of patrons to play anonymously, and consequently will not materially increase the patron draw of the gaming room. Further, should the accommodation be built, this is unlikely to attract patrons from disadvantaged areas.
65. Ms Peterson told the Commission that granting the Application would result in the following social and economic benefits:

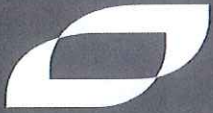


- (a) increased opportunities for recreational gambling;
 - (b) additional community contributions of \$20,000 per annum for the life of the EGM entitlements;
 - (c) the creation of two full time equivalent positions;
 - (d) additional gaming expenditure; and
 - (e) increased competition.
66. Social and economic disbenefits which may arise as a consequence of granting the Application were said by Ms Peterson to include:
- (a) the potential for problem gambling;
 - (b) the potential impact on community health and connectedness;
 - (c) lower spending at other gaming venues in Melton from transferred expenditure; and
 - (d) the potential for decreased employment at other venues.
67. Should the proposed building works occur, this will also result in the additional following social and economic benefits:
- (a) social benefits to users of the Premises' accommodation by providing greater accessibility to accommodation for conferences and other functions;
 - (b) economic benefits to local businesses who will benefit from greater availability of accommodation in the local community;
 - (c) higher levels of additional employment, estimated at 10 to 15 full time equivalent employees; and
 - (d) additional supply contracts in the local area to service the construction works at the Premises.
68. Ms Peterson concluded that, even should the construction of the additional accommodation not proceed, the approval of the additional EGMs at the Premises would result in a "slightly positive" net outcome.

'NO NET DETRIMENT' TEST

69. Turning to the Commission's consideration of the 'no net detriment' test, set out below (and summarised in tabular form at Appendix One) is the Commission's assessment of the economic benefits and disbenefits and social benefits and disbenefits associated with this Application, including the weighting given to each of these impacts.

ECONOMIC IMPACTS



70. The Commission finds that the approval of additional EGMs will create an improved financial position for the Applicant. The Commission found Mr Gauci to be a credible witness and it accepts his evidence that the Applicant intends to proceed with the construction of the new accommodation facilities at the Premises when its financial arrangements are positioned in line with the Club's risk profile. Should the additional construction occur, it will provide an economic benefit by enabling greater use of the Premises' facilities, such as the function rooms, by larger groups. The Commission also considers that the construction of the additional accommodation will offer an economic benefit to the community, by virtue of employment created and other economic stimulus as a result of construction and installation, balanced against the benefit of employment and additional economic activity not being isolated entirely to Melton. These benefits are given low weight by the Commission in circumstances where the construction is not definite as at the date of this Decision.
71. The Commission considers that, in the unintended event that the accommodation expansion does not proceed, approval of the Application will nevertheless result in a minor economic benefit. The balance of the Commission's findings in relation to economic impacts set out below are determined upon the basis that the construction does not proceed.
72. The Commission accepts that approval of this Application is likely to result in an increase in gaming expenditure at the Premises of no greater than \$378,448 over the first 12 months, consisting of approximately \$112,059 new expenditure and \$266,389 transferred expenditure from other gaming venues in Melton.
73. The Commission finds that the portion of new expenditure not attributed to problem gambling is an economic benefit, noting that some of that benefit is likely to be derived from patrons who live outside Melton. In any event, the extent of the additional expenditure is not large, and, as such, a low weight is given to this benefit.
74. To the extent that a portion of new expenditure is attributable to problem gambling, this represents an economic disbenefit.¹⁵ In assessing the extent of this disbenefit, the Commission recognises that it does not include transferred expenditure because such expenditure cannot

¹⁵ 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 Ltd 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 v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [178] and following per Dwyer DP. For completeness the Commission considers both the economic and social impacts of problem gambling in its assessment of this Application.



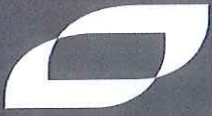
exacerbate problem gambling.¹⁶ Given the low level of anticipated additional expenditure in Melton, the profile of patrons of the Premises, and the active mitigation approach taken to problem gambling by the Applicant, the Commission accepts that any increase in problem gambling as a result of the Application is likely to be minor, and hence a low weight is placed on this impact.

75. The Commission considers that the community contributions of \$20,000 per annum which the Applicant has volunteered to make if the Application is approved is an economic benefit to the community. This is not a large amount in the context of this application and is accordingly ascribed a weight of marginal to low by the Commission.
76. The Commission also considers that there are various other economic benefits and disbenefits associated with the Application for which a low weight is given. These include:-
- (a) Employment of two additional full time equivalent employees at the Premises – while there is no guarantee that local residents will be employed and the number of new jobs is low, the Commission ascribes a low weighting to this benefit in recognition of the relatively high unemployment rate in Melton.¹⁷
 - (b) Increase in competition in gaming in Melton – while this is an important factor in light of the statutory purposes of the Act and the consumer benefits that derive from competition, it is an economic benefit which is given a low weight in the current Application given the number of the EGMs operating in the Melton, the number of additional machines proposed for the Premises and the existing EGM utilisation rates.
 - (c) Diversion of trade from other segments of the economy – this economic disbenefit is expected to be low given the low increase in EGM numbers at the venue, the low level of anticipated transferred expenditure and the size of the LGA economy.
77. Overall, the Commission considers that there will be a minor, but positive, economic impact on the Melton community by approval of the Application.

SOCIAL IMPACTS

78. Wherever accessibility to EGMs is increased there is always a risk of an increase in problem gambling, which leads to other costs such as lost productivity, increased health and social

¹⁶ See *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [113] 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.

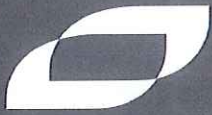


service requirements and other social costs. Accordingly, the Commission accepts there is potential for negative social costs through possible increased problem gambling expenditure.

79. The Commission accepts the evidence of Mr Barrett that the Premises exhibit a number of factors that may decrease the risk of problem gambling, such as the 'open' layout and the broad venue offer with substantial facilities other than gaming drawing patrons to the Premises. The Commission finds that the Application will not directly alter any of these factors through the introduction of 10 additional EGMs. The Commission considers it likely that these protective factors have some impact on the risk of problem gambling at the Premises.
80. The Commission accepts that there is a strong commitment to RSG practices by the managers of the Premises. This, in conjunction with the employment of an additional two full-time equivalent employees on the gaming floor, is likely to mitigate any risk from increased problem gambling as a consequence of the additional EGMs.
81. The Commission also considers that the risk of an increase to problem gambling as a result of this Application being approved is limited by the current accessibility to EGMs in Melton and, in particular, the presence of EGMs in venues that are closer to the more disadvantaged parts of Melton than the Premises. The average number of EGMs per 1,000 adults in Melton is less than the State and metropolitan averages,¹⁸ and the number of EGMs operating is well within the municipal limit.
82. Overall, taking into account the marginal increase in EGM density and EGM expenditure per adult together with the socio-economic profile of the municipality, the Commission finds that Melton does not present as particularly vulnerable to problem gambling and is satisfied that the potential for an increase in problem gambling is low.
83. The Commission finds that the increased number of EGMs at the Premises will better serve the needs of recreational gaming patrons through providing a wider variety of EGMs from which to choose. This benefit for recreational gamblers is somewhat marginal given the small increase in the number of EGMs, the existence of nearby venues with EGMs and the relatively low periods of peak utilisation of EGMs currently experienced at the Premises.
84. The Commission also finds that the increased number of EGMs will likely enable the Applicant to enhance the accommodation facilities at the Premises. This will in turn allow the Premises to

¹⁷ See *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [62] per Code PM and Nelthorpe M.

¹⁸ As to recognised limitations with this factor see *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [59] per Morris J.



cater to market demand in the area and enable greater use of conference and function facilities. However, taking into account that the plans for construction of the additional accommodation are currently uncertain, the Commission considers this to be a low social benefit.

85. In relation to proposed community contributions, the Commission considers the additional \$20,000 contribution and the impact this will have on local community organisations to be a small social benefit which is given low weight. The additional funds will be put towards the already existing West Waters Hotel Community Grants Program. On the issue of distribution of funding by the program committee, the Commission notes that it recognises the importance of sporting, recreational and social clubs to local communities. Sporting clubs, for example, are seen to provide a benefit for the broader community. It is the Commission's view that it is appropriate that funds be properly distributed from the program for such causes, particularly in circumstances where the Applicant has existing commitments to separately donate funds for local community welfare and problem gambling support purposes.
86. After considering the social benefits of the proposal balanced against the detriments, the Commission considers that, on balance, there is likely to be a minor positive social impact by granting the Application.

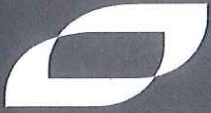
NET ECONOMIC AND SOCIAL IMPACT

87. The '*no net detriment test*' in section 3.4.20(1)(c) of the Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.¹⁹
88. After consideration of the material put forward by the Applicant, and weighted as outlined above and summarised in tabular form at Appendix One of these Reasons for Decision, the Commission has concluded that there is likely to be a minor net positive social and economic impact to the well-being of the community in the municipal district in which the Premises is located if the Application is approved.

OTHER RELEVANT CONSIDERATIONS

89. Having determined that the '*no net detriment*' test has been satisfied, there remains a discretion in the Commission to determine whether or not to approve the Application. In determining

¹⁹ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.



whether or not to grant the application, the Commission may take into account other relevant matters, including broader policy considerations drawn from the Acts as a whole.²⁰

90. The Applicant submitted that the Commission should view the Council's position as one of support for the Application, upon the basis of Council meeting minutes the Commission was taken to by the Applicant. As noted earlier, the Council notified the Commission that it did not oppose the Application. The Commission is not persuaded that, in the absence of further submissions by the Council itself, the Council's position in relation to the Application can be put any higher than that of neutrality as expressed in its letter.
91. On the material that has been put before it, the Commission is satisfied of the other matters in section 3.4.20(1). The Commission is also 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. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the Application.
92. The Commission was provided with draft conditions that the Applicant would be willing to accept should the Application be approved. In granting approval, the Commission believes it is appropriate that its approval should be subject to conditions of this nature. The conditions are as follows:

1. **Community Contributions**

- (a) *The operator of the premises (**the Venue Operator**) has previously established the West Waters Hotel Community Grants Program (**the Program**).*
- (b) *If this application is approved, the Applicant undertakes to do the following:*
- (i) *Make the cash contributions referred to in Condition 1(b)(ii) whilst and so long as any of the additional ten (10) additional electronic gaming machines (**Additional EGMs**) operate at the Premises up to 15 August 2022.*
- (ii) *The additional annual cash contribution will be in the sum of \$20,000 (indexed each year by CPI all groups Melbourne) (**the Additional Contribution**).*
- (iii) *The Additional Contribution will be allocated each year to not-for-profit community and sporting organisations in the Eastern Corridor of Melton. The*

²⁰ *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per



Eastern Corridor comprises Caroline Springs, Burnside, Burnside Heights, Rockbank, Hillside, Taylors Lakes and Diggers Rest (the Eastern Corridor).

- (c) *The distribution of the Additional Contribution in accordance with Condition 1(b) is to be determined by the committee that has been established and currently administers the Program.*
- (d) *The Venue Operator currently makes annual contributions in the sum of \$155,000 (indexed to CPI) for a period of 10 years from the commencement of the operation of the Premises (being 17 December 2010) as follows:*
 - (i) *\$100,000 each year towards cash grants for not for profit community and sporting organisations in the Eastern Corridor of Melton in accordance with the guidelines of the Program;*
 - (ii) *\$20,000 each year towards welfare purposes in the Eastern Corridor of Melton, with such amount to be allocated at the discretion of Council; and*
 - (iii) *The balance, namely \$35,000, is paid to Council each year and applied by Council toward the provision of a problem gambling/financial counsellor employed by Council and who assists persons living in the Eastern Corridor of Melton;*

(the Existing Contributions).

- (e) *The Venue Operator will continue to pay each year the Existing Contributions until 16 December 2020.*
- (f) *At the end of each annual reporting period, if any part of the Additional Contribution and/or the Existing Contributions remain unallocated, the Venue Operator must allocate the entire unpaid sum at its sole discretion, provided that the monies are allocated to not-for-profit community and sporting organisations in the Eastern Corridor.*

The preceding paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy, Deputy Chair, and Mr Des Powell Commissioner

Appendix One

The following table is a summation of the economic and social benefits and disbenefits considered by the Commission in reaching its decision. It 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 as detailed.

Summary of social and economic impacts

Economic impacts

	Impact	Paragraph	Comment relevant to weight
Benefit	Greater spending at Premises, employment creation and other economic stimuli associated with the construction of the accommodation	70	Greater use of Premises facilities by guests using accommodation such as function rooms. Construction will offer economic benefit to the community, by virtue of other economic stimulus as a result of construction; Balanced against the benefit of employment and additional economic activity not being isolated entirely to Melton and construction being unconfirmed at this time; Low weight.
	Gaming expenditure not associated with problem gambling	72 and 73	Direct and measureable benefit to the community; Extent of additional expenditure not large; Low weight.
	Community contributions of additional \$20,000 per annum	75	Economic benefit to the community; Not a large amount in the context of the Application; Marginal to low weight.
	Additional employment	76(a)	Creation of two full time equivalent positions; Low unemployment rate in Melton, balanced against no guarantee on residency of additional employees; Low weight.



				Important factor in light of purposes of the Act and consumer benefits; Balanced against the number of EGMs operating in Melton, the number of additional EGMs proposed and existing utilisation rates; Low weight.
				Comment relevant to weight
Disbenefit			74	Low level of anticipated additional expenditure; Demographic profile of Melton, profile of patrons at the Premises and active mitigation approach taken to problem gambling by the Applicant; Low weight.
	Increase in gaming competition in the community	76(b)		
	Impact	Par.		
	Possibility of increased incidence and impact of problem gambling.			
	Diversion of trade from other segments of the economy	76(c)		Low level of EGM numbers at Premises, the level of anticipated transfer expenditure and the size of the LGA economy; Low weight.



Social impacts

	Impact	Par.	Comment relevant to weight
	Wider variety of choice of EGMs for recreational gamblers	83	The increased number of EGMs at the premises will better serve the needs of recreational gaming patrons; Balanced against small increase in EGM numbers, proximity of alternative EGM venues and utilisation rates at the Premises; Marginal weight.
	Enhancement of accommodation, conference and function facilities at the premises	84	The increased number of EGMs will likely enable the applicant to upgrade the facilities on the premises; Balanced against current uncertainty of construction plans; Marginal benefit.
	Additional funds towards the community	85	Social benefit in supporting local non-for profit community groups; Balanced against small amount of contribution; Low weight.
	Impact	Par.	Comment relevant to weight
Disbenefit	Possible increase in risk of problem gambling, increased health and social service requirements and costs.	78	The Commission accepts there is potential for negative social costs through possible increased problem gambling expenditure; Balanced against RSG practices at the Premises, two full time equivalent employees on the gaming floor, current access to EGMs and the economic profile of the municipality; Low weight.