



Victorian Commission for Gambling and Liquor Regulation

DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by Altona RSL Sub-Branch Inc to amend its venue operator's licence to vary the number of electronic gaming machines at the approved premises located at Altona RSL, 31 Sargood Street, Altona, from fifty-eight (58) to eighty (80).

Commission:

Ms Helen Versey, Deputy Chair
Dr Dina McMillan, Commissioner

Appearances:

Ms Louise Hicks of Counsel for the Applicant (instructed by Williams Winter Solicitors)

Mr John Rantino for Council (instructed by Maddocks)

Ms Lilli Owens-Walton, Counsel Assisting the Commission

Date of Hearing:

7 and 8 November 2018

Date of Decision:

4 December 2018

Date of Reasons:

20 December 2018

Decision:

The Application is refused.

Signed:

Helen Versey
Deputy Chair



REASONS FOR DECISION

INTRODUCTION

1. This is an application by Altona RSL Sub-Branch 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**) operating at the approved premises located at Altona RSL, 31 Sargood Street, Altona (**Altona RSL**), from 58 to 80 (the **Application**).
2. The relevant municipal authority is Hobsons Bay City Council (the **Council**). By letter to the Commission dated 13 September 2018, Council stated that it intended to make a written economic and social impact submission regarding the Application. It did so on 5 October 2018 (together with supporting documents),¹ in opposition to the Application.
3. The Commission considered the Application at a public inquiry conducted on 7-8 November 2018 (the **Hearing**). The Applicant was represented by Ms Louise Hicks of Counsel, instructed by Williams Winter Solicitors. Council was represented by Mr John Rantino, of Maddocks.

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—*

(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;*

¹ See paragraph 23 below.



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- (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*



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- (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. Section 9(3) of the Victorian Commission for Gambling and Liquor Regulation Act 2011 (**VCGLR Act**) provides, inter alia:

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

8. The relevant provision concerning the Application is section 3.4.17(1)(b) of the GR Act, which states that variation of the number of EGMs permitted in an approved venue may be amended in accordance with Division 2, Part 4 of Chapter 3 of the GR Act.
9. 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—*



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

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, as follows:

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



and operation of the approved venue and the proposed approved venue are genuinely independent of each other.

12. Pursuant to section 3.4.20(1)(a) of the GR Act, the Commission must be satisfied that the proposed amendment does not conflict with a Ministerial direction, if any, given under section 3.2.3 of the GR Act. There is no relevant direction issued pursuant to section 3.2.3 of the GR Act that relates specifically to this Application.
13. Section 3.4.20(1)(c) provides for what is now commonly described as the '*no net detriment*' test. It requires the Commission to be satisfied that there is no net detriment arising from the approval through positively and objectively establishing that the net economic and social impact will not be detrimental to the well-being of the community.²
14. The GR Act does not specify the matters which the Commission must consider in deciding whether the '*no net detriment*' test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:
 - (a) the likely economic impacts of approval;
 - (b) the likely social impacts of approval; and
 - (c) the net effect of those impacts on the well-being of the relevant community.³
15. As such, the '*no net detriment*' test is a composite test requiring consideration of a single net impact in economic and social terms on the well-being of the community.⁴ The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.
16. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.⁵ On review, decisions in the Victorian Civil and Administrative Tribunal (VCAT) have held that for impacts that may be both economic and social – for example

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

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

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

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



the benefits of gaming consumption – it does not matter whether the impact is considered on the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.⁶

17. The Commission also notes the position taken by VCAT that:

*A table of likely economic and social benefits and disbenefits, and with some comments relevant to the relative weight to be given to particular factors ... is a useful way of transparently dealing with the 'no net detriment' test, and might perhaps be considered for wider application.*⁷

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

18. If the Commission is not satisfied that the 'no net detriment' test is met, that is clearly fatal to the application before it, as given the opening words of section 3.4.20(1) of the GR Act, satisfaction of the test is a mandatory pre-condition to approval. However, although section 3.4.20(1) sets out certain mandatory considerations for the Commission, the provision is not exhaustive. If the Commission is satisfied that the 'no net detriment' test is met, it still has an ultimate discretion as to whether or not to grant the approval.⁸ The Commission must decide whether to make the proposed amendment, with or without any changes from that proposed by the applicant, even where the applicant has satisfied the minimum threshold of the 'no net detriment' test.⁹

19. 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;¹⁰ and
- (b) it may also be influenced by other factors such as broad policy considerations drawn from

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

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

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

⁹ GR Act, section 3.4.20(2).

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



the content and objectives of the GR Act as a whole.¹¹

20. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*¹² that, if all of the mandatory considerations under the GR Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval – other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.
21. Finally, 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. On 16 October 2013, a Ministerial guideline was published in the Victorian Government Gazette pursuant to section 5 of the VCGLR Act concerning applications for approvals of venues for EGMs and children’s play areas incorporated in the venue. This guideline concerned the assessment of the suitability of a premises for gaming. As such, it appears primarily to apply to a premises applying to be a new gaming venue, rather than an increase in the number of EGMs at an existing gaming venue. While this guideline is therefore not directly applicable to this Application, the Commission’s view is that it is proper for the Commission to have regard to the underlying policy intent of such a guideline (which in this instance appears to relate to the legislative objective under section 1.1(2)(ab) of the GR Act that minors are neither encouraged to gamble nor allowed to do so) when considering the Application.

MATERIAL BEFORE THE COMMISSION

22. The Applicant provided the Commission with the following material in support of the Application:
- (a) Application form – Amendment to venue operator’s licence – vary gaming machines, dated 30 July 2018;
 - (b) Social and Economic Impact Statement, prepared by Mr Nick Anderson, Managing Director of NBA Group, dated June 2018 (the **NBA Report**) with appendices;

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

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



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- (c) Addendum Report to the NBA Report, prepared by Mr Anderson, dated 5 November 2018 with appendices including:
- (i) a summary of objections referred to later in paragraph 25;
 - (ii) a request for further information from Council to NBA Group in relation to the Applicant's planning permit PA1840472, dated 20 August 2018 and the response to Council from NBA Group, dated 13 September 2018;
 - (iii) submissions to the Gaming Machine Arrangements Review by Council, dated 25 February 2016 and Health West, undated;
 - (iv) mapping of postcode petition data to 10km; and
 - (v) various maps of the area surrounding the Altona RSL
- (the **NBA Addendum Report**). Mr Anderson attended the Hearing, adopted the NBA Report and NBA Addendum Report as evidence and made some corrections and gave further evidence; and
- (d) Expenditure Report, prepared by Mr Michael Clyne for Progressive Venue Services (**PVS**), dated June 2018 (the **PVS Report**) and an updated Altona RSL Trade Area Map, dated October 2018;
- (e) Witness Statement of Mr Graham Andrew Williams, President of the Applicant, dated 26 July 2018;
- (f) Witness Statement of Mr David Hanson, General Manager of the Premises, dated 27 July 2018, attaching a copy of:
- (i) the RSL Sub-Branch Incorporated Rules,
 - (ii) the RSL Sub-Branch Incorporated Responsible Gambling Code of Conduct March 2009; and
 - (iii) the Australian Hotels Association (Vic) Self Exclusion Program, dated 20 March 2009
- (**Mr Hanson's Witness Statement**); and
- (g) Addendum to Mr Hanson's Witness Statement, dated 5 November 2018, with six appendices:
- (i) compliance audit findings by Leigh Barrett & Associates, dated 19 March 2017, 4 May 2018 and 24 September 2018;



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- (ii) a floor plan of the Altona RSL as sent to Leigh Barrett & Associates with proposed responsible service of gaming (**RSG**) measures indicated on the plan;
- (iii) an email from Leigh Barrett, Managing Director and Principal Consultant of Leigh Barrett & Associates, dated 1 November 2018;
- (iv) an RSL Staff Handbook – Policies and Codes of Conduct;
- (v) transaction reports for the Altona RSL for the 2015-2016, 2016-2017 and 2017-2018 financial years; and
- (vi) a copy of the results and details of a survey entitled '*Community Gaming Survey on Altona RSL Sub-Branch Inc Gaming Application*' conducted between 15 October 2018 and 29 October 2018.

23. The Council provided the following material in opposition to the Application:

- (a) written economic and social impact submission signed by the Acting Chief Executive Officer of the Council, dated 5 October 2018, referred to in paragraph 2 above;
- (b) minutes of the Council meeting held on 9 October 2018 relating to the Application;
- (c) Social and Economic Impact Assessment prepared by SGS Economics & Planning (**SGS**), dated October 2018 (**SGS Report**);
- (d) Letter from Wyndham City Council in support of Council's opposition to the Application; and
- (e) expert Witness Statement of Mr James Atkinson, urban economist with SGS, attaching copies of Mr Atkinson's curriculum vitae and an amended version of the SGS Report accounting for public submissions, dated 30 October 2018 (**Amended SGS Report**).

24. The following material, prepared by Commission officers, was provided to the Applicant and Council and was considered by the Commission:

- (a) a report titled *Economic and Social Impact Report*, dated October 2018 (the **VCGLR Report**); and
- (b) a report titled *Pre-Hearing Inspection and Compliance Report*, dated 23 October 2018 (the **Inspection Report**).

25. In addition, the Commission received correspondence in opposition to the Application from 19 individuals in Victoria¹³ and a petition signed by 75 individuals¹⁴ submitted by the Victorian

¹³ According to the Amended SGS Report, five individual submissions were submitted from outside of the LGA, p 65-68.

¹⁴ According to the Amended SGS Report, 58 of the individuals on the petition reside within a postcode in the LGA, p 65.



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Local Governance Association/Alliance for Gambling Reform. The Commission also received submissions from the following community organisations and associations operating in the City of Hobsons Bay, including by providing services to that local government area (LGA):

- (a) Young Leaders of the West, dated 30 October 2018;
- (b) cohealth ltd, dated 24 October 2018;
- (c) Women's Health West, dated 9 October 2018;
- (d) HealthWest Partnership, dated 8 October 2018;
- (e) Latitude: Directions for Young People, dated 3 October 2018; and
- (f) North Western Primary Health Network, undated but received on 3 October 2018.

26. Prior to the Hearing, both Deputy Chair Versey and Commissioner McMillan visited the Altona RSL.

27. During the Hearing, the following further material was provided by the Applicant to the Commission in relation to the Application:

- (a) Hobsons Bay City Council Integrated Transport Plan Background Paper;
- (b) Hobsons Bay City Council Policy Statement 'Problem Gambling – Electronic Gambling Machines (EGMs)', dated July 2015;
- (c) Hobsons Bay Planning Scheme Amendment C112 – Explanatory Report, approved by the Department of Environment, Land, Water and Planning (DELWP) on 26 October 2018; and
- (d) a report titled, 'The Influence of Venue Characteristics on a Player's Decision to Attend a Gambling Venue' by Professor Nerilee Hing and Dr John Haw of the Centre for Gambling Education and Research, commissioned by Gambling Research Australia, dated March 2010.

28. The following witnesses gave oral evidence at the Hearing:

- (a) Mr Anderson;
- (b) Mr Clyne;
- (c) Mr Hanson;
- (d) Mr Williams;
- (e) Mr Atkinson; and



(f) Ms Rhonda Collins, director of community organisation *Latitude: Directions for Young People*.

29. At the conclusion of the oral evidence at the Hearing, written submissions were provided to the Commission for:
- (a) the Applicant, prepared by Ms Hicks; and
 - (b) the Council, prepared by Mr Rantino.
30. After the Hearing, on 16 November 2018, the Applicant wrote to the Commission detailing its proposed amendments to its venue operator's licence (if the Application is granted), which Council responded to on 22 November 2018. On 26 November 2018, the Applicant provided its final proposed conditions, taking into account Council's comments (**Proposed Conditions**).

DECISION AND REASONS FOR DECISION

Location

31. Altona RSL is located in the City of Hobsons Bay (**Hobsons Bay**) at 31 Sargood Street, Altona. Altona RSL is in a residential area in the suburb of Altona, which is a few blocks away from Altona Beach. The Altona Beach Activity Centre and the Altona train station are situated on the opposite side of Sargood Street to the Altona RSL.
32. Hobsons Bay is a metropolitan LGA located approximately 13 kilometres south-west of Melbourne and covers an area of 64 square kilometres. Major centres in Hobsons Bay include Williamstown, Altona and Spotswood. According to the VCGLR Report, Hobsons Bay has an adult population of 74,967 which ranks it at 30 of the 31 metropolitan municipalities, the second least populous. The annual rate of population growth of 1.2% in 2018 is lower than the Victorian average of 2.3%. Hobsons Bay's percentage of population over 50 of 31.3% in 2018 is projected by DELWP to be equal to the Victorian average of 31.3%.

Current gaming in Hobsons Bay

33. Hobsons Bay is subject to a limit on the maximum permissible number of gaming entitlements, in accordance with a Ministerial Order pursuant to sections 3.2.4 and 3.4A.5(3A) of the GR Act. The maximum permissible number of gaming machine entitlements is 577.¹⁵ Currently, there are nine gaming venues operating within Hobsons Bay with approvals to operate a total of 535 EGMs.

¹⁵ See the Ministerial Order under sections 3.2.4 and 3.4A.5(3A) of the GR Act dated 20 September 2017 and taking effect on 3 November 2017 (*Victorian Government Gazette No. S 318 Wednesday 20 September 2017*).



34. Hobsons Bay has an EGM density of 7.1 EGMs per 1,000 adults, which is 44.6% higher than the metropolitan average (4.9) and 35.8% higher than the Victorian average (5.3). This gives Hobsons Bay the 3rd highest EGM density per 1000 adults of the 31 metropolitan municipalities.
35. The VCGLR Report indicates that in 2017-18, Hobsons Bay had an average gaming expenditure of \$633 per adult (based on DELWP data from 2018), which is 14.9% higher than the metropolitan LGA average (\$551) and 18.7% higher than the Victorian average (\$533). Applying the estimate of increased gaming expenditure arising from the operation of 22 additional EGMs at the Altona RSL as received from the Applicant, the Application (if granted) would result in an increase in average gaming expenditure per adult of 0.9% without allowance for population changes.

Socio-economic profile of Hobsons Bay

36. Hobsons Bay is characterised by a mixed socio-economic profile with indices both above and below metropolitan averages and is ranked 54th out of 79 LGAs in Victoria on the Socio-Economic Indexes for Areas (SEIFA) scale of disadvantage (IRSD),¹⁶ indicating less disadvantage within the LGA (1st being the LGA with the greatest disadvantage). The NBA Report relies on data from the SEIFA scale of advantage and disadvantage (IRSAD).¹⁷ Hobsons Bay is ranked 59th on the SEIFA IRSAD, which indicates less relative disadvantage than it is on the SEIFA IRSD rankings.
37. In relation to the immediate surrounding area of the Altona RSL (i.e. within 2.5 kilometres),¹⁸ the SEIFA IRSD index is 2.6% higher than the SEIFA IRSD index for Hobsons Bay, and 3% higher than the SEIFA IRSD index for Victoria. On the SEIFA IRSD, a higher score indicates less disadvantage, therefore the immediate surrounding area is less disadvantaged than both Hobsons Bay and Victoria. 0% of SA1s¹⁹ in the immediate surrounding area are in the 1st quintile²⁰ of SEIFA scores and 11.1% of SA1s are in the 2nd quintile. This also suggests that the area immediately surrounding the Altona RSL experiences low levels of disadvantage.
38. The VCGLR Report also indicates that:

¹⁶ SEIFA is a product developed by the ABS to assist in the assessment of the welfare of Australian communities. The SEIFA Index allows the ranking of regions/areas, providing a method of determining the level of social and economic well-being in each region.

¹⁷ According to the NBA Report at paragraph 174, the use of IRSAD is preferred over the IRSD and this is explained by the ABS as follows: the index is preferred in situations where the user: wants a general measure of advantage and disadvantage in their particular analysis, is not looking at only disadvantage and lack of disadvantage and wants advantage to offset any disadvantage in the area.

¹⁸ The VCGLR Report adopts a 2.5km radius as the immediate surrounding area for applications to amend EGM venue operator's licences for venues within metropolitan LGAs.

¹⁹ SA1s have been designed by the ABS as the smallest unit for the release of Census data, and generally have a population of 200 to 800 persons, with an average of 400 persons

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



- (a) the number of pensions and allowances (**pensions**) per 1000 adults in the immediate surrounding area is 210.1, which is higher than the rate of pensions in Hobsons Bay (191), metropolitan LGAs (173) and the Victorian rate of 199.5;
- (b) the rate of housing stress experienced within the immediate surrounding area of the Altona RSL (calculated as the percentage of households in the lowest two equivalised household income quintiles paying more than 30% of income on rent or mortgage) is 72.8%, which is higher than the rate of housing stress for Hobsons Bay (62.3%), for metropolitan LGAs (64.5%) and for Victoria (60.2%); and
- (c) the unemployment rate in Hobsons Bay decreased from 6.3% to 5.9% over the past year. The metropolitan unemployment rate is slightly lower at 5.8%. The unemployment rate for the immediate surrounding area is 6.2%.

Nature of the Altona RSL

39. The Altona RSL was established in June 1930 and currently has approximately 2,200 members. The *'RSL Sub-Branch Incorporated Rules'* provide the objects for which the Altona RSL is established, which relevantly include: providing for the sick, helpless, wounded, aged, disabled, destitute and needy among those who are serving or who have served. According to the NBA Report, the Altona RSL has a *'strong commitment to supporting ex-servicemen and current serving personnel, whilst additionally servicing the local community through volunteered support and cash donations to a wide range of community and sporting groups.'* The Altona RSL secured the 22 EGM entitlements it currently seeks approval for from the nearby Williamstown RSL which closed in early 2017. The Applicant hopes to increase its appeal to a wider demographic of patrons through the installation of the additional EGMs and the associated redevelopment works.
40. The Altona RSL currently comprises:
- (a) a 70-seat capacity bistro, open four and half hours a day, six days a week from Tuesday to Sunday between 12:00pm to 2pm and 6:00pm to 8.30pm. The bistro is also a licensed private caterer serving approximately 800 meals per week;
 - (b) member's lounge bar/sports bar seating approximately 70 – 80 people and including a pool table and TAB facilities;
 - (c) function room hosting up to 200 people and including multimedia facilities, a stage and a bar;
 - (d) a gaming room with 58 EGMs, open:

Monday to Wednesday – 9 am to 10 pm



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Thursday – 9 am to 11.30 pm

Friday – 9 am to 12.30 am

Saturday – 10 am to 12.30 am

Sunday – 10 am to 10 pm; and

(e) an offsite welfare office.

41. The Applicant intends to conduct renovations to the Altona RSL over three stages at an estimated cost of \$5,274,100, discussed in further detail at paragraph 70. Part of the first stage of the works, including a new entry off Sargood Street and associated sign-in desk to the value of \$600,000, is not conditional on the approval of the Application. Consequently, the Commission has determined that these works will occur regardless of the outcome of this Application, and therefore are not considered to form a benefit of the Application. As such, the entryway and sign-in desk have been excluded from the Commission's assessment of the 'no net detriment' test.

Catchment of the Altona RSL

42. 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'.²¹ 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.
43. In the NBA Report and oral evidence, Mr Anderson described the catchment area of the Altona RSL as encompassing a 5 to 10 kilometre strip from Williamstown down through Altona Meadows, Laverton and Williams Landing and which is bound by the water on one side and the Princes (West Gate) Freeway on the other. In oral evidence, Mr Anderson described the suburb of Altona as 'an island,' having regard to those geographical features. Mr Anderson noted in the NBA Report that, while research has found people generally travel up to 2.5 kilometres to play EGMs,²² after analysing postcode data for Altona RSL members, he concluded that, in this case, patronage was spread in a linear pattern with patrons coming from approximately 7.5 kilometres either side of the Altona RSL on an east west basis, as opposed to a circular pattern. Mr Anderson gave evidence that 200 members of the Williamstown RSL had joined the Altona RSL since the

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

²² See NBA Report paragraph 115.



closure of the Williamstown RSL, which further supports his analysis regarding the catchment area and patron travel beyond the usual 2.5 kilometre distance.²³

44. In the Amended SGS Report, Mr Atkinson similarly observed that the Altona Statistical Area 2 (SA2),²⁴ in which the Altona RSL is located, is relatively isolated from the surrounding metropolitan region. Consequently, he proposed a primary catchment area consisting of the Altona SA2 only and a secondary catchment comprised of the SA2s of Altona Meadows, Altona North and Williamstown.²⁵ In considering this catchment, Mr Atkinson noted that there are a number of geographical features in the area acting as a barrier to the movement of people to Altona SA2 including Skeleton Creek (between Seabrook, Sanctuary Lakes and Point Cook) and the Princes and West Gate Freeways. He argued that residents in Footscray, Seddon, Yarraville, Newport and South Kingsville are not likely to travel south-west to Altona SA2 for recreation and more likely to move toward to activity centres around Footscray, Williamstown and central Melbourne.
45. The PVS Report states that, for the purpose of the Geotech model, the area surrounding the venue from where patrons are drawn, and in which competing venues are located, is comprised of a number of statistical areas including trade area, local network and local government area.²⁶ The trade area is defined as the statistical area in which the majority of the venue's customers are domiciled and it is divided into primary (>20% probability of patronage of the venue from residents of these areas), secondary (12 to 20% probability of patronage from these areas) and tertiary areas (4 – 12% probability of patronage from these areas).²⁷ For the Altona RSL, the only other venue within the trade area is the Millers Inn Hotel. In oral evidence, Mr Clyne confirmed that the Geotech model does not account for membership demographics such as residential addresses of the members and is limited to patrons who are going to game.
46. Having regard to the above material, the Commission notes that Mr Anderson and Mr Atkinson are somewhat in agreement about the geographical features of the area surrounding Altona RSL influencing the catchment area, however Mr Anderson did not agree that Skeleton Creek is a barrier to patrons attending from the west based on membership data.²⁸ The Commission also notes that the PVS Report expenditure predictions are based on distances and other venues and do not account for membership demographics specifically. The Commission considers that the distance a patron is prepared to travel could be influenced by geographical factors such as those

²³ Williamstown is approximately 7 kilometres from the Altona RSL.

²⁴ SA2s are the second smallest unit for the 2011 and 2016 ABS Census data, are based on gazette state suburbs and usually have a population of between 3000 to 25,000, with an average of 10,000.

²⁵ See Amended SGS Report, paragraphs 72-73.

²⁶ PVS Report, page 7.

²⁷ *Ibid.*, page 7.

²⁸ Addendum NBA Report, page 14 paragraph 60.



identified by Mr Anderson and Mr Atkinson.

47. The Commission agrees with the analysis of Mr Anderson that the catchment of the gaming room is linear in nature and extends as far as Williamstown. This Commission also agrees with the analysis of Mr Atkinson that Altona SA2 is the primary catchment and that, being further away, Williamstown is in a secondary catchment area. The Commission therefore considers the appropriate catchment area of Altona RSL consists of the primary catchment of Altona SA2 and the secondary catchment area comprising the remainder of the strip identified by Mr Anderson in the NBA Report (which includes the SA2s of Altona Meadows, Altona North and Williamstown) (the **Catchment Area**).

Issues for determination

48. Pursuant to section 3.4.20 of the GR Act, the Commission cannot grant the Application unless it is satisfied of the following matters:²⁹
- (a) that the amendment of the venue operator's licence does not conflict with a direction given under section 3.2.3 of the GR Act;
 - (b) that the relevant regional or municipal limit for EGMs applicable to Hobsons Bay will not be exceeded by the making of the amendment the subject of the Application; and
 - (c) that the net social and economic impact of the increase in EGMs permitted in the Altona RSL will not be detrimental to the well-being of the community of Hobsons Bay (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.

A. Directions given under section 3.2.3

49. As outlined in paragraph 12 above, the Commission is satisfied that there are no relevant directions given under section 3.2.3 that are applicable to this Application.
50. On this basis, the Commission is satisfied that granting the Application would not conflict with a direction given under section 3.2.3 of the GR Act, and therefore considers that mandatory pre-condition set out in section 3.4.20(1)(a) of the GR Act is satisfied.

²⁹ The Commission also considered and was satisfied as to the matters set out in section 3.4.20(1)(d) of the GR Act.



B. Municipal limits and regional caps

51. Hobsons Bay is subject to a limit on the number of EGMs under a Ministerial Order pursuant to sections 3.2.4 and 3.4A.5(3A) of the GR Act. According to the Ministerial Order, the capped region is the whole area covered by the local government area of Hobsons Bay and the limit is 577.³⁰ The current number of EGM approvals within the region is 535. Approval of this Application would increase the number of EGM approvals within Hobsons Bay to 557, which is within applicable limit.³¹
52. On that basis, the Commission is satisfied that granting the Application would not cause the relevant municipal limit for gaming machines in Hobsons Bay 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.

C. 'No net detriment' test

53. The Commission is required to be satisfied that if the Application is granted, the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the Altona RSL is 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 the Application, including the weighting given to each of these impacts.
54. Before undertaking an assessment of the impact relevant to this Application, the Commission makes the following preliminary comments:
- (a) In previous applications, the Commission has considered the associated yet distinct economic and social benefits of community contributions separately. As noted in paragraph 16 above, it does not matter whether impacts are 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. In this Application, the Commission has adopted the approach it took in *Lynbrook Tavern Pty Ltd at Lynbrook Hotel premises (Gaming – EGM Increase) [2018] VCGLR 31 (Lynbrook Hotel)* and determined to consider the impacts associated with the proposed community contributions as a single impact under the 'Social impacts' section of its consideration. As noted in its discussion of this impact below, the Commission has taken into account both the economic and social benefits generally associated with

³⁰ See Ministerial Order taking effect on 3 November 2017 (*Victorian Government Gazette No. S 318 Wednesday 20 September 2017*) signed on 20 September 2017 by the Hon. Ms Marlene Kairouz.

³¹ According to paragraph 14 of the PVS Report, a further 20 entitlements are in force in the municipality but unattached. This represents the balance of the 42 entitlements held by the Williamstown RSL prior to its closure.



community contributions forming part of EGM increase applications, and given appropriate weight to that impact in its cumulative form.

- (b) Table 16 of the NBA Report³² sets out the 'supporting' and 'detrimental' factors that were considered by Mr Anderson in his assessment of the Application. The Commission does not consider the factors listed are necessarily separate and distinct benefits or detriments of the Application to be assessed as part of the '*no-net detriment*' test. Factors including those identified as 'Current Venue', 'Council Policy,' 'Destination Venue,' and 'Management Expertise' were cited by Mr Anderson as supporting factors and considered as part of identified impacts of the Application. The Commission does not consider these factors to be distinct impacts of the Application, and as such has not separately considered them below. Further, while the Commission has taken those factors into account (where relevant) in its assessment of the impacts identified in the following section of its reasons, the Commission was not assisted by the apparent confluence of impacts and mitigating factors by Mr Anderson in Table 16.
- (c) The SGS Report contained both qualitative and quantitative analyses of the impacts of the Application. At the Hearing, Mr Atkinson stated that the quantitative analysis does not replace or invalidate the qualitative approach but, rather, it should be seen to sit alongside it as part of a more complete and rigorous overall analysis. In previous applications, in which SGS has sought to rely on its quantitative analysis only, the Commission has placed no weight on the conclusions of the quantitative assessment.³³ However, in this Application, the Commission found the quantitative analysis to be useful in assessing the qualitative approach taken by Mr Atkinson.

Economic impacts

55. 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.

Gaming expenditure not associated with problem gambling

56. As the economic category includes consumption, then to the extent that gaming expenditure is not associated with problem gambling, it has been recognised (by, for example, the Productivity Commission in its 1999 report) that such expenditure can be treated as an economic positive.³⁴

³² See NBA Report, pages 85 – 91.

³³ See, for example, *Lynbrook Hotel*.

³⁴ See *Romsey #2* at [351] per Bell J.



As Bell J further notes, this approach also brings to account the benefit obtained from pure consumption by the lone gambler who does not use machines for social reasons.³⁵

57. For the Applicant, Mr Clyne, in the PVS Report and at the Hearing, gave evidence regarding anticipated expenditure in the first 12 months operating an additional 22 EGMs at the Altona RSL. Using the Geotech model, Mr Clyne estimated that:
- (a) the level of additional gross gaming expenditure generated from the Application would be \$3,455,725.00 in the first 12 months of trade;
 - (b) 88% of this would be transferred expenditure from a number of existing gaming venues within Hobsons Bay; and
 - (c) adopting the estimated level of 88% transferred expenditure, new gaming expenditure is estimated to be \$413,996 in the first 12 months of trade, which equates to approximately 0.9% of total gaming expenditure in Hobsons Bay in 2016-2017.
58. The Commission notes that the Geotech model is a retail gravity model, based on the theory that a consumer's choice of gaming venue will be based on two fundamental considerations: travel time and venue attractiveness. The determinants for venue attractiveness, in order of priority, are: EGM numbers; whether the venue is a hotel or a club; operating hours; and facility score, which itself is based on a number of factors, including the proposed venue fit-out.
59. In the PVS Report, Mr Clyne provided an analysis of the Geotech model outputs relating to the Application.³⁶ Of note, Mr Clyne observed that,
- (a) the estimated increase in weekly expenditure of \$66,456 from the current actual average of \$71,541 is 'quite significant,' being approximately 93%. Mr Clyne attributed this to certain factors influencing the venue attractiveness score at the Altona RSL including:
 - (i) the increase in EGMs from 58 to 80 (described by Mr Clyne at the Hearing as 'substantial'), resulting in a higher weighting being attached to the Altona RSL in terms of its venue attractiveness; and
 - (ii) the proposed completion of stage 1 of the venue redevelopment works.

Under cross-examination at the Hearing, Mr Clyne agreed that the expenditure predictions

³⁵ See *Romsey #2* at [351]. Bell J notes further at [352] that the other approach is to say, as did Morris J in *Branbeau Pty Ltd v Victorian Commission for Gambling 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.

³⁶ See PVS Report, page 12.



of the Geotech model are based 'very largely' on the increase in the number of EGMs which are set to occur during Stage 1 of the proposed works (see paragraph 70 for full details of proposed works). He stated that, as further redevelopment works that may improve the facility score would occur in later stages of the proposed works, the Geotech model has not taken these into account in its expenditure prediction estimates;

- (b) the estimated increase in expenditure per EGM per day being predicted to rise from \$176 to \$252 is 'very significant' in consideration of historical trends which indicate that a venue receiving a top-up of EGMs will typically experience a reduction in expenditure per EGM per day in the first 12 months following installation of the additional EGMs; and
- (c) should the Altona RSL achieve the expenditure predictions, the Altona RSL will rise from 28th to 8th of the 52 RSL gaming venues in terms of expenditure per EGM.³⁷

60. At the Hearing, Mr Clyne gave evidence that he was confident that the expenditure estimates are in line with other venues and that the prediction will not be exceeded in the first 12 months.
61. In relation to his predictions regarding transferred expenditure, Mr Clyne attributed the higher figure of 88% to the fact that Hobsons Bay is not experiencing any growth in expenditure and therefore any increase achieved by Altona RSL will have to be attracted away from other venues. He submitted that the impact on neighbouring venues would range from 0.9% - 17.8% of the contributing venue's current weekly expenditure and that Millers Inn Hotel, Altona Sports Club, Altona Bowling Club and Koorringal Golf Club would be most significantly affected.³⁸
62. In the Addendum SGS Report, Mr Atkinson made observations regarding the PVS Report. In summary, Mr Atkinson stated that the PVS Report, which focuses on estimates over the 12 month period following the installation of the new EGMs, fails to consider a number of factors and subsequently understates the impact on EGM expenditure by Mr Clyne. These factors include:
- (a) the likelihood that the Altona RSL EGM expenditure will continue to grow after the first year of operation, albeit at a lower rate, based on data regarding the expenditure impact of recent RSL venue top ups for over ten EGMs between 2009 – 2016;
 - (b) the likelihood that surrounding venues will respond to their losses in gaming revenue and competitive responses could induce new EGM expenditure at those venues; and
 - (c) the creation of new capacity at Millers Inn, the most heavily-used EGM venue in Hobsons

³⁷ PVS Report, paragraph 31, referencing 2016-2017 expenditure data.

³⁸ PVS Report, paragraphs 42 – 43.



Bay is likely to create new opportunities for gaming in that venue's catchment.³⁹

63. Mr Atkinson offered his own expenditure predictions in the Amended SGS Report, which (as discussed in paragraph 54(c)), consist of a qualitative and quantitative analysis of impacts to be read together. Regarding what he termed '*consumer surplus linked to EGM expenditure not associated with problem gambling*,' Mr Atkinson concluded that projected increases in expenditure are likely to be offset by reductions in expenditure elsewhere in the catchment and therefore the increase in consumer surplus is likely to be relatively small. In his quantitative analysis, Mr Atkinson placed a net present value (NPV) on this impact of \$1,048,793.00 (over a 20 year evaluation period and applying a seven per cent discount rate⁴⁰) or \$108,577 per annum.⁴¹
64. At the Hearing, Mr Clyne submitted that he did not believe that the expenditure impact will continue to grow. He argued that the 12 month estimates of the Geotech model were consistent with the requirements of the legislation and that Mr Atkinson's response to the PVS Report expenditure prediction of \$413,996 in new expenditure following a transfer of 88% from surrounding venues fails to account for:
- (a) other factors that may have influenced the growth of expenditure at those RSLs between 2009 – 2016, as similar growth was recorded in other RSLs without top-ups;
 - (b) the fact that the Geotech model overstates the impact to account for the 'ramp-up' in expenditure following the installation of the new EGMs; and
 - (c) the fact that, in such a dynamic industry, it is difficult to model the way other venues will react to the Application. However, Mr Clyne still estimates that any changes to expenditure at other venues would consist largely of transferred expenditure and would not be new expenditure.
65. Having regard to the evidence before it, the Commission accepts the evidence of Mr Clyne as to the estimated gaming expenditure as calculated above. The Commission notes that the timing of the likely commencement of operation of the additional EGMs at the Altona RSL is unknown and dependent on planning permission being obtained.
66. In assessing the extent of this benefit, the Commission has had regard to the evidence outlined in paragraphs 99 to 127 below and findings with respect to the potential increase to the incidence of problem gambling as a result of the Application, which reduces the economic benefit of the new

³⁹ Addendum SGS Report paragraph 366. In relation to the popularity of Millers Inn, Mr Atkinson noted that it is the most heavily used EGM venue in Hobsons Bay and has one of the highest rates of expenditure per EGM in Victoria, \$185,312 per EGM, which ranks it at 16 of 480 EGM venues.

⁴⁰ Addendum SGS Report, pages 27 and 33.

⁴¹ *Ibid.*, page 35, paragraph 221.



expenditure.

67. Overall, in consideration of the estimated 0.9% increase in expenditure in Hobsons Bay, and having necessary regard to the extent of gambling expenditure associated with problem gambling as outlined in paragraphs 99 to 127 below, the Commission considers that this benefit should only be given a nil to marginal weight.

Expenditure on capital works

68. A potential key economic benefit associated with this Application is that arising from the expenditure on the proposed redevelopment of the Altona RSL.
69. In oral and written evidence, the Applicant submitted that the Altona RSL has not been updated since 1996 and badly needs refurbishment to expand its appeal to a broader range of patrons. To that end, a proposed redevelopment costed at \$5,274,100.00 (excluding GST) is planned.
70. At the Hearing, Counsel for the Applicant confirmed that, for the consideration of impacts, \$600,000 should be deducted from the total estimated capital works expenditure, leaving remaining works of \$4,674,100 for which the Commission should have regard (as discussed in paragraph 41). This project is broken into the following stages:⁴²
- (a) Stage 1 (\$1,033,800) – redevelopment of member's lounge, terrace and gaming lounge (new Member's entry excluded from consideration and \$600,000 deducted from costings), for commencement/completion from August to December 2019;
 - (b) Stage 2 (\$1,871,300) – redevelopment of club entry, foyer, reception, administration and bistro lounge and development of new café, children's 'lounge' and back of house storage, for commencement/completion from July to November 2022; and
 - (c) Stage 3 (\$1,769,000) – new gaming lounge extension and amenities, welfare and administration offices, including expanded car parking, for commencement/completion from February to June 2024.

The Commission refers to subparagraphs 70(a)-(c) as '**the Proposed Works.**' These costings were contained in an Appendix to the NBA Report showing plans, scope and quotes provided by Rubicon Architects.⁴³

71. The NBA Report states that the Proposed Works will be tendered to local and state-wide tenderers

⁴² The Applicant has applied for a planning permit to conduct the three stages of capital works described.

⁴³ See NBA Report, Appendix 5 and 5a.



and that it is preferred that a local contractor will undertake the work. On this basis, Mr Anderson concluded that the expenditure will be retained in the municipality.⁴⁴ At the Hearing, when questioned by Deputy Chair Versey regarding this conclusion, Mr Anderson qualified the comments by stating that there was no guarantee that a \$5,000,000 tender will necessarily be won by a local tenderer because locals may not have the expertise. For this reason, he had only attributed a moderately positive weighting to this impact, as opposed to a stronger finding.

72. Mr Atkinson assessed the impact of the Proposed Works in which he considered what he termed the 'value add associated with capital works.' The Amended SGS Report considers both the impact of just stages 2 and 3 of the Proposed Works,⁴⁵ and the impact of stages 2, 3 and those parts of stage 1 that are contingent upon the grant of the Application. Mr Atkinson observed that 'only value add generated by catchment businesses' can be attributed to the Proposed Works when measuring the impact of the Application. SGS estimates that the benefit associated with the value add component of the Proposed Works accruing to the community would be approximately \$61,000 in 2019, \$111,000 in 2022 and \$104,000 in 2024.⁴⁶
73. At the Hearing, Mr Hanson, General Manager of the Altona RSL, gave evidence in relation to statements in the NBA Report indicating that a local provider will be 'preferred,' upon which Mr Atkinson took to suggest that the Applicant is prepared to pay a premium for works to ensure that local businesses are employed.⁴⁷ Mr Hanson stated that the Applicant would not be prepared to pay a premium to ensure a local provider, but would open the tender process up to locals.
74. The Commission accepts the evidence of the Applicant that the Proposed Works to a value of \$4,674,100 is a benefit associated with the Application, to vest in the community over a six year period. The Commission notes Mr Hanson's evidence that both local and state-wide contractors will be invited to tender for the work and therefore the appointment of a local supplier is not guaranteed. This Commission considers that, in this case, a greater benefit to Hobsons Bay would follow from the appointment of a local contractor to undertake the Proposed Works. In consideration of these factors, the Commission affords a marginal weight to the expenditure on capital works.

⁴⁴ See NBA Report, page 89.

⁴⁵ This analysis is contained in the Amended SGS Report's qualitative analysis.

⁴⁶ In reaching this conclusion, SGS adopted a value add figure of 35 per cent representing the difference between the value of the works and the sum of labour and capital inputs. SGS then relies on census data which showed that 17% of construction workers in Altona were residents of the Catchment Area, and applies that same proportion to account for those site workers and contractors that will also be employed locally.

⁴⁷ Addendum SGS Report, paragraph 376.



Increased gaming competition in Hobsons Bay

75. Increasing competition in gaming in Hobsons Bay is a factor in light of the statutory purposes of the GR Act and the consumer benefits that derive from competition.
76. In this regard, the Commission refers to and relies on the evidence set out in paragraphs 57 to 65 in relation to the anticipated transfer of gaming expenditure within Hobsons Bay.
77. On the basis of an estimated adult population in Hobsons Bay of 74,967 in 2018, the Commission considers that this Application would (if approved):
- (a) increase the overall number of EGMs with attached entitlements within the municipality by 22 (4.11% increase) from 535 to 557;
 - (b) increase the EGM density of Hobsons Bay from 7.1 EGMs per 1,000 adults to 7.4 EGMs per 1,000 adults (compared with the metropolitan average of 4.9 EGMs per 1,000 adults and average Victorian average of 5.3 EGMs per 1,000 adults); and
 - (c) increase the gaming expenditure per adult in Hobsons Bay from \$633 to \$638 (compared with a metropolitan average of \$551 per adult and a state average of \$533), an increase of 0.9% of total gaming expenditure in Hobsons Bay.⁴⁸
78. In the NBA Report, Mr Anderson acknowledged that utilisation of the gaming room at the Altona RSL is seldom at peak usage, rather averaging use between 34% - 49% capacity.⁴⁹ At the Hearing, Mr Anderson also stated that two hours of peak utilisation in a week is low for an RSL (based on a gaming room utilisation survey conducted between 9 June 2017 and 9 July 2017). Mr Anderson also clarified a statement in the NBA Report which appeared to justify the Application for additional EGMs at the Altona RSL on the basis of the existing low usage.⁵⁰ Mr Anderson confirmed that this was not a 'supply and demand' type of argument, but rather that, notwithstanding the fact that the Altona RSL has relatively modest usage at the moment, the new EGMs will be required in future considering the forecast gentrification of the community and when the Altona RSL starts to attract more people.
79. At the Hearing, Mr Anderson submitted that the closure of the Williamstown RSL had created a deficit in the RSL market and that the nearest RSL was now 16 kilometres away in Werribee. He stated that Williamstown patrons who only wanted to patronise a licensed RSL venue would

⁴⁸ For all data in paragraph 77, see VCGLR Report pages 10-12 and 17-18.

⁴⁹ NBA Report page 2.

⁵⁰ NBA Report page 44, paragraph 135 states, 'Survey data confirms the gaming room is not being used to capacity for large periods of time and supports the venue management position that the reason for the top up is to provide additional gaming machine options for patrons wishing to play EGMs in the proposed refurbished venue when it is better able to service new and existing patrons and offer a broad range of hospitality services, including its gaming offering.'



therefore attend the Altona RSL, a conclusion that was supported by membership statistics which show that 200 former Williamstown RSL patrons have become members at Altona RSL.

80. At the Hearing, Mr Clyne submitted that young people would be drawn to go into an RSL because of the new machines, regardless of the type of premises (noting that the Geotech model distinguishes between hotels, clubs and RSLs in its expenditure predictions).
81. As set out in paragraphs 57 to 65, the Application, if approved, is predicted to give rise to a transfer rate of 88% from surrounding gaming venues. According to the PVS Report, the major contributing venues are the Millers Inn Hotel (the only other venue in the Geotech model trade area) as well as three clubs: the Altona Sports Club, the Altona Bowling Club and the Kooringal Bowling Club. Mr Clyne found this to be an appropriate transfer rate in consideration of the fact that there is very little growth in gaming in Hobsons Bay and therefore any additional expenditure would be the result of the new machines.
82. The Commission notes the evidence of Mr Atkinson in the Addendum SGS Report in which it states that the transfer in gaming expenditure to the Altona RSL could further increase gaming expenditure in Hobsons Bay, which could be another competitive impact. Relevantly, Mr Atkinson considered that there could be competitive responses by the surrounding venues to the loss of revenue to the Altona RSL. Mr Atkinson also noted that the Millers Inn Hotel has been operating at capacity for a number of years and that the transfer of patrons away from that venue could free up capacity at the venue enabling surplus demand to find expression at Millers Inn.⁵¹
83. The Commission finds that granting approval of the Application will provide 22 additional EGMs at which patrons may choose to play. While an application of this size exceeds most EGM increase applications considered by the Commission, the Application represents a relatively small proportional increase in the number of EGMs in Hobsons Bay. The Commission notes that gaming expenditure per adult in Hobsons Bay exceeds the metropolitan and Victorian averages by approximately 15% and 18% respectively, and while it acknowledges that \$413,996 in the first 12 months of trade is a relatively high increase in new expenditure, the increase in EGMs as a result of this Application would represent only a minor increase of 0.9%. The Commission also finds that the utilisation rates at the Altona RSL do not indicate that demand for gaming is outstripping supply.
84. As such, for the purposes of this Application, the Commission considers that there is a very small benefit associated with an increase in gaming competition in Hobsons Bay as a result of the

⁵¹ Addendum SGS Report page 59, paragraph 364.



addition of 22 EGMs at the Altona RSL, and hence gives this impact marginal weight.

Additional employment

85. As regularly established by the Commission in applications of this nature, the Application may result in employment benefits associated with the increased number of operational EGMs and increased patronage of existing facilities at the Altona RSL. Short term employment benefits may arise during the redevelopment of the Altona RSL during the Proposed Works (related to, but separate to the economic benefit associated with expenditure on capital works).
86. According to the NBA Report, approval of the Application will result in the creation of 4.5 full time equivalent (FTE) positions at the Altona RSL equating to \$220,000 in salaries per year comprising four full time staff and a part time welfare officer. According to Mr Hanson's statement, the positions would include two new reception staff, one extra bus driver, one gaming room supervisor and the part-time welfare officer.⁵² The Altona RSL currently has 5 full time employees and 17 casual employees. Mr Hanson also stated that the majority of the Altona RSL's employees live locally. He stated that the turnover rate for staff is very low, citing three employees with 20 years tenure and a number of other employees with approximately 10 years tenure as an example.
87. At the Hearing, Mr Williams gave evidence that the part time welfare officer role will occur regardless of the outcome of the Application because Anzac House has changed the model so now all welfare officers must be paid employees. Mr Williams gave evidence that due to the recent retirement of the existing welfare officer, a new recruit is currently completing the required courses to move into that role.
88. In the Amended SGS Report, Mr Atkinson stated that he considered 4.5 employees to be a reasonable estimate of staff required at the Altona RSL in consideration of the expenditure projections being set to double.⁵³ However, in his qualitative assessment of the impacts, Mr Atkinson presented two arguments suggesting that 4.5 employees at the Altona RSL would not necessarily result in a net positive impact on employment in the municipality.
89. First, he said that there is evidence to suggest that when individuals shift expenditure from sectors such as retail, food and hospitality into EGMs, job losses tend to occur because relatively few staff are required to service an EGM venue compared to labour requirements in, for example, a café.⁵⁴ At the Hearing, Mr Atkinson also submitted that it would be difficult to argue that an 88%

⁵² Witness Statement of David Hanson, page 4, paragraph 17.

⁵³ Amended SGS Report, page 11, paragraph 63.

⁵⁴ Mr Atkinson cited the Productivity Commission's report in 2010 and the Victorian Competition and Efficiency Commission's report in 2012 in support of the argument that employment could be net neutral following the addition of EGMs.



transfer rate of gaming expenditure would not lead to corresponding job losses in other EGM venues. Second, he submitted that, given the estimated skills shortage in Victoria in food, hospitality and construction, those prospective staff would have found employment elsewhere if the Application is refused.

90. In consideration of the above, the Commission considers that there was no evidence provided in relation to short-term employment benefits to the municipality because the Applicant cannot guarantee that the Proposed Works will be carried out by a local supplier.
91. The Commission accepts the Applicant's estimate that four new FTE positions will be created at the Altona RSL if the Application is approved. The Commission finds that the part time welfare officer role will occur regardless of the Application and has therefore not included this 0.5 FTE in its assessment of impacts. The Commission notes that while there is no certainty provided that the new FTE positions will be filled by individuals from within Hobsons Bay, given the employment practices of the Applicant to employ local staff, it is likely that they will. The Commission considers it is possible that the transferred expenditure could lead to job losses at other gaming venues in the municipality, and that it is possible that the new FTE positions could be filled by staff from other venues. However, the Commission finds there was not enough evidence to indicate the impact on employment in the municipality would be net neutral. In consideration of the above, the Commission gives this benefit marginal weight.

Supply contracts and complementary expenditure

92. The Application did not contain any figures or evidence in relation to the economic benefit associated with supply contracts and complementary expenditure and did not directly rely on these impacts as a benefit of this Application. While these potential impacts are occasionally dealt with separately by the Commission, they will be considered as one for this Application.
93. In the Amended SGS Report, Mr Atkinson provided some evidence regarding the potential impact arising from supply contracts. He considered that it would be reasonable to anticipate the expansion in the number of EGMs would generate a small increase in supply contracts (such as cleaning, EGM servicing and maintenance).⁵⁵ Mr Atkinson reasoned that, in the absence of an explicit policy regarding sourcing suppliers from local businesses, procurement of suppliers would be based on cost rather than geographical proximity.
94. Complementary expenditure is a potential benefit where it results in increased economic activity in the municipal district in which the premises that are the subject of an application are located.

⁵⁵ Amended SGS Report page 29, paragraph 180.



However, the extent of this benefit will depend upon a range of factors, including:

- (a) the extent to which the expenditure is a consequence of new spending (i.e. as a result of additional people coming to the municipal district as tourists as compared to transferred expenditure from other venues within the municipality); and
- (b) the extent to which that complementary expenditure results in additional spending on local goods and services.

95. In the Amended SGS Report, Mr Atkinson provided some evidence regarding the potential impact arising from complementary expenditure such as food and drink sales. He submitted that the value add associated with this impact could only be considered a benefit if the expenditure would otherwise have occurred outside the region, or if it is new expenditure as opposed to that transferred from another venue. In his view, most of the new venue expenditure would be transferred from other venues in Hobsons Bay.
96. On the information available, the Commission considers there is no direct evidence on these impacts. Firstly, even if increased supply contracts are anticipated at the Altona RSL following any approval of the Application, as discussed in paragraph 73, there is no guarantee that local suppliers will be contracted to undertake the work. Therefore, the extent that any such increase would generate increased economic activity within Hobsons Bay is uncertain. The Commission finds that, while there is still some beneficial impact if the supply contracts are filled by those outside of the municipality, in these circumstances, greater weight would be placed on surety that the supply contracts would be performed by local contractors.
97. Secondly, even if increased patronage at the Altona RSL is anticipated following any approval of the Application, there is significant uncertainty as to the extent that any such increase would generate increased economic activity within the local area as opposed to transferred activity within Hobsons Bay.
98. For these reasons, the Commission finds that any benefit associated with supply contracts and complementary expenditure for the municipality would be negligible and as such places no weight on this impact.

Gaming expenditure associated with problem gambling

99. To the extent that a portion of the new gaming expenditure is attributable to problem gambling,



this represents an economic disbenefit.⁵⁶ 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 gaming undertaken by individuals in each of the problem gambling severity index (**PGSI**) risk categories, in particular those who may be defined as 'problem gamblers,' as well as those who may be otherwise regarded as 'low-risk' or 'moderate-risk' gamblers.

100. In assessing the extent of this benefit, the Commission has regard to the expenditure evidence set out in paragraphs 56 to 67 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.⁵⁷

The potential vulnerability of Hobsons Bay to gambling related harms

101. The extent to which new gaming expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with the Application, will be influenced by the socio-economic status and vulnerability of the community of Hobsons Bay, and in particular those living in the Catchment Area: see paragraphs 42 to 47. This is because communities characterised by socio-economic disadvantage and greater vulnerability are considered to be more susceptible to the harms arising from problem gambling.
102. The NBA Report cites various factors to suggest that there is lower risk of increased incidence and economic impact of problem gambling should this Application be approved, including:
- (a) Hobsons Bay had a SEIFA IRSAD score of 1000 in 2016 and a ranking of 59 (out of 80, where 1 is the most disadvantaged), which indicates a relatively low level of disadvantage when compared to other municipalities in Victoria;
 - (b) Hobsons Bay improved in its SEIFA IRSAD decile⁵⁸ ranking from 7th decile in 2011 to the 8th decile in 2016;

⁵⁶ 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 separately considered both the economic and social impacts of problem gambling in assessing this Application.

⁵⁷ 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.

⁵⁸ According to the NBA Report, paraphrased, the SEIFA index scores are divided into a distribution of ten equal groups with the lowest scoring 10% of areas given a decile number of 1, the second-lowest 10% given a decile number of 2 and so on, up to the highest 10% of areas being given a decile number of 10, page 64.



- (c) the SA2 in which the Altona RSL is located (Altona) showed few signs of disadvantage, having:
 - (i) a SEIFA score of 1031 and sitting in the 7th decile;
 - (ii) a median weekly personal income for people aged 15 years and over of \$734, which is higher than the average in Hobsons Bay of \$704 and the average in Greater Melbourne of \$673, suggesting a slightly higher disposable income;
 - (iii) a median weekly family income of \$1,953, which is higher than the average in Hobsons Bay of \$1,921 and in Greater Melbourne of \$1,826;
 - (iv) an unemployment rate of 5.8%, which is lower when compared to 6.5% in Hobsons Bay and 6.8% in Greater Melbourne; and
 - (v) a low proportion of households experiencing mortgage stress of 5% and rental stress of 9.7% when compared with Hobsons Bay (6.4% and 9.4% respectively) and Greater Melbourne (8.9% and 11% respectively), suggesting that a greater proportion of households can comfortably afford rental and mortgage repayments;
- (d) with reference to surrounding LGAs, the majority of the wider area surrounding Altona RSL (excluding the LGA of Brimbank) exhibits an above average socio-economic disposition;
- (e) patron surveys and membership data indicates that Altona RSL does not attract excessive patronage from those SA2s in the vicinity of Altona RSL that register high levels of disadvantage (Altona North, Braybrook, Sunshine and Sunshine West);⁵⁹ and
- (f) according to the Addendum NBA Report, the SA2s in the primary and secondary catchment areas improved in their SEIFA IRSAD ranking between 2011 and 2016 which indicates that they are becoming less disadvantaged.

103. The NBA Report also relies on factors beyond the social and economic profile of patrons in the Catchment Area in asserting that the approval of 22 new EGMs at the Altona RSL will not have a detrimental impact on the relative disadvantage of the community in Hobsons Bay, including that:

- (a) it is an existing gaming venue in a mature market;
- (b) it has a low risk patron profile in terms of the core gaming patron demographic attracted to RSL venues;

⁵⁹ Relevantly, a maximum of 4.8% of members and 6% of patrons reported to attend from those areas, which hare also generally north of the West Gate Freeway and are serviced by closer gaming venues including Millers Inn Hotel and Altona Bowling Club, see NBA Report page 65, paragraph 183.



- (c) it is a not-for-profit RSL sub-branch venue with a community, charity and welfare focus;
- (d) it is a 'club' venue in a destination location (not convenient or easily accessible by definition);
- (e) it has a proven high commitment to the welfare of their patrons, with volunteers providing gratis assistance to ex-service personnel and the local community and their families;
- (f) due to the closure of the Williamstown RSL, the overall number of entitlements in Hobsons Bay will still be reduced; and
- (g) the closure of the Williamstown RSL has seen the geographical catchment area for the Altona RSL increased to meet the deficit in the market place for patrons wishing to attend an RSL.⁶⁰

104. The NBA Report states that the Altona RSL and its management team have a long-term, proven commitment to comply with the requirements of the relevant legislative framework for RSG.⁶¹ However, the NBA Report also recognises that, while compliant, the layout of the Altona RSL has room for improvement to bring it into line with current best-practice. In his oral and written evidence, Mr Anderson expressed the view that the improved RSG measures to be introduced as a result of the Application would address the existing RSG issues at the Altona RSL.
105. At the Hearing, Mr Anderson elaborated on his position regarding the Altona RSL being a 'destination venue,' which is acknowledged to be protective factor against problem gambling. Mr Anderson argued that while the Altona RSL is in a convenient location insofar as it is opposite a train station, it is not within the core retail area but, rather, on the periphery of the town centre in a residential area and not 'on an ant-trail.' He considered that one might walk past it to get to the train station or into town, but it was not what he would say 'overly convenient.' Mr Anderson also stated that the typical RSL patron does not catch public transport and that the Proposed Works includes expanded car parking which would further encourage people to drive to the Altona RSL and thus increase its 'destination venue' status. Under cross-examination at the Hearing, Mr Anderson stated that he relies on the Productivity Commission's definition of destination venue and that the Altona RSL does not meet this definition.⁶²
106. In the Amended SGS Report, Mr Atkinson provided a demographic analysis of the primary and secondary catchment areas around the Altona RSL. He stated that the primary catchment is, in general, at or above the average for most socio-economic indicators. He stated that the secondary catchment population demographics are mixed, but that the region in general performs poorly,

⁶⁰ NBA Report, page 7, paragraph 22.

⁶¹ NBA Report, page 31, paragraph 82.

⁶² The Productivity Commission 2010 Report was handed up by the Applicant at the Hearing.



with Altona Meadows and Altona North containing some of the most disadvantaged communities in metropolitan Melbourne.⁶³

107. Mr Atkinson argued that the apparently strong performance of the primary catchment obscures internal population dynamics resulting from the working-class history of the region and its recent and ongoing gentrification, relying on figures from the 2016 census. Relevantly, the proportion of residents aged 55+ living in households earning less than \$33,800 per annum is 12.6% in Altona, compared with 10% in Hobsons Bay and 8.44% in Greater Melbourne. The proportion of households earning more than \$65,000 per annum that are under the age of 54 is approximately 27% which is roughly on a par with the average in Hobsons Bay but higher than Greater Melbourne at 23%. Mr Atkinson therefore concluded that the primary catchment area has an elderly population that is significantly disadvantaged compared to the population generally. He also argued that these long-term residents are also the cohort most likely to be attracted to game at the Altona RSL.
108. Mr Atkinson responded to the NBA Report conclusion that the Altona RSL is a destination venue in the Amended SGS Report and at the Hearing. In particular, Mr Atkinson stated that certain features of the Altona train station indicate that large number of commuters will pass by the Altona RSL as part of their commute.⁶⁴ He stated that the Altona RSL is visible from the platform exit at the western end of the Altona station platform, that all passengers board and alight Altona trains from the side of the platform in which the Altona RSL is located and that works to duplicate parts of the Altona loop have recently been completed which will enable more frequent and reliable train services to Altona station.
109. In the quantitative analysis of the impacts associated with the Application, as discussed at paragraph 54(c), Mr Atkinson estimated that the net detriment accruing to the community as a result of the Application has a NPV of around \$293,000 over a 20 year period, applying 7 per cent discount rate in accordance with Department of Treasury and Finance guidelines.⁶⁵ Mr Atkinson arrived at this conclusion by quantifying each of the benefits and adding them together, and then subtracting the detriments.
110. The total cost of problem gambling is the only detrimental factor in the quantitative assessment, and attracts a figure of \$2,821,393 on this combined economic and social impact.⁶⁶ While noting

⁶³ Amended SGS Report, page 25-26, paragraph 146.

⁶⁴ Amended SGS Report, page 31, paragraph 191, Mr Atkinson relied on Public Transport Victoria data which estimated that around 850 unique trips to the Altona train station occurred in 2013-14, a figure he considered has likely increased in line with the population of the catchment.

⁶⁵ Amended SGS Report, page 33, table 6.

⁶⁶ Ibid.



that the mid-point of the Productivity Commission's 2010 estimate in relation to percentage of gaming expenditure attributable to problem gambling is 40 per cent,⁶⁷ factors specific to this Application led Mr Atkinson to conclude that 45 per cent would be a more suitable estimate. Those factors include the appeal of the Altona RSL to elderly residents, its prominent location and the prominence of the EGMs within the Altona RSL.

111. By way of oral evidence at the Hearing, Mr Atkinson explained findings in relation to the sensitivity testing⁶⁸ conducted on the conclusions of the quantitative assessment. Mr Atkinson gave evidence that, under most scenarios, the net community impact of the proposed Application remained detrimental with two exceptions only:

- (a) if the proportion of expenditure attributable to problem gambling was less than 40%; and
- (b) if community benefits were increased to \$100,000 per annum.

The sensitivity testing in the Amended SGS Report also shows the impact of accounting for low and medium risk PGSI categories in the quantitative analysis, which had been omitted. This was in consideration of the fact that the Commission has previously made it clear that these risk categories should be taken into consideration, and that the Victorian Responsible Gambling Foundation in November 2017 estimated that 64.8% of total gambling costs were associated with non-problem gambler categories.

112. In response to the SGS Reports, Mr Anderson argued that an elderly population are not a demographic named in any research as high risk to problem gambling. Mr Anderson stated that the regular use of the words 'assumption,' 'assumed,' 'estimated' and 'reasonable' in the SGS Report leads him to suspect that it is not an assessment based on facts.

The Commission's view in relation to the vulnerability of the Catchment Area

113. Taking into account all of the material before it, including that discussed in paragraphs 36 to 38 above, the Commission finds that the Catchment Area features mixed levels of socio-economic disadvantage. The Commission notes that, in general, the experts agree that the primary catchment of Altona SA2 exhibits lower levels of disadvantage on the respective SEIFA index adopted.⁶⁹ However, Mr Atkinson gave a view that the elderly population of Altona exhibits higher disadvantage than elderly populations in Greater Melbourne and Hobsons Bay. While noting Mr Anderson's comments regarding elderly populations not being named in any research as a

⁶⁷ Amended SGS Report, page 39, table 9.

⁶⁸ Ibid., page 42, paragraph 256 describes the sensitivity tests conducted on the outcomes of the quantitative assessment.

⁶⁹ Noting Mr Atkinson for SGS has relied on the SEIFA ISRD index while Mr Anderson has relied on the SEIFA IRSAD index in the NBA Report.



high risk of problem gambling, the Commission also accepts Mr Atkinson's view that an elderly population featuring lower relative household earnings and relatively high rates of pensions indicates disadvantage in the area.

114. The Commission notes that the experts agree that parts of the secondary catchment, namely Altona North and Altona Meadows SA2s, exhibit higher levels of relative disadvantage. However, Mr Anderson noted that membership and postcode data showed that patrons from those areas are not highly represented and that two competing gaming venues (Millers Inn and the Altona Bowling Club) are located between those SA2s and the Altona RSL indicating that there are more convenient gaming venues for patrons in Altona North and Altona Meadows. While the Commission accepts this evidence, it does not consider that prospective patrons from those SA2s should be entirely discounted from consideration of the impacts of the Application.
115. The Commission finds that, on the evidence provided, the Catchment Area is likely to continue to gentrify, which could reduce its vulnerability to harms from problem gambling over time. However, the Commission notes that the expenditure predictions relate to the first 12 months after installation of the new EGMs, prior to the majority of the Proposed Works which are intended to increase the appeal of the Altona RSL to an expanded, more gentrified clientele. For this reason, any increased harms arising from problem gambling associated with the new expenditure will be felt most greatly by the Catchment Area and its current demographics.
116. The Commission finds that certain features of the Application and the Altona RSL indicate that the Catchment Area has a marginally higher vulnerability to the risks of problem gambling and that approval of the Application would exacerbate the risks of problem gambling in Hobsons Bay. Those exacerbating features will be detailed in the following paragraphs 117 to 127.
117. In considering the extent to which new gaming expenditure may give rise to an increased risk of problem gambling, the manner in which gaming is to be conducted at the venue is a relevant consideration. On the information before it, while the Commission notes that the RSG measures proposed by the Applicant will improve existing practices, the Commission is not satisfied that they will effectively mitigate the increased risk of problem gambling in Hobsons Bay associated with this Application.
118. In making this finding, the Commission notes that external regulatory compliance audits conducted by Leigh Barrett & Associates show non-compliance on 19 March 2017 and 4 May 2018. The compliance audit of 24 September 2018 states that 'nearly all' of the issues raised in the previous audit had been addressed. Evidently, the Applicant did not address all compliance issues raised in the intervening period after engaging Mr Barrett in 2017, which does not show a



robust approach to RSG.

119. The Commission also notes Mr Hanson's addendum witness statement which describes correspondence between himself and Mr Barrett on 31 October 2018 and 1 November 2018 regarding RSG improvements to the floorplan at the Altona RSL. Mr Barrett made suggestions regarding the position of walls, sliding doors, visibility screens, sign-in desk staffing and the entrance to the children's play area, which the Altona RSL intends to adopt. In consideration of the fact that this exchange occurred one week prior to the Hearing, the Altona RSL's compliance with RSG best practice appears to be somewhat motivated by the positive impact it could have on the Application.
120. The Commission notes evidence given at the Hearing by the Altona RSL President, Mr Williams, regarding a matter raised in a public submission in relation to post-traumatic stress disorder (PTSD) and gaming. In response to Deputy Chair Versey's query as to whether any members or veterans suffering PTSD might access the gaming room, Mr Williams stated that most people have found their way into yoga through the RSL Active program (which is open to sufferers of PTSD). He dismissed the possibility and stated that no one in the yoga class goes near the gaming room.⁷⁰ The Commission also notes Mr Hanson's evidence that the sign-in procedure at the Altona RSL would discourage problem gamblers, was somewhat offset by his other evidence that the cost of a 'community membership' was only \$2. If one advantage of this membership category is that you do not have to sign-in, the Commission finds that it would diminish the protective element that the membership might otherwise have.
121. The Commission agrees with Mr Anderson's evidence that where gaming occurs at an RSL, it is generally considered to a protective factor against problem gambling. However, the Commission finds that Mr Anderson placed considerable weight on this factor when concluding that the Altona RSL posed a low-risk of problem gambling, and inadequate weight on the RSG practices of the Applicant, including the attitude of management.
122. The Commission notes the evidence of Mr Atkinson at the Hearing that the Altona RSL is '*one of the worst venues (he) has seen for RSG.*' The Commission does not agree with this assessment but does consider that, on the basis of the evidence provided, the overall RSG practices of the Applicant do not demonstrate a robust commitment to RSG best practice. The Commission finds Mr Atkinson's assumption that 45 per cent of gaming expenditure is associated with problem gambling for the purpose of the quantitative assessment is overstated, in part due to Mr Atkinson's

⁷⁰ This response was part of Mr Williams evidence in relation to the RSL Active program that the Altona RSL offers and that a yoga class is part of this initiative.



view that the Altona RSL was among the worst venues he had visited in relation to RSG.

123. The Commission notes Mr Anderson's evidence in support of his view that the Altona RSL is best classified as a 'destination venue.' The Commission considers that the Altona RSL does not fall within the strict definition of 'destination venue' relied upon by Mr Anderson. It finds that the venue is highly convenient and accessible having regard to its proximity to the Altona train station, the Altona Beach Activity Centre and a local primary school and kindergarten. The Commission does not find that increasing carparking space will make it more likely to be a destination venue.
124. In considering the extent to which new gaming expenditure may give rise to an increased risk of problem gambling, the size of the venue is also a relevant consideration. This is because larger venues are thought to offer increased anonymity for the problem gambler.⁷¹ The Commission notes Mr Anderson's evidence at the Hearing that, according to his assessment of the gaming environment in Victoria in 2018, venues with 0 – 50 EGMs are classified as small, venues between 50 – 80 are medium sized and venues with above 80 EGMs would be large.
125. With its existing 58 EGMs, the Altona RSL is a medium sized venue, though at the smaller end (according to Mr Anderson's scale). The introduction of 22 new EGMs will transform it into a much larger gaming venue though according to Mr Anderson's scale it would still be 'medium sized' as it is not above 80.
126. The Commission considers the Altona RSL should be treated as a large venue for the purpose of assessing the impact of the Application on the risk of problem gambling in the municipality. This finding is consistent with PVS and SGS assessment of the Altona RSL's size, should the Application be granted, relying on the Geotech model expenditure estimates which show that estimated new expenditure at the Altona RSL will be approximately \$3,455,725 in the first twelve months of operating the new EGMs, an almost doubling of expenditure (Altona RSL 2016 – 2017 expenditure \$3,720,144).⁷² The Commission finds that transforming the venue from its current medium size to a large venue will increase the risk of problem gambling associated with this Application and that changing the nature of the Altona RSL in this way could increase the risk that individuals may spend more money on EGMs than they may have otherwise.
127. Overall, in consideration of the evidence before it, the Commission considers with respect to the Application, that the potential expenditure associated with problem gambling is a negative economic impact upon which it should place marginal to low weight. Issues relating to the negative

⁷¹ See, for example, *Lynbrook Hotel* at 115 in which it was stated that a larger gaming room would be more attractive for problem gamblers. In that matter, the increase in venue size was found to be off-set by the additional staff in the gaming room.

⁷² PVS Report, page 10, table 3.



social impacts associated with problem gambling are considered further in paragraphs 153 to 155 below.

Diversion of trade from other gaming venues

128. In the PVS Report, Mr Clyne estimated that 88% of gaming expenditure would be transferred from other gaming venues within Hobsons Bay and the neighbouring City of Wyndham. This equates to \$3,041,729 in the first twelve months of operation of the 22 additional EGMs. At the Hearing, in response to questions from the Commission, Mr Clyne stated that he agreed that 88% was quite a sizeable increase, but that he could see no reason to discount the prediction of the Geotech model.
129. With reference to the impact on surrounding venues,⁷³ the PVS Report states that three venues in particular would be likely to experience significant losses in revenue if the Application were approved. Those venues are the Altona Bowling Club (-17.75%), Altona Sports Club (-14.27%) and the Koorringal Golf Club (-15.88%).⁷⁴ During cross-examination, Mr Rantino put it to Mr Clyne that this would amount to a combined total of \$1.689 million in expenditure lost from those three venues. In response, Mr Clyne submitted that he considered that assessment to be too simplistic in light of taxation considerations with regard to decreased gaming revenue.
130. In the Amended SGS Report, Mr Atkinson stated that the introduction of the additional EGMs at the Altona RSL would result in a reduction in expenditure at nearby venues. However, he concluded that, to the extent that diversion of expenditure takes place, any associated loss of value add or employment should theoretically be offset by the effects of increased expenditure at Altona RSL.⁷⁵ He considered there could be a meaningful loss of community welfare only if the diverted revenue threatened the viability of a community organisation presently reliant on EGM revenue, or if surrounding venues respond to the Application by making their EGM facilities more appealing and thus further increase EGM use associated with problem gambling. Noting that the Altona Bowling Club, the Altona Sports Club and the Koorringal Gold Club are all community organisations whose activities are estimated to be significantly hampered by the reduction in revenue, Mr Atkinson considered this impact would result in a 'substantial detriment' to nearby gaming venues. At the Hearing, Mr Atkinson stated he considered that an EGM increase at the Altona RSL would trigger a competitive response from surrounding businesses.

⁷³ PVS Report, page 13, Appendix 1.

⁷⁴ Ibid., page 17, table 6.

⁷⁵ Amended SGS Report, page 31, paragraph 198.



131. The Commission accepts the Applicant's evidence that 88% of anticipated transferred expenditure would be derived from other venues, with the majority of that transfer from venues within Hobsons Bay. The Commission considers that a transfer rate of this size is significant and the diversion of trade will have a detrimental economic impact on other venue operators, with particularly serious losses for the Altona Bowling Club, the Altona Sports Club and the Koorinal Golf Club. Having regard to these factors, the Commission assigns marginal weight to this impact.

Conclusion on economic impacts

132. After considering the economic benefits of the Application and balanced against the detriments, the Commission considers that, on balance, there is likely to be a marginal negative economic impact of the Application.

Social Impacts

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

Additional and improved facilities at the Altona RSL

134. Separate from the economic benefit that may be associated with expenditure involved in capital works at the Premises, there are also potential social benefits to the community that may arise having regard to the nature of the Proposed Works.

135. As noted in subparagraphs 70(a)-70(c) above, the Proposed Works include redeveloped existing facilities as well as new facilities at the Altona RSL as follows:

- (a) redevelopment of the member's lounge, terrace and gaming lounge, club entry, foyer, reception, administration and bistro lounge; and
- (b) development of new café, children's 'lounge' and back of house storage, gaming lounge extension and amenities, expanded car parking.

136. The NBA Report states that the Proposed Works will see improved facilities for the community's enjoyment including the provision of a new boardroom for use by the community, the introduction of an indoor/outdoor children's play area and the replacement of the exclusive members area with a new sports bar and café and the introduction of a sacred garden area for quiet reflection.⁷⁶ Mr Hanson submits that the renovations will result in a more open and modern layout at the Altona

⁷⁶ NBA Report, page 89, Mr Hanson's Witness Statement, page 4.



RSL, which is more attractive to the changing demographic of locals.

137. The Amended SGS Report concludes that the Proposed Works are likely to lead to a slight improvement in the array of entertainment options in the region, referring to the reconfigured venue with an improved bistro and sports bar. In concluding this, Mr Atkinson noted that he considered the Proposed Works would lead to a slight reduction in floor space in the venue presently set aside for non-EGM uses and the loss of outdoor areas and reduced capacity to host functions. Mr Anderson disagreed with this assessment in the NBA Addendum Report and at the Hearing.
138. The Commission notes that there is a degree of uncertainty as to when the social benefits associated with the Proposed Works will vest in the community because planning permission has not yet been granted. On the basis that planning permission is granted, the Commission considers it could be at least five years until the Altona RSL has completed its enhancements to the point of attracting the new patronage, based on the Proposed Conditions submitted after the Hearing. The Commission finds some social benefit in the refurbishment of existing facilities as it will modernise the venue and increase its attractiveness, considering there have been no renovations since 1996. The Commission finds that, on the evidence available, the café and the children's play area are the only 'new' facilities to flow from this Application, and notes that they are non-gaming related attractions at the Altona RSL. On the whole, the Commission affords this social benefit a marginal weight.

Increased gaming opportunities for those who enjoy gaming

139. 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.
140. The Applicant submits that the proposed addition of 22 EGMs will assist in providing an increased range of choice and variety of machine to patrons choosing to gamble responsibly at the venue. It submits that the additional machines are required to support the Altona RSL's additional former Williamstown RSL patrons, and the anticipated younger patronage who may be attracted to the Altona RSL following the completion of the Proposed Works.
141. Peak utilisation has been previously accepted by the Commission to indicate periods when additional gaming expenditure is foregone by the Applicant.⁷⁷ According to the NBA Report, peak utilisation equates to 70% utilisation or more. According to Mr Hanson's witness statement, the peak periods are between 4pm to 10pm on a Friday and 2pm to 10pm on a Saturday and that

⁷⁷ See, for example, *Lynbrook Hotel*.



these times coincide with peak periods in the bistro. The EGM usage survey conducted by the Applicant and as discussed in paragraph 78 indicates that the Altona RSL is under-utilised at present. Relevantly, during the survey period of three weeks between 9 June 2017 and 9 July 2017, peak utilisation was only achieved for two hours, both on 2 July 2017.⁷⁸

142. The Amended SGS Report states that, for EGM users that are non-problem gamblers, an expansion in the number of EGMs represents an expansion in the region's recreation and entertainment offer. However, in consideration of the high transfer rate (indicating that expenditure would have otherwise occurred elsewhere in the catchment, if not for the Application), Mr Atkinson expected this impact to be a low user benefit.⁷⁹
143. In relation to the additional demand arising from the closure of the Williamstown RSL, the Commission accepts the evidence discussed in paragraph 79, that approximately 200 former Williamstown RSL patrons have joined the Altona RSL since the closure. The Commission considers that the closure of the Williamstown RSL has created additional demand for gaming at the Altona RSL. However, on the evidence provided, including the fact that the usage survey was conducted after the closure of the Williamstown RSL, it appears that the gaming room with 58 machines is sufficient to meet that demand.
144. The Commission acknowledges that there is a benefit in increasing machine choice for recreational players and catering for (non-problem gambling) demand. Overall, given there are already 58 EGMs at the Altona RSL, the EGM utilisation survey provided by the Applicant showed that utilisation rates above 70% were only reached for a few hours every few weeks and there are nine other venues in Hobsons Bay where EGMs operate, with 535 EGMs currently being in operation in the municipality, the Commission considers there is already an ease of access and high levels of consumer choice for anyone choosing to play EGMs. Therefore, the Commission considers this to be a negligible social benefit to the community in Hobsons Bay itself, and hence one on which it places nil to marginal weight.

Social benefit derived from increased community contributions

145. In determining the net economic and social impact of applications of this nature, both the Commission⁸⁰ and VCAT⁸¹ have regularly treated community contributions as a positive benefit. However, for such contributions to be regarded as a benefit associated with the Application, it is

⁷⁸ NBA Report, appendix 6, table 2.

⁷⁹ Amended SGS Report, page 24, paragraph 133 and 136.

⁸⁰ See, for example, *Application by Richmond Football Club* [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

⁸¹ See, for example, *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.



necessary that they are properly regarded as community contributions and that they will result as a consequence of the Application.

146. As noted in paragraph 54(a) above, the Commission has taken into account both the economic (financial benefit enjoyed by recipients) and social (improvement to the social fabric of the community) benefits associated with the proposed community contributions forming part of the Application in this section, and given appropriate weight to that impact in its cumulative form.
147. The Application made to the Commission on 30 July 2018 did not place a specific figure on the increased community contributions to be made as a result of the Application if approved, but it noted that contributions would continue in line with what currently occurs. Prior to the Hearing, on 5 November 2018, the Applicant committed to making additional community contributions of \$20,000 in cash per year to local sporting clubs (**Additional Contribution**), on top of its existing community contributions.⁸² In the Proposed Conditions submitted after the Hearing, the Applicant proposed that the Additional Contribution would be allocated to not-for-profit community organisations as well as sporting organisations in Hobsons Bay, and at least 10% of the Additional Contribution would be provided to problem gambling service providers in Hobsons Bay.
148. According to the NBA Report, the Applicant's community benefit statements indicate that the Applicant made \$1,635,327.00 in cash and in-kind donations to the community between the 2014 – 2017 financial years.⁸³ He stated that the Altona RSL, as a member of the RSL, is non-profit based and as such, all surplus funds are redirected back into the community or into improvement of the venue and facilities.⁸⁴ At the Hearing, Mr Anderson submitted that the Altona RSL was what he would call a 'classic RSL' in the sense that its cash and in-kind contributions are relatively consistent on an annual basis, but contributions do fluctuate depending on available funds. Mr Anderson gave the view that the Additional Contribution was committed to by the Applicant in response to decisions that had been handed down recently where the ad-hoc nature of the way the RSLs have traditionally provided community support was not found to be a strong enough commitment.
149. In his written and oral evidence, Mr Anderson broadly submitted that he placed greater emphasis than other submitters on the value of the community contributions and the volunteer role of the Altona RSL sub-branch in the community. Mr Anderson placed weight on the provision of the volunteer welfare officer at the Altona RSL. At the Hearing, Mr Anderson cited 'lawn mowing and haircuts' as examples of volunteer work that the Altona RSL welfare department does for its

⁸² Addendum to Witness Statement of David Hanson, paragraph 6.

⁸³ NBA Report, Appendix 2, table 3.

⁸⁴ NBA Report, page 85, table 16.



members. He queried what would happen if the Altona RSL was not there to do these things. In response to questions from Deputy Chair Versey, Mr Anderson conceded that the RSL would do those things irrespective of whether they had any EGMs, but that the additional EGMs would underwrite the Altona RSL until 2042 to attract more members to become volunteers going forward. He submitted that this was important considering the ageing volunteer base.

150. Due to the timing of its submission, Mr Atkinson did not consider the Additional Contribution in the Amended SGS Report. He had assumed that the Applicant's increase in cash contributions would more technically reflect the increase in EGMs and would therefore equate to \$25,169 per year. In his quantitative analysis, Mr Atkinson calculated an NPV of \$243,122⁸⁵ for the Altona RSL's community contributions, however he considered there was a good reason to suggest that it would be less than this amount. This was on the basis that subsidies can distort pricing signals, that many of the contributions of the past four years were not in a form that could be said to derive a community benefit due to being marketing expenses or otherwise, and because the high transfer rate would be likely lead to other community clubs being less able to pay community contributions.⁸⁶
151. The Commission notes that the Altona RSL makes a significant contribution to the community. The services offered for the elderly, veterans and ex-veterans and families, many of which are free or subsidised, are commendable. However, the Commission also agrees with Mr Atkinson that some of the community benefits claimed by Mr Anderson are in reality marketing expenses. While there was some evidence provided in relation to costs going up and the diminishing volunteer base, the Commission has not seen any evidence to suggest that the Altona RSL will not continue to provide benefits to the community if the Application is not approved. For the purpose of this Application, the Commission is only assessing the impact of the Additional Contribution on the community of Hobsons Bay.
152. The Commission nevertheless accepts that \$20,000 additional cash contributions to non-profit community organisations and sporting clubs in the community will have a positive economic and social impact. The Commission is further satisfied that the Additional Contribution will only occur if the Application is granted. The Commission finds that an Additional Contribution of this size is small within the context of the municipality. Having regard to this increase in the community contributions that will occur if the Application is granted, the Commission considers the Additional Contribution to be a small positive benefit, which it affords a marginal weight.

⁸⁵ Over 20 years, applying the 7% discount rate.

⁸⁶ Amended SGS Report, page 38, paragraph 236.



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

153. As established in previous Commission decisions,⁸⁷ wherever accessibility to EGMs is increased there is always a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, relationship breakdowns, emotional harms and other social costs. Accordingly, the Commission accepts there is potential for negative social costs through possible increased problem gambling expenditure. The Commission also accepts that to the extent that approval of this Application would result in an increase to gambling-related crime and other social disturbances (including family violence) it would constitute a social disbenefit of this Application.
154. The Commission refers to and relies upon the evidence set out in paragraphs 99 to 127 above with respect to the economic impact of problem gambling on the community, which equally apply to the social impact of problem gambling. As indicated above at paragraph 99, the Commission accepts that harms associated with the incidence of problem gambling are wide-ranging and attributable to all PGSI categories of gamblers ('low-risk', 'moderate-risk' and 'problem gamblers') and across the community more broadly.
155. Overall, the Commission finds that this Application, to vary the number of EGMs at an existing venue from 58 to 80, is estimated to be associated with new expenditure of approximately \$413,996 in the first 12 months following installation of the new EGMs. It accepts that a proportion of this new expenditure will be associated with problem gambling, however it was not persuaded that the proportion would be 45%, as argued by Council. The Commission finds that the Catchment Area exhibits mixed relative socio-economic disadvantage, but that it is not significantly disadvantaged. The Commission accepts that patrons of the Altona RSL are likely to include the older, disadvantaged cohort of Altona who are generally more financially vulnerable, and notes that the Applicant is seeking to attract a new demographic who may also be vulnerable to gambling related harms in the form of the younger population looking to occupy medium density accommodation being built in Altona.
156. The Commission finds that the protective factor associated with the Application being from an RSL was not strong in this instance. While noting that the Applicant is committed to improving RSG practices at the Altona RSL if the Application is successful, the Commission is not satisfied that the Altona RSL demonstrates a robust approach to RSG at present. Further, the Commission finds that the impact that an EGM increase of this size will have on the Altona RSL – transforming it from a (smaller size) medium venue to a large venue (predicted by Mr Clyne to go from 28th to

⁸⁷ See, for example, *Lynbrook Hotel, Dandenong Cranbourne RSL Sub-Branch Inc at Dandenong RSL premises (Gaming – EGM Increase)* [2018] VCGLR 44 (24 September 2018) and *Castello Cardinia Hotel Pty Ltd at Castello's Cardinia Hotel premises (Gaming – EGM Increase)* [2018] VCGLR 37 (10 September 2018).



8th highest earner per EGM per day across the whole RSL network in Victoria)⁸⁸ – and the convenience of the Altona RSL to commuters and visitors to the Altona Beach Activity Centre, will further increase the risk of incidence and the impact of problem gambling on the community.

157. The Commission is therefore of the view that granting this Application has the potential to increase the incidence and impact of problem gambling in Hobsons Bay to a moderate extent. As such, the Commission accepts that the disbenefit associated with problem gambling is a negative social impact upon which it places low to moderate weight.

Community attitude

158. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,⁸⁹ 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 of an application as part of the ‘no net detriment’ test.

159. The evidence before the Commission indicates that some community attitude towards this Application has been negative. In summary:

- (a) the Council, as the representative body of the relevant community and charged with statutory duties under various pieces of legislation, has made a submission in opposition to the Application and appeared at the Hearing of the Application;⁹⁰
- (b) the representative body of the neighbouring municipal council of Wyndham City Council made a submission in support of Council's opposition to the Application, expressing concerns that 22 additional EGMs at the Altona RSL will cause potential social and economic impacts on the surrounding municipal district due to the increased incidences of problem gambling; and
- (c) as detailed in paragraph 25, the Commission received correspondence in opposition to the Application from six community groups, 19 individuals and a petition signed by 75 individuals. A representative of the community group *Latitude: Directions for Young People* appeared at the Hearing and gave evidence to the Commission.

160. In the NBA Report, Mr Anderson stated that the attitude of the community toward the Altona RSL was positive on the basis of its 2,166 strong membership base, 89% of whom are from a local

⁸⁸ PVS Report, page 26, appendix 7.

⁸⁹ (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.

⁹⁰ 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].



population of within 10km of the Altona RSL.⁹¹ Mr Anderson concluded that the acceptance of donations from the Altona RSL indicates support for the Altona RSL, and for the Application.

161. Following receipt of the public and individual submissions in opposition to the Application, the Amended SGS Report was prepared in order for Mr Atkinson to account for these views in his assessment of impacts associated with the Application. Mr Atkinson excluded the submissions from individuals outside of the municipality and petitioners from postcodes that do not fall within the catchment from his consideration. Mr Atkinson noted that no submissions in favour of the Application were made. He placed high weight on community submissions from local organisations whose concerns were evidenced based and relevant to the groups represented.
162. The NBA Addendum Report contained a response to the community objections, excluding submissions from individuals outside of the municipality from his consideration and placing less weight on the 'Do Gooder'⁹² pro-forma email submissions. Mr Anderson ultimately concluded that few of the issues raised in the submissions are specifically targeted at the Altona RSL, or of sufficient concern to affect his original conclusion regarding the net positive social and economic benefit to the community of the Application.
163. At the Hearing, Ms Collins, the director of Latitude, said that she had opposed the Application in the interests of harm minimisation and as an advocate for vulnerable young people who do not necessarily have a voice. While noting that the Altona RSL is a 'wonderful organisation' and a great supporter of Latitude, she considered that the additional EGMs at the Altona RSL were not required and would create more harm. She stated that the Altona RSL is an attractive place for a homeless young person for reasons such as warmth, the welcoming staff, free tea and coffee and the manner in which they can sit and play the pokies quietly but still be 'participating.' She said that most of the young people who go to the Altona RSL are not likely to have a meal and do not have alcohol issues, but they have financial management problems impacted by gambling.
164. The submissions from individuals and non-profit community organisations contained both general and specific concerns regarding the impact of the Application on the local community. The general concerns were contained in emails generated by the Do Gooder campaign website, as well as bespoke emails that expressed an anti-pokies sentiment but did not specifically touch on specific harms resulting from the Application. Of specific relevance to the Application, submissions included the following concerns:

⁹¹ NBA Report, page 90.

⁹² Do Gooder is a web platform that allows individuals to send emails to organisations regarding issues they consider important.



- (a) that the interests of veterans suffering from post-traumatic stress disorder and addiction are not served by additional EGMs, and that due to her profession of working with vulnerable people, her own personal exposure to violence in the workplace and the community may be increased as a result of additional EGMs at the Altona RSL;⁹³
- (b) that there is already a huge concentration of EGMs in the community and that certain risk factors of the Application would increase the risk of problem gambling. These include its convenience, the visibility of the gaming room from the front entrance and the proposal to increase the size, which will make it a more 'anonymous' venue that attracts a problem gambler who can arguably be lost in the crowd;⁹⁴
- (c) while Altona is relatively advantaged, the surrounding suburbs are not and proximity to the train and bus stations at the Altona RSL mean it is easily accessible by public transport from the poorer areas;⁹⁵
- (d) that the relocation of the welfare office into the venue (from its current position in a separate building) could increase the risk of harm due to its proximity to the EGMs;⁹⁶
- (e) that the Altona RSL is one block from the Altona Library and attracts older residents;⁹⁷
- (f) that there are a large number of high risk families in the region; and
- (g) that because the machines are being shifted from Williamstown (an area of relative advantage) to Altona with higher levels of disadvantage, the risk of harm from gambling losses, and the impact of losses, will be greater for people in the Altona area.⁹⁸

165. In its submission made on 5 November 2018, the Applicant submitted the results of a customer survey conducted at the Altona RSL between 15 – 29 October 2018 as evidence of support for the Application, referred to in paragraph 22(g)(vi) above. At the Hearing, Mr Anderson stated that he considered it to be a 'targeted' survey and for that reason the results are skewed somewhat. However, he gave the survey some weight because there were no incentives to fill it out. Under cross-examination by Ms Hicks, Mr Atkinson stated that he did not place any weight on the findings of the survey due to the way in which the questions were worded in such a way as to lead the survey participant to agree to its propositions.

166. The Commission notes that:

⁹³ Submission of Ms Melissa Dent.

⁹⁴ Submission of Rev Chris Lancaster, Vicar of St Eanswythe's Anglican Church, Altona.

⁹⁵ Submission of Mr Ron Alforce

⁹⁶ Ibid., and submission of Health West.

⁹⁷ Submission of Kim Reilly.

⁹⁸ Submission of coHEALTH ID.



- (a) the customer survey, while indicating positive support for the Application, was not as persuasive as the volume of submissions received from individuals and community groups in opposition to the Application, many of which expressed genuine and relevant concern for the potential impact of the Application on the local community; and
- (b) the evidence of Ms Collins and submission of Reverend Chris Lancaster contained relevant concerns regarding the impact of the Application on the local community from two entities that work closely with the Altona RSL.

167. The Commission does not agree with Mr Andersons's conclusions in relation to community attitude. The Commission notes that the 'community membership' to the Altona RSL only costs \$2, and it is not reasonable to conclude that acceptance of donations from the Applicant generally implies support for the Application to increase the Altona RSL's EGM numbers. Nor can the community's support of the work of the Altona RSL equate to community support of the Application.

168. In conclusion, the Commission finds that there is some negative attitude towards the Application from within the community of Hobsons Bay. The Commission considers it appropriate to attribute marginal weight to this negative social impact of the Application.

Conclusion on social impacts

169. 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 low negative social impact of the Application.

Net economic and social impact

170. The '*no net detriment*' test in section 3.4.20(1)(c) of the GR Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. This test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impact of approval on the well-being of a relevant community will be either neutral or positive.⁹⁹

171. 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 has concluded that there is likely to be a net marginal to low negative

⁹⁹ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 at [52] per Dwyer DP.



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social and economic impact to the well-being of the community in the municipal district in which the Altona RSL is located if the Application is approved.

172. Overall, the Commission is satisfied that the net economic and social impact of approving the Application would be detrimental to the well-being of the community in the municipal district in which the Altona RSL is located, and therefore considers that mandatory pre-condition set out in section 3.4.20(1)(c) of the GR Act is not satisfied.

CONCLUSION

173. On the material that has been put before it, the Commission has determined that a mandatory pre-condition for approval has not been satisfied (i.e. the '*no net detriment*' test under section 3.4.20(1)(c)), and pursuant to section 3.4.20(1), the Commission must not grant the Application.

174. The Application is therefore refused.


The preceding paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey, Deputy 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	Weight
Benefits	Gaming expenditure not associated with problem gambling	56 to 67	<p>The portion of new expenditure not attributable to problem gambling is an economic benefit.</p> <p>Expenditure expert predictions of 88% anticipated transfer rate and new expenditure of \$413,996 in the first 12 months of trade equating to approximately 0.9% of total gaming expenditure in Hobsons Bay are accepted.</p> <p>The Altona RSL is located in a Catchment Area of mixed relative socio-economic disadvantage, however, patronage by disadvantaged elderly Altona residents, the expansion of the Altona RSL from a medium to a large venue, the convenience of the Altona RSL and the past RSG practices of the Applicant.</p>	Nil to marginal
	Expenditure on capital works	68 to 74	<p>A potential economic benefit associated with the Application is the Marginal expenditure on the Proposed Works to redevelop the Altona RSL. Contingent upon the Application, the Proposed Works are costed at \$4,674,100. Local and state-wide contractors will be invited to tender for the works, but there is no guarantee that a tenderer from Hobsons Bay will be successful.</p>	




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Economic impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
	Increased gaming competition in Hobsons Bay	75 to 84	Increasing competition in gaming is a factor in light of the statutory purposes of the GR Act. The Application will increase the overall number of EGMs with attached entitlements in Hobsons Bay by 22 from 535 to 557 (4.11% increase), increase the EGM density from 7.1 to 7.4 EGMs per 1000 adults and increase expenditure from \$633 to \$638 per adult and that the Application will only represent a negligible increase of 0.9% in gaming expenditure. The Commission notes that the gaming room at the Altona RSL is seldom at peak usage and that existing EGM numbers meets demand.	Marginal
	Additional employment	85 to 91	The Application may result in long term employment benefits due to the increased number of operational EGMs and increased patronage of the facilities at the Altona RSL. The Commission is satisfied the Application will create 4 FTE roles at the Altona RSL and those positions are likely to be filled by residents of the municipality, based on existing hiring practices. There was not enough evidence to suggest that the impact of 4 new FTEs at Altona RSL would be offset by job losses in neighboring gaming venues leading to a net neutral impact.	Marginal
	Supply contracts and complementary expenditure	92 to 98	The Application contained no figures or evidence in relation to the economic benefit associated with supply contracts or complementary expenditure and did not directly rely on these impacts as a benefit. The Commission notes observations of Council expert regarding the impact from complementary expenditure such as food and drink sales which would likely be transferred from other venues in Hobsons Bay.	No weight




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Economic impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
Disbenefit	Gaming expenditure associated with problem gambling	99 to 127	<p>The portion of new gaming expenditure attributable to problem gambling is an economic disbenefit. The Altona RSL is located in a Catchment Area of mixed relative socio-economic disadvantage. However, patronage by disadvantaged elderly Altona residents, the expansion of the Altona RSL from a medium to a large venue, the convenience of the Altona RSL and the high concentration of gaming in Hobsons Bay indicate that residents in the Catchment Area have a level of financial vulnerability which would make them more vulnerable to gambling-related harms.</p> <p>While the Applicant proposes to improve RSG at the Altona RSL through the Application, past non-compliance does not inspire confidence in its capacity to effectively mitigate the potential increase in risks and therefore increased harm associated with problem gambling.</p>	Marginal to low
Diversion of trade from other gaming facilities		128 to 131	<p>The anticipated transfer rate of 88% is expected to be spread across existing gaming venues within Hobsons Bay and to a lesser extent, the City of Wyndham. Three venues in particular are likely to experience significant losses in revenue if the Application is approved. Those venues are the Altona Bowling Club (-17.75%), Altona Sports Club (-14.27%) and the Koorringal Golf Club (-15.88%).</p> <p>The Commission considers that a transfer rate of this size is significant and that serious losses will be incurred by the Altona Bowling Club, Altona Sports Club and the Koorringal Golf Club.</p>	Marginal



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Social impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
Benefits	Additional and improved services and facilities at the Altona RSL	134 to 138	Social benefits that may be associated with the Proposed Works include the addition of a new café and children's 'lounge', which do not currently exist at the Altona RSL. Further social benefits will result from the refurbishment of the existing facilities at the Altona RSL which has not been updated since 1996. These benefits may not be felt for in excess of five years due to contingency upon planning permission.	Marginal
	Increased gaming opportunities for those who enjoy gaming	139 to 144	The Application will increase gaming opportunities by providing an additional 22 EGMs at which patrons may choose to play. Marginal benefit in light of the current number of EGMs in the Altona RSL (58) and within municipality (535), the nine other gaming venues in Hobsons Bay, and the current utilisation rates of the existing EGMs at the Altona RSL, which rarely reach peak capacity.	Nil to marginal
	Social benefit derived from increased community contributions	145 to 152	Additional community contribution of \$20,000 per annum to be distributed to local sporting groups and non-profit organisations, with 10% assigned to problem gambling service providers. This will only occur if the Application is approved. The Commission notes there was no evidence to indicate that the existing good community work of the Altona RSL would cease if the Application is refused.	Marginal



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Social impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
Disbenefits	Possibility of increased incidence and the potential impact of problem gambling on the community (including family violence)	153 to 157	<p>A proportion of total gaming expenditure at the Altona RSL will be associated with problem gambling. Adverse impacts relating to problem gambling include health, jobs, finances, emotional states and relationships. Therefore, a portion of the \$419,996 of new expenditure in the first year of installation of the machines will be associated with problem gambling, including all PGSI risk categories.</p> <p>The Altona RSL is located in a Catchment Area of mixed relative socio-economic disadvantage. However, patronage by disadvantaged elderly Altona residents, the expansion of the Altona RSL from a medium to a large venue, the convenience of the Altona RSL, the high concentration of gaming in Hobsons Bay and the less robust RSG practices of the Applicant indicate that residents in the Catchment Area have a level of vulnerability to gambling-related harms that would raise the possibility of increased incidence and potential impact on problem gambling in the community.</p>	Low to moderate
Community attitude	Community attitude	158 to 168	<p>The Commission has taken into account:</p> <ol style="list-style-type: none"> 1. the Council's intended role in which it represents the community interest; 2. submission from neighbouring City of Wyndham regarding impact on the surrounding municipal district; and 3. submissions from individuals and community organisations from Hobsons Bay containing relevant concerns. <p>Overall some negative attitude towards the Application from within the community of Hobsons Bay.</p>	Marginal