

Decision and reasons for decision

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by GRHO Pty Ltd to amend its venue operator licence to vary the number of electronic gaming machines at the approved premises, the Grosvenor Hotel, located at 10 Brighton Road, Balaclava from twenty-two (22) to sixty-two (62).

Commission: Mr Andrew Scott, Chair
Dr Ron Ben-David, Deputy Chair
Mr Chris O'Neill, Commissioner

Date of Hearing: 1 – 2 March 2023

Date of Decision: 19 April 2023

Date of Reasons: 19 April 2023

Appearances: Ms Nicola Collingwood of Counsel for the Applicant, instructed by BSP Lawyers
Mr Mark Bartley of HWL Ebsworth lawyers (**HWLE**) on behalf of Port Phillip City Council
(the **Council**)
Mr Robbie Ahchee, Counsel Assisting the Commission

Decision: The Commission has determined to grant the application subject to the conditions set out in Appendix A.

Signed:



Andrew Scott

Chair

Background

1. GRHO Pty Ltd (**Applicant**) owns and operates the Grosvenor Hotel, located at 10 Brighton Road, Balaclava (**Premises**). It also owns the Dick Whittington Tavern at 32 Chapel Street, Balaclava which is located approximately 900 metres from the Premises.
2. This is an application by the Applicant to the Victorian Gambling and Casino Control Commission (**Commission/VGCCC**) to amend its venue operator's licence to increase the number of electronic gaming machines (**EGMs**) operating at the Premises, from twenty-two (22) to sixty-two (62) (**Application**).
3. The Applicant has also proposed that if the Application is granted, that it will transfer to the Grosvenor Hotel all of the EGM entitlements at the Dick Whittington Tavern which will cease operating any EGMs (**Proposed Transfer**).
4. The relevant municipal authority is the City of Port Phillip (**Council**). By correspondence dated 20 December 2022, the Commission notified the Council of the Application and requested that it advise the Commission whether it wished to lodge a submission to address the social and economic impacts of the Application on the local community.
5. On 20 December 2022, the Commission notified the adjoining municipalities of City of Bayside, City of Glen Eira, City of Melbourne, City of Stonnington and City of Yarra of the Application. The City of Glen Eira was the only one of these which provided a submission and did so on 24 February 2023.
6. The Council responded to the Commission on 23 January 2023, advising that it intended to make an economic and social impact submission in relation to the Application, and did so on 20 February 2023.
7. The Commission considered the Application at a public inquiry on 1 and 2 March 2023 (**Hearing**). The Applicant was represented by Ms Nicola Collingwood of Counsel, instructed by BSP Lawyers. The Council was represented by Mr Mark Bartley of HWLE lawyers.

Legislation and the Commission's task

Victorian Gambling and Casino Control Commission Act 2011 – Harm Minimisation

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

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

The objectives of the Commission are—

 - (a) *to maintain and administer systems for the licensing, supervision and control of gambling businesses and casinos, for the purpose of—*
 - (i) *ensuring that the management and operation of gambling businesses and casinos remain free from criminal influence and exploitation through oversight of those gambling businesses and casinos and liaison with other regulatory agencies; and*
 - (ii) *ensuring that gambling conducted or operated by a gambling business and gaming and betting in a casino are conducted or operated honestly; and*
 - (iii) *fostering responsible gambling conducted or operated by a gambling business or in a casino; and*
 - (b) *to minimise gambling harm and problem gambling.*

In effect this has strengthened the Commission's focus on minimising gambling harm, and has led to an increased expectation on venue operators to minimise such harm.

12. Section 9(1)(i) of the VGCCC Act provides that the functions of the Commission will include, among other things “to undertake activities to minimise gambling harm.”

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

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

Gambling Regulation Act 2003

14. 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.

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

...

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

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

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

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

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

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

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

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

(e) *to ensure that-*

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

(ii) *practices that could undermine public confidence in community and charitable gaming are eliminated;*

(iii) *bingo centre operators do not act unfairly in providing commercial services to community or charitable organisations;*

(f) *to promote tourism, employment and economic development generally in the State.*

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

(1) *The purpose of this Chapter is to establish a system for the regulation, supervision and control of gaming equipment and monitoring equipment with the aims of—*

(a) *ensuring that gaming on gaming machines is conducted honestly; and*

(b) *ensuring that the management of gaming equipment and monitoring equipment is free from criminal influence or exploitation; and*

(c) *regulating the use of gaming machines in casinos and other approved venues where liquor is sold; and*

(d) *regulating the activities of persons in the gaming machine industry; and*

(e) *promoting tourism, employment and economic development generally in the State; and*

- (f) *fostering responsible gambling in order to—*
 - (i) *minimise harm caused by problem gambling;*
 - (ii) *accommodate those who gamble without harming themselves or others.*
 - (2) *The purpose of this Chapter is also to—*
 - (a) *provide for the allocation of gaming machine entitlements in order to maximise the financial and social benefits to the Victorian community within the regulatory framework applying to the allocation of entitlements;*
 - (b) *promote a competitive gaming industry with the aim of providing financial and social benefits to the Victorian community.*
17. 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.
18. Sections 3.4.18 to 3.4.19 of the GR Act provide for the manner in which requests for amendments under section 3.4.17(1)(b) are to be made. Relevantly for the Application, section 3.4.18 provides, inter alia, that:
- (1) *A request by a venue operator for an amendment of licence conditions—*
 - ...
 - (c) *in the case of ... an amendment to increase the number of gaming machines permitted in an approved venue, must be accompanied by a submission—*
 - (i) *on the net economic and social benefit that will accrue to the community of the municipal district in which the approved venue is located as a result of the proposed amendment; and*
 - (ii) *taking into account the impact of the proposed amendment on surrounding municipal districts—*

in the form approved by the Commission and including the information specified in the form.
19. 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.*
20. 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.*

21. The matters set out in sections 3.4.20(1)(a) and 3.4.20(1)(b) of the GR Act are discussed further at paragraphs 61 to 64 below.
22. 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.¹
23. 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.²
24. 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.³ The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.
25. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.⁴ On review, decisions in the Victorian Civil and Administrative Tribunal (VCAT) have held that for impacts that may be both economic and social – for example the benefits of gaming consumption – it does not matter whether the impact is considered on the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.⁵
26. 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.*⁶
- The Commission has utilised this approach for the purpose of considering the ‘*no net detriment*’ test in this matter. However, discussion relevant to the relative weight given to particular factors is included in the body of this Decision and reasons and not summarised in the table.
27. 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,

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

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

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

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

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

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

it still has an ultimate discretion as to whether or not to grant the approval.⁷ 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.⁸

28. 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;⁹ and
 - (b) it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the GR Act as a whole.¹⁰
29. The Commission notes the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*¹¹ 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.
30. Finally, pursuant to section 9(4) of the VGCCC Act, the Commission must have regard to Ministerial Guidelines issued under section 5 of the VGCCC Act when performing functions under gambling legislation. The Commission did not identify any Ministerial Guidelines directly relevant to its consideration of this Application.

Material before the Commission

31. The Applicant provided the Commission with the following material in support of its Application:
- (a) ‘Application for approval of premises for gaming’ form, received by the Commission on 22 November 2022 (**Application Form**);
 - (b) Social and Economic Impact Assessment prepared by Ratio Consultants Pty Ltd, dated 1 December 2022 (**Ratio Report**);
 - (c) Expenditure Analysis prepared by ShineWing Australia, dated 28 November 2022 (**ShineWing Report**);
 - (d) Responsible Service of Gambling (**RSG**) management report prepared by Andrew Jeynes of RSA Compliance Specialist, dated 25 November 2022 (**Compliance Report**);
 - (e) Witness statement of Jonathan Francis Sherren, director of the Applicant, dated 1 December 2022;
 - (f) Witness statement of Lorraine Ann Hillard, gaming manager of the Applicant, dated 1 December 2022; and
 - (g) Site Plan and Gaming Room Plan.
32. The Council provided written economic and social impact submissions in opposition to the Application, dated 20 February 2023 from Ms Bonnie Rosen at Symplan (**Symplan Report**).
33. The following reports, prepared by VGCCC officers, were provided to the Applicant and the Council and were considered by the Commission:
- ‘Economic and Social Impact Report’, dated 16 February 2023 (**VGCCC Report**);
 - ‘Pre-Hearing Size, Layout and Facilities Report’, dated 15 February 2023 (**VGCCC Premises Report**); and

⁷ See *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M; see also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [97] and following per Dwyer DP (with respect to section 3.3.7 GR Act).

⁸ GR Act, section 3.4.20(2).

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

¹⁰ *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.

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

- 'Pre-Hearing Inspection and Compliance Report in respect of the Grosvenor Hotel', dated 16 February 2023 (**Compliance History Report**).
34. In addition, the Commission received submissions from the Port Phillip Community Group and Sacred Heart Mission in opposition to the Application.
 35. The following witnesses gave oral evidence at the Hearing:
 - (a) Ms Colleen Peterson, CEO of Ratio Consultants;
 - (b) Mr Tim Stillwell, Partner of ShineWing Australia;
 - (c) Mr Andrew Jeynes, RSA Compliance Specialist;
 - (d) Mr Jonathan Sherren, Director of the Applicant;
 - (e) Ms Lorraine Hillard, Gaming Manager at the Grosvenor Hotel; and
 - (f) Ms Bonnie Rosen, Principal, Symplan.
 36. Following the Hearing, the Commission was provided with written submissions by Ms Alison Elverd on behalf of the Applicant, dated 6 March 2023 (**Applicant Final Submissions**) and suggested conditions to attach to the approval, which were responded to by Mr Bartley on behalf of the Council on 7 March 2023 (**Proposed Conditions**). The Applicant also provided further correspondence to the Commission on 14 March 2023 and 16 March 2023.
 37. Commissioners Scott and O'Neill visited the Premises before the Hearing.

Reason for decision

BACKGROUND

Location

38. The Premises is located in the City of Port Phillip,¹² a metropolitan municipality located approximately 5 kilometres south of Melbourne. Major suburbs include Balaclava, St Kilda, St Kilda East, Port Melbourne and South Melbourne. According to the VGCCC Report, the estimated total adult population is 106,100, ranking 21st of 31 metropolitan municipalities (1 being the most populated area).¹³ The City of Port Phillip's estimated annual population growth of 1.9% in 2022 was projected by the DELWP to be slightly higher than the Victorian average of 1.2%.

Current gaming in the City of Port Phillip

39. Currently, there are ten (10) gaming venues operating within the City of Port Phillip with approvals to operate a total of 390 EGMs with 377 entitlements currently attached. The maximum permissible number of gaming machine entitlements under which gaming may be conducted in the City of Port Phillip is 883 EGMs.¹⁴ The success of the Application would not increase the number of licensed EGMs or entitlements in this municipality as the EGMs will be transferred to the Premises from the Dick Whittington Hotel which is also located within the same municipality.
40. The VGCCC Report notes that the City of Port Phillip has an EGM density of 3.55 EGMs per 1,000 adults, which is 20.4% less than the metropolitan LGA average (4.5) and 26.2% less than the State average (4.8). This ranks the City of Port Phillip as the 24th of 31 metropolitan LGA average in terms of EGM density per 1,000 adults.¹⁵
41. Also as stated in the VGCCC Report, in the 2021-22 financial year, the City of Port Phillip had an average gaming expenditure (ie, net losses) of \$196.97 per adult, which is 51.48% less than the metropolitan LGA average (\$405.96) and 51.85% less than the State average (\$409.09). Applying the Applicant's estimate of increased gaming expenditure arising from the operation of the additional 40 EGMs at the Premises in the first year of operation would result in an increase in average gaming expenditure per adult from \$196.97 to \$206.64, which is an increase of 4.91% in the LGA.

¹² Where reference is made in these reasons to the City of Port Phillip, this is a reference to the local government area (**LGA**).

¹³ Department of Environment, Land, Water and Planning (**DELWP**), 2019.

¹⁴ See the Ministerial Order under ss 3.2.4 and 3.4A.5(3A) of the GR Act, Victorian Government Gazette, No. S 318 Wednesday 20 September 2017, p.6.

¹⁵ VGCCC Report, page 12.

42. In the 2021-22 financial year, the expenditure on gaming for the City of Port Phillip was \$20,898,871.63.

Socio-economic profile of the City of Port Phillip

43. The City of Port Phillip is characterised by an above average socio-economic profile, in comparison to metropolitan municipalities. It is ranked 26th of 31 metropolitan LGAs and 72nd of 79 LGAs in Victoria on the Socio-Economic Indexes for Areas (**SEIFA**) index of relative socio-economic disadvantage (**IRSD**),¹⁶ indicating a lower level of disadvantage within the LGA (1st being the LGA with the greatest disadvantage).

44. In relation to the immediate surrounding area of the Premises (i.e. within 2.5 kilometres),¹⁷ the SEIFA IRSD index is 1.59% higher than the SEIFA IRSD index for the City of Port Phillip, and 7.48% higher than the SEIFA IRSD index for Victoria. On the SEIFA IRSD, a higher score indicates a lack of disadvantage, therefore the immediate surrounding area from the City of Port Phillip experiences a relatively lower disadvantage than Victoria as a whole. 0.9% of SA1s¹⁸ in the immediate surrounding area are in the 1st quintile¹⁹ of SEIFA scores (below the metropolitan average of 13%). This also suggests that the area immediately surrounding the Premises experiences relatively lower levels of disadvantage than the metropolitan LGA average.

45. The VGCCC Report also indicates that, among other things:

- (a) the unemployment rate in the City of Port Phillip is 3.43%. This is lower than the metropolitan LGA average of 4.24%, and the State average of 4.01%. The unemployment rate for the immediate surrounding area is 2.6%, being 23.2% lower than the metropolitan LGA average;
- (b) the equivalised household income in the City of Port Phillip is \$1,464.40, which is slightly higher than the metropolitan LGA average of \$1,082.94, and the State average of \$1,028.24. The equivalised household income in the immediate surrounding area is \$1,415.75, being 30.7% higher than the metropolitan LGA average;
- (c) housing stress in the City of Port Phillip is 74.1%, which is higher than the metropolitan average of 64.5%, and the State average of 60.2%. Housing stress in the immediate surrounding area is 76.5%, being 18.5% higher than the metropolitan LGA average; and
- (d) the homelessness rate in the City of Port Phillip is 12 per 1,000 adult population, is 3rd highest of metropolitan LGAs. The homelessness rate within the immediate surrounding area is 31.6% lower than LGA rate and 46.1% higher than all metropolitan LGAs.

Nature of the Premises approved

46. The Premises has held a gaming licence since 1993 where it was originally for 5 EGMs. Over the years since then it has been authorised to operate a varying number of EGMs and currently is authorised to operate 22.

47. The Premises currently comprises a range of facilities including:

- restaurant with a total seat capacity of 136 (i.e. dining room 48 seats, outdoor dining room 58 seats, private dining room 30 seats);
- sports bar with TAB with a total seat capacity of 60;
- functions room with capacity of 130, cocktail style;
- cocktail bar with seating for 30 patrons; and
- atrium with seating for 36 patrons.²⁰

¹⁶ SEIFA is a product developed by the ABS to assist in the assessment of the welfare of Australian communities. The SEIFA Indices allow the ranking of regions/areas, providing a method of determining the level of social and economic well-being in each region or area. As such, the SEIFA IRSD provides a relative, rather than an absolute, indication of the level of socio-economic disadvantage within the relevant area.

¹⁷ The VGCCC Report adopts a 2.5km radius as the immediate surrounding area for applications to amend EGM venue operators' licences for venues within metropolitan and major regional LGAs.

¹⁸ (Statistical Areas Level 1 (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.

¹⁹ SEIFA IRSD is divided into five quintiles each comprising 20% of areas (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).

²⁰ Ratio Report, page 10.

48. The current permitted hours of operation of the gaming room, sport bar and bistro are as follows²¹:
- (a) Gaming room
- Monday to Sunday 10am – 1am the following day
- (b) Licensed area
- Monday to Thursday 7am – 1am the following day
 - Friday and Saturday 7am – 3am the following day
 - Sunday 10am – 1am the following day
49. The Dick Whittington Tavern has held a gaming licence since July 1997, which authorised gaming on 35 gaming machines within the approved gaming machine area. In December 2011, the number of gaming machines in the venue was increased to 40.

Catchment area of Premises

50. The ‘*no net detriment*’ test primarily applies to ‘*the community of the municipal district in which the approved venue is located.*’ In determining the impact of an application of this nature on a municipal district, previous Commission and VCAT decisions have had particular regard to the area serviced by the relevant premises, which is generally referred to as the ‘catchment area’.²² The determination of the likely catchment area in this instance is important in the Commission’s consideration of the identity of those residents who will be most affected by the Application in terms of gambling-related benefits and harms.
51. As the City of Port Phillip is a metropolitan, rather than a regional municipality, typically the catchment area would be a 2.5 kilometre radius from the Premises. In this application, the VGCCC Report applies a 2.5 kilometre radius around the Premises.
52. The Ratio Report, the ShineWing Report and the Symplan Report all assume a catchment area of 2.5 kilometre radius of the Premises.
53. Mr Stillwell’s and Ms Peterson’s view is that, empirically, the majority of gaming patrons visiting the Premises reside within the City of Port Phillip or the surrounding LGAs. At the Hearing, a gaming patron and EGM utilisation survey was distributed. This was in the form of a letter from Hayley Vinecombe dated 27 February 2023. The letter noted that in February 2023, 15.6% of patrons at the Premises were from Balaclava, 22.4% from Elwood and 16.7% from St Kilda.
54. Having regard to the material and evidence put forward by the Applicant and the Council and noting the VGCCC Report analysing the surrounding area as a radius of 2.5 kilometre around the Premises, the Commission considers and all parties agree that the appropriate primary catchment area of the Premises likely consists of the area within a 2.5km of the Premises.

Closure of Dick Whittington Tavern Gaming Room

55. The Applicant submitted that all of the additional EGMs sought to be approved by the Application would be transferred from the Dick Whittington Tavern, with that venue to cease operating as a gaming venue. The Applicant confirmed this at the start of the Hearing.
56. Prior to this confirmation, the Council submitted in paragraph 14 of its submissions that the potential removal of gaming machines from the Dick Whittington Tavern is not guaranteed. It submitted that any positive impacts of closing the Dick Whittington Tavern must be disregarded unless and until an appropriate amendment or surrender of the venue operator’s licence for the venue is confirmed. At the Hearing, following the confirmation of the intended cessation of gaming at the Dick Whittington Tavern, the Council announced that it would confine its objection to the Proposed Transfer having a net zero change in the number of EGMs in the LGA.
57. The Ratio Report submits that the Proposed Transfer of EGMs from the Dick Whittington Tavern to the Premises is a low benefit.²³ Ms Peterson submitted in her written and oral evidence that the retention of the gaming room at the Dick Whittington Tavern, located as it is, directly opposite a social housing development, does not meet

²¹ Application form dated 22 November 2022, page 3.

²² 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).

²³ Ratio Report, page 59 and 60.

best practice with regard to the provision of responsible gambling. The Proposed Transfer would, therefore, provide a benefit to the local community according to her.

58. The Symplan Report did not assess this factor, but in cross-examination Ms Rosen noted that in principle the closure of a venue and relocation of machines to another venue is a benefit.²⁴ She stated that the community surrounding the Dick Whittington Tavern is vulnerable and that EGMs would be transferred from one vulnerable community to another vulnerable community. She acknowledged there is less social housing within 400 metres of the Premises (62 social housing units as opposed to 299 surrounding the Dick Whittington Tavern) and stated that the Council's policy treats 50 social housing units as the relevant threshold. On that basis she stated that whether the number is 62 or 299 should not be a material consideration.

Issues for determination on review

59. As set out in paragraph 20 above, the Commission cannot grant the Application unless it is satisfied as to the four matters set out in section 3.4.20 of the GR Act. These matters are considered in parts A to D below.
60. If it determines that these matters have been satisfied, the Commission is then required to exercise its discretion under section 3.4.20 to determine whether or not the Application should be granted. That is, whether or not the proposed amendment to the venue operator's licence should be made.

A. Directions given under section 3.2.3

61. Pursuant to section 3.4.20(1)(a) of the GR Act, the Commission must be satisfied that the proposed amendment does not conflict with a Ministerial direction, if any, given under section 3.2.3 of the GR Act. There is no relevant direction issued pursuant to section 3.2.3 of the GR Act that relates to this Application.
62. On this basis, the Commission is satisfied that granting the Application would not conflict with a direction given under section 3.2.3 of the GR Act, and therefore considers that the mandatory pre-condition set out in section 3.4.20(1)(a) of the GR Act is satisfied.

B. Municipal Cap

63. As noted in paragraph 39 above, the City of Port Phillip is subject to a municipal cap on the number of EGMs under a Ministerial Order under sections 3.2.4 and 3.4A.5 of the GR Act. The maximum permissible number of gaming machine entitlements in the area covered by the LGA is 887.
64. As the EGMs are being transferred within the LGA, from the Dick Whittington Tavern to the Grosvenor Hotel, the grant of this Application would not result in the number of licensed EGMs within the LGA increasing. The Commission is satisfied that granting the Application would not cause the relevant municipal cap for gaming machines for the City of Port Phillip to be exceeded, and therefore considers that the mandatory pre-condition set out in section 3.4.20(1)(b) of the GR Act is satisfied.

C. 'No net detriment' test

65. The Commission must be satisfied that, if the Application is granted, the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the Premises is located. Set out below (and summarised in tabular form at Appendix B) is the Commission's assessment of the economic and social benefits and disbenefits associated with the Application, including the weighting given to each of these impacts.
66. As noted in paragraph 25 above, the Commission considers that it does not matter whether impacts are considered on the economic side, or the social side, or both, so long as such impacts are included and not double-counted in the ultimate composite test. In this Application, the Commission has adopted the approach it took in *Lynbrook Tavern Pty Ltd at Lynbrook Hotel premises (Gaming – EGM Increase)* [2018] VCGLR 31 and determined to consider the impacts associated with the proposed community contributions as a single impact under the 'Social impacts' section of its consideration. As noted in its discussion of this impact below, the Commission has taken into account both the economic and social benefits generally associated with community contributions forming part of EGM increase applications and given appropriate weight to that impact in its cumulative form. The Commission has also taken this position in respect of problem gambling harm.

²⁴ As noted on day 2 of the hearing, page 211 of the transcript.

Economic impacts

67. The materials before the Commission and the evidence adduced at the Hearing provided the evidentiary basis for a range of economic benefits and disbenefits associated with this Application. While the assessments of these likely future benefits and disbenefits by expert witnesses for the Applicant and the Council are not able to be precisely evaluated with certainty, for the purposes of this Application, they constitute the best evidence available to the Commission.

Expenditure on capital works – Investment in venue renovations

68. A potential economic benefit associated with the Application is that arising from the expenditure on capital works to renovate the Premises.

69. The Applicant submitted that the capital works, which will include the expansion of facilities on offer at the Premises including the creation of a new sports bar area, more cohesive dining options and expanded function capability, would be at a cost of \$1.2 million.²⁵ The Ratio Report noted that this expenditure was of a negligible benefit.

70. In the Symplan Report, Ms Rosen considered that improvements to facilities will have negligible potential benefits.

71. The Council noted that the Premises bistro is currently being renovated, so there is doubt as to whether this negligible benefit is reliant on the Application being approved.²⁶

72. At the Hearing, the Applicant clarified that part of the Premises is closed off to the public which gives the misleading impression that renovations are already underway, which they are not. The Applicant also clarified that the capital works proposed by the Applicant are dependent on the success of this Application. The Applicant did not confirm whether those conducting the renovation works will be sourced locally.

73. The Commission considers the renovation works are an economic benefit of marginal weight.

Supply contracts

74. The Applicant considers that the approval of the Application will result in an increase in supply contracts, in the amount of \$114,000.²⁷ In oral evidence at the Hearing, Mr Stillwell noted that his view is that the value of these supply contracts would likely be between \$117,000 to \$293,000. He did not provide a basis for why his estimate is higher.

75. The Commission notes that there is no evidence or certainty whether supply contracts would be conducted by local suppliers. In turn, there is no evidence of any potential benefit to the local community.

76. Accordingly, the Commission gives this economic benefit no weight.

Complementary expenditure

77. Complementary expenditure is the increased economic activity in the LGA, apart from gaming expenditure, that may arise if the Application is granted. However, the extent of this benefit will likely depend upon a range of factors, including the extent to which the expenditure is a consequence of new spending, for example, as a result of additional people coming to the municipal district as tourists or for business as compared to transferred complementary expenditure from other venues within the municipality, and the extent to which that complementary expenditure results in additional spending on local goods and services.

78. The Ratio Report provides that the Application will result in \$2,704,000 in additional complementary expenditure in the municipal district in the first year. In his oral evidence, Mr Sherren explained that this figure is derived from his estimate that it will generate an additional \$52,000 per week, consisting of \$25,000 from the bottle shop, two functions per week at \$5,000 each and \$17,500 from the bar and bistro. Ms Peterson noted in the Ratio Report that this provides some further stimulus to the local economy, but recognised that much of this spending will occur outside the LGA.²⁸ At the Hearing, the Applicant clarified the estimated figure of \$2,704,000 in additional complementary expenditure is derived from the estimated added weekly expenditure of \$52,000.

79. In the Symplan Report, Ms Rosen assessed the economic impact of complementary expenditure as neutral, as any changes in competitiveness will be distributed within the Premises's primary and secondary catchments.

²⁵ Ratio Report, page 58.

²⁶ Symplan Report, paragraph 16.

²⁷ Ratio Report, page 63.

²⁸ Ibid., page 61,.

80. The Commission notes that the material submitted by Ms Peterson did not offset reduced complementary expenditure at the Dick Whittington Tavern, noting that both the Applicant's written application and oral evidence indicated its intention to potentially sell the Dick Whittington Tavern if the EGMs are transferred to the Premises. For these reasons, the Commission finds complementary expenditure to be an economic benefit that it affords no weight to marginal weight.

Additional employment

81. The economic benefit of employment creation arising from this Application falls broadly into the category of longer-term employment benefits arising from the introduction of the additional EGMs and increased patronage of facilities at the Premises.
82. In the Ratio Report, it was noted that the proposal will create an additional five EFT positions across the venue, including three EFT positions in the gaming room, noting that there will be three staff in the gaming room and sports bar areas at all times. In the Ratio Report, it was noted that this will have a negligible positive benefit.²⁹
83. In the Symplan Report, Ms Rosen identified that this will have a negligible positive benefit.³⁰ In the Council's submissions, it was noted that the benefits derived from additional employment are dependent upon the Proposed Transfer and that care should be taken not to double count this or other factors.
84. At the Hearing it was noted that this additional employment figure is over and above the number of EFT positions that will have their employment transferred from the Dick Whittington Tavern. However, on cross-examination the expert witnesses for the Applicant were unable to confirm or estimate how many of the claimed net increase in jobs arising from the expansion of the Premises and cessation of gaming at the Dick Whittington Tavern would be filled by residents of the City of Port Phillip.
85. There was some discussion at the Hearing regarding the adequacy of these levels of staffing if the sports bar was to become busy. The Applicant submitted that it would simply not be in the best commercial interests of the operator to understaff a busy sporting bar area and that if the sports bar was particularly busy (due to, for example, a sporting event), additional staff would be drawn from the bistro and not from the gaming room.
86. After the Hearing, in their letter dated 6 March 2023, the Applicant noted that in relation to staffing at the venue, it is proposed that there will be three staff on duty in the gaming room at all times that the gaming room is operational. In that letter, the Applicant sought to clarify that the gaming rooms includes the bar, the cashier's station and the sports bar. The Commission is of the view that the "gaming room" is the green line area where the cashier and EGMs are operated and does not include the sports bar (**Gaming Room**). The Commission considers that a minimum of two staff must be in the Gaming Room at all times that EGMs are operational, and this is therefore specified in the conditions below.
87. The Commission considers that the employment impacts are quite unclear. It is not clear which jobs will be created and which will be transferred. It is also not clear to what extent the Dick Whittington Hotel would continue to operate beyond the cessation of gaming at the venue. Overall, the Commission is of the view that granting the Application will generate employment at the Premises, and this is a positive benefit. This Commission also acknowledges that there will be some movement of employment from the Dick Whittington Tavern so the net effect of this positive benefit is somewhat reduced. Overall, the Commission considers any additional employment arising from the Application as positive and gives this benefit nil to marginal weight.

Additional Gaming expenditure not associated with problem gambling

88. As the economic category of gaming expenditure not associated with problem gambling includes consumption, then to the extent that such expenditure is not associated with problem gambling, it has been recognised that it can be treated as an economic positive.³¹ As Bell J noted in *Romsey No. 2*, this approach also brings to account the benefit obtained from pure consumption by the lone gambler who does not use EGMs for social reasons.³²
89. Mr Stillwell gave evidence that, adopting an empirical approach, he would, based on the assumption that the Proposed Transfer will occur, anticipate:

²⁹ Ratio Report, page 62.

³⁰ Symplan Report, page 51.

³¹ See *Romsey No. 2* [2009] VCAT 2275 [351] per Bell J.

³² *Ibid.* Bell J further notes at [352] that the other approach is to say (as Morris J did in *Branbeau Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2005] VCAT 2606 at 79) that gaming extends 'substantial economic and social benefits' to gaming machine users, which treats consumption as a benefit without saying whether it is economic or social. While Bell J states both approaches are correct, for the purposes of this Application, this benefit is treated as an economic benefit.

- (a) the level of additional gaming expenditure generated from the Application would be between \$849,540 and \$1,026,054 in the first 12 months of trade; and
 - (b) assuming that the Dick Whittington Tavern will cease gaming operations in accordance with the Proposed Transfer, Mr Stillwell estimated that the level of additional net gaming expenditure³³ generated from the Application would be between \$117,032 and \$293,546 in the first 12 months of trade.
90. The Ratio Report stated that additional gaming expenditure would result a negligible benefit in the context of the overall local economy.
91. The Commission expressed its reservations, particularly about the upper end of these estimates, querying whether they under-estimate the possible quantum of new expenditure. In correspondence dated 16 March 2023, Mr Stillwell provided a letter confirming that the disclosed ranges are formula-driven and as such were presented in their appropriate form.
92. The Symplan Report did not provide any contrary evidence to Mr Stillwell's gaming expenditure figures for the Premises relating to the proposed additional EGMs at the Premises. For the purposes of the '*no net detriment*' test, the Commission has considered the impact on the community of the LGA in which the Premises are located. In all the circumstances and with reference to the catchment area of the Premises, the Commission accepts the evidence of Mr Stillwell in relation to anticipated gaming expenditure as outlined in paragraph 89 above, though considers these estimates are more likely to under-estimate, rather than over-estimate additional gaming expenditure.
93. In assessing the extent of the benefit of gaming expenditure not associated with problem gambling, the Commission has had regard to the evidence provided with respect to the incidence of problem gambling. Of the problem gambling that occurs within the Premises, the anticipated transfer rate suggests the majority of problem gamblers are likely to be residents of the City of Port Phillip or the City of Glen Eira and its immediate surrounds. The expenditure rate from the Proposed Transfer is relatively modest in the context of the LGA. Therefore, the Commission finds that the portion of new expenditure not attributable to problem gambling is an economic benefit that is given nil to marginal weight.

Increased gaming competition in the City of Port Phillip

94. Increasing competition in gaming in the City of Port Phillip is a factor to be considered by the Commission in light of the statutory purposes of the GR Act³⁴ and the consumer benefits that derive from competition.
95. The VGCCC Report identifies that, on the basis of an estimated adult population in the City of Port Phillip of 106,100, this Application would (if approved and if the Proposed Transfer occurs):
- (a) not increase the overall number of EGMs within the municipality; and
 - (b) not increase the EGM density of the municipality in which the Premises are situated.
96. The Ratio Report assessed this as a negligible disbenefit.
97. In the Symplan Report, Ms Rosen assessed this as neutral as any changes in competitiveness will be distributed within the Premises's primary and secondary catchments.
98. At the Hearing no evidence was given to suggest that there would be any additional benefit arising from increased competition over and above the additional expenditure.
99. The Commission finds that granting approval of the Application will increase gaming competition in the City of Port Phillip insofar as the Premises will become a more attractive venue for individuals looking to play on EGMs. The refurbishment and Proposed Transfer will likely increase gaming competition with some of the more successful gaming venues in the City of Port Phillip. This is evidenced by the anticipated increased expenditure on EGMs that will result from the approval of this Application.³⁵
100. On balance, the Commission considers the impact of increased competition to be an economic benefit to which it gives nil to marginal weight.

³³ Net new expenditure is new expenditure, less lost expenditure from the closure of the Dick Whittington tavern.

³⁴ See GR Act, section 3.1.1(2).

³⁵ As noted in paragraph 104 of this decision.

Diversion of trade from other gaming venues and retail facilities

101. The Ratio Report considered the diversion of trade from other gaming venues and retail facilities as a negligible disbenefit and provided it reduced weight given the competition objectives of the GR Act.
102. In the Symplan Report, Ms Rosen did not individually assess these factors. The Council in its submissions proffered that this assessment that potential competition impacts will be neutral is applicable to these factors and in any case, care should be taken to not double (or triple) count competition factors.
103. At the Hearing, Mr Stillwell gave evidence that 60% - 65% of gaming expenditure would be transferred from existing venues within the City of Port Phillip.
104. The Commission accepts the Applicant's evidence that at least 60% - 65% of anticipated increased expenditure would be derived from other venues located within the City of Port Phillip. The Commission considers that a transfer rate of this size is not insignificant, however in light of the concentration and performance of gaming competitors within the market, the Commission finds that the diversion of trade will only have a marginal detrimental economic impact on other venue operators.
105. In addition, the Commission accepts that the impact that could be felt by local non-gaming businesses is the value of the new expenditure from this Application (assuming that the Proposed Transfer will occur) being between, \$117,032 and \$293,546 in the first year of operation.³⁶ However, the Commission notes that it is difficult to determine if, and to what extent, that expenditure would necessarily have been spent elsewhere within the City of Port Phillip.
106. The Commission finds that there is a relatively insignificant economic disbenefit associated with any diversion of trade from both gaming venue and retail facilities or other businesses in the City of Port Phillip because of this Application and considers it appropriate to attribute marginal weight to this impact.

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

107. The Commission has taken into account both the economic and social impacts associated with problem gambling associated with the Application and has given appropriate weight to this impact below.
108. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an economic disbenefit.³⁷ In assessing this impact (and other effects of problem gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gambling undertaken by those who may be defined as 'problem gamblers', as well as those who may be otherwise regarded as being at 'low-risk' or 'moderate-risk' of harm from gambling.
109. In assessing the extent of this disbenefit, the Commission has had regard to the expenditure evidence set out in paragraph 89 above and the findings in relation to the risk of problem gambling at the Premises discussed further below. In considering this aspect of the '*no net detriment*' test, the Commission does not include consideration of transferred expenditure because being transferred from another venue, such expenditure cannot be said to exacerbate problem gambling.³⁸

The vulnerability of the City of Port Phillip and the catchment area

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

³⁶ As per paragraph 1.6 of the ShineWing Report.

³⁷ The Commission recognises that, on review, the key likely disbenefit of 'problem gambling' has, for convenience, been treated under the heading of 'social impacts' in various instances: see *Mount Dandenong Tourist Hotel Pty v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted; see, for example, *Mount Alexander Shire Council* [2013] VCAT 101 at [178] and following per Dwyer DP. For completeness, the Commission considers both the economic and social impacts of problem gambling in assessing this Application.

³⁸ 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.

111. The VGCCC Report identifies that, within the 2.5 kilometre radius of the Premises:

- the SEIFA rankings show that, of the SA1s within a 2.5 kilometre radius of the Premises, 2.7% are in the 1st quintile, 1.8% in the 2nd quintile and 10.3% in the 3rd quintile.³⁹ The SEIFA for the immediate surrounding area of the Premises (1,086.00) is 1.59% more than the City of Port Phillip, 6.39% more than metropolitan LGAs and 7.48% more than Victoria;⁴⁰
- the unemployment rate for the immediate surrounding area is 2.6%, which is lower than the unemployment rate in the City of Port Phillip, metropolitan LGAs and Victorian averages at 3.43%, 4.24% and 4.01% respectively;⁴¹ and
- housing stress is 96.3%, which is higher than housing stress in the entire City of Port Phillip, metropolitan LGAs and Victorian averages at 74.1%, 64.5% and 60.3% respectively.⁴²

Applicant's submissions – problem gambling

112. In the Ratio Report⁴³, having applied the VGCCC scale of grading benefits and disbenefits, Ms Peterson grades problem gambling and gambling related harm and possible increase of incidence and impact of problem gambling as low. Ms Peterson, Mr Jeynes, Mr Sherren and Ms Hillard also gave evidence that they consider that the addition of EGMs will result in a “very low risk” of problem gambling at the Premises in light of the “management’s high commitment to RSG”. They also noted that patrons in the expanding gaming area are always appropriately greeted, checked on and will not be lost in the crowd. In oral evidence, Ms Rosen disputed this assertion, confirming that when she entered the gaming area when visiting the Premises, she was not greeted or acknowledged by staff.

113. In the Ratio Report, Ms Peterson submitted that problem gambling is likely to cause the following disbenefits⁴⁴:

- **Social disbenefits** – a neutral – low social disbenefit, on the basis that:
 - (a) the Application results in the relocation of machines and the closure of the Dick Whittington Hotel and therefore there would be a slight reduction in accessibility for vulnerable members of the community; and
 - (b) there are current low utilisation rates at both venues and any potential increase in risk to problem gamblers is mitigated by proposed changes to the gaming room.
- **Economic disbenefits** – a negligible disbenefit on the basis that:
 - (a) there will be higher costs to health and service providers and lower spending on local goods and services; however
 - (b) this is mitigated as there is no net increase in the number of EGMs within the municipality and a net reduction in the number of gaming venues.

In cross-examination at the Hearing, Ms Peterson conceded that there could be some double-counting associated with the Proposed Transfer.

114. The Applicant proposed other factors to suggest there is lower risk of increased incidence of economic and social impacts of problem gambling at the Premises should this Application be granted, including that:

- the closure of the Dick Whittington Tavern as a gaming venue will move machines away from an area of significant disadvantage;⁴⁵
- as noted by Ms Collingwood on day 1 of the Hearing, that there are excellent RSG practices implemented at the Premises, which was also based on evidence given by:

³⁹ VGCCC Report, page 36.

⁴⁰ Ibid, page 35.

⁴¹ Ibid, page 39.

⁴² Ibid, page 32.

⁴³ Ratio Report, page 59.

⁴⁴ Ibid, pages 59 and 60.

⁴⁵ Ibid., page 63.

- (a) Ms Peterson (although she conceded under cross-examination that the probable impact of problem gambling was more than negligible and that there was a disbenefit in terms of the impact on the local community;
 - (b) Mr Jeynes review of the hotel operations;
 - (c) Mr Sherren, the director of the Applicant; and
 - (d) Ms Hillard, the gaming manager.⁴⁶
- Ms Peterson submitted that:⁴⁷
 - (a) The venue is not located within an area of convenience shopping.
 - (b) The venue is a destination venue in its own right.
 - (c) The proposed changes to the venue will ensure there is a more cohesive and full range of entertainment and recreation options including sports bar, bistro, casual dining, al fresco dining area and function facilities.
 - (d) There are two entrances to the gaming room both providing passive surveillance of patrons as they enter.
 - (e) There is no direct access to the gaming room from the (off-street) car park.
 - (f) Due to the odd shape of the venue it is difficult for patrons to see everything that is on offer at the venue when they enter.
 - (g) The gaming room closes no later than 1am and is closed for a minimum of 9 hours a day.
 - (h) The gaming room is well separated from the dining area of the venue and there will be no views into the gaming room from this part of the venue.
 - (i) The sports bar will be open at all times that the gaming room is open, with food available at all times.
 - (j) The Compliance Report by Mr Jeynes indicated compliance with all regulatory requirements.

The Council's submissions – problem gambling

115. The Council submitted that the risk of problem gambling is the most significant factor to be considered in this case, and on balance should outweigh any of the marginal to low positive potential impacts of the proposal.⁴⁸ In oral evidence Mr Bartley submitted that problem gambling in the area is a significant concern.
116. In relation to the economic detriment of problem gambling, the Council's expert Ms Rosen assessed this in the Symplan Report as a significant potential negative impact, based on the following risk factors:
- increased demand for health, welfare and support services and services for people affected by family violence; and
 - the economic costs of gambling-related harms borne by affected individuals, their family, friends, employers and service providers.
117. The Council submitted that Ms Rosen's assessment in the Symplan Report of the economic impacts of problem gambling expenditure should be preferred, particularly because it is based on the understanding that the Proposed Transfer does not 'lock-in' a reduction in gaming machines at the Dick Whittington tavern or its closure as a gaming venue.
118. In the Symplan Report, Ms Rosen assessed the social impact of problem gambling as having a significant negative impact, based on the following risk factors:
- the communities in the Grosvenor Hotel's primary catchment and within 400m of it are at elevated risk of gambling-related harms, including on the basis of socio-economic indicators of vulnerability, the concentrations of households experiencing mortgage and rental stress, and proportions of the population receiving welfare payments;

⁴⁶ As noted by Ms Collingwood on page 6 of the day 1 transcript.

⁴⁷ Ratio Report, pages 55 and 56,

⁴⁸ Symplan Report, paragraph 24.

- two of five welfare and support agencies within the primary catchment, who were able to provide feedback in time, said they regularly provide services to people affected by gambling harm;
 - social housing units within 400m of the Grosvenor Hotel are more integrated than at the Dick Whittington Tavern;
 - City of Port Phillip has family violence concerns and a higher proportion of people receiving welfare than its adjoining municipalities;
 - the Application will increase gaming expenditure at a venue in an area already at an elevated risk of gambling-related harms;
 - the Grosvenor Hotel is integrated with a strip shopping centre both visually and in terms of pedestrian access, and the surrounding area has “*no non-gambling social, leisure, entertainment and recreation facilities and activities that operate at the same time as the gaming room*”;
 - establishment of the largest gaming venue in both its municipality and primary catchment;
 - the layout and design of the Grosvenor Hotel elevates risks, including through allowing two forms of access to the gaming room without passing through non-gambling areas, the design and location of the smoking area and bathrooms, and restricted lines of site from the cashier’s desk; and
 - the gaming room operates when non-gambling facilities are closed, and food and beverages may be served to patrons using gaming machines.
119. In his submissions, Mr Bartley raised concerns about the second access point to the Premises from Grosvenor Street. Mr Bartley was concerned about this for numerous reasons, including that it would be more difficult to supervise as it meant players would not walk past the cashier on their way into and out of the venue. There were also concerns it was an entry from a residential street and served as an entry from the car park (the latter being a similar criticism to that made of the Dick Whittington Tavern by all parties).⁴⁹ Based on these submissions, the Commission are of the view that as an appropriate risk mitigant, the Grosvenor St entrance should be an exit only.
120. In this regard, he conceded that the doorway itself could still be used as a fire escape. He also indicated the Council’s preference to be that doors and windows in the gaming room will be opaque and frosted, so that there would be no view into the gaming lounge and sports bar from the general hotel bistro area.
121. Mr Bartley submitted that any economic benefits would flow broadly across the community rather than directly to Port Phillip. On the other hand, the economic costs, are costs that are borne locally, which made it more difficult to assess them as net benefits.
122. A community agency, the Port Phillip Community Group, provided a submission in relation to problem gambling. It was premised on the Application adding forty gaming machines rather than replacing those currently at Dick Whittington Tavern. It asserted that:
- residential distance to a venue plays a significant role in gambling participation;
 - the increase in gaming machines is a substantial rise in the number of gaming machines and poses challenges in terms of detecting and responding to gambling problems;
 - the significant increase would pose challenges for gaming staff to be familiar with and interact with the patrons, therefore increasing the capacity for harm to problem gamblers who will potentially be less visible; and
 - generally, there are high levels of advantage and favourable health outcomes in the City of Port Phillip, but extreme disadvantage and poorer health outcomes exist in some neighbourhoods. The COVID-19 pandemic has exacerbated this disadvantage. It noted the most common bio-psychosocial risk factors associated with problem gambling include mental health issues such as depression, anxiety related disorders, substance use and abuse, and lower educational attainment and income.
123. Another community agency, Sacred Heart Mission which supports people who experience problem gambling submitted that they support the Council’s submission in opposition to the proposal. It also asserted that it is likely

⁴⁹ As noted by Ms Peterson, in oral evidence addressing questions from Mr Bartley on day 1 of the hearing, as noted at page 42 of the transcript.

that their clients and the wider community will experience negative social and economic impacts from the increase in EGMs.

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

- *“Before the installation of the Additional EGMs at the Premises the Venue Operator must submit to the VGCCC for approval a harm minimisation policy and procedures manual (the Policy).*
- *The purpose of the Policy is to enshrine best practice harm minimisation practices in connection with the use of EGMs at the Premises.*
- *The Policy must include:*
 - (a) *Steps that the Venue Operator will take to minimise harm arising from EGM use (over and above any existing requirements detailed in the Premises’ Code of Conduct, the current VGCCC Gambling Venue Checklist and harm minimisation strategies set out in the Gambling Regulation Act 1998 and/or relevant Regulations);*
 - (b) *Confirmation that there will be a minimum of 3 staff on duty in the gaming room at all times the gaming room is operational; and*
 - (c) *Enshrining the current practice prohibiting the service of food and beverages to patrons whilst seated at EGMs (that is, patrons must collect food and beverages from the bar).*
- *The Policy, including the matters specified herein, may be amended to the satisfaction of the VGCCC.*
- *When approved, the Policy;*
 - (a) *Is to be implemented at the Premises to the satisfaction of the VGCCC; and*
 - (b) *Is to be provided to the Premises’ Venue Support Worker; and*
 - (c) *Is to be displayed in the Gaming Room in a manner that invites public attention at all times the Gaming Room is open to the public.*
- *The Venue Operator must confirm in writing each year that the gaming room is being operated in accordance with the Policy.*
- *If the VGCCC determines that the Venue Operator has not implemented or complied with the Policy and that failure to implement or comply with the Policy is ongoing, the VGCCC may direct the Venue Operator to cease operating any of the Additional EGMs at the Premises until such failure to implement or comply with the Policy is rectified to the satisfaction of the VGCCC.*
- *All entrances and external windows to the gaming room must have frosted glass or other treatment to obscure vision into the gaming room.*

Proffered conditions

125. The Applicant has also proffered other conditions that are intended to mitigate and minimise the harm that would flow from problem gambling if the Application were granted. These include:

- *“That the Venue Operator must ensure that food and drink is made available to patrons at all times the gaming room is in operation.*
- *The Venue Operator must install a sign at the Grosvenor Street entrance to the Hotel that reads:*
 - (a) *Bistro, sports bar and function room access is available via the St Kilda Road entrance to the Hotel.*
- *The Venue Operator will engage an external training organisation to provide Anti-Money Laundering (AML) and Counter Terrorism Finance (CTF) risk awareness training to one (1) Director of the Venue Operator, the nominee, managers and all gaming room staff using a know your customer approach (AML/CTF Risk Awareness Training Program).*
- *The AML/CTF Risk Awareness Training Program must be a written plan that shows how the Venue Operator, the nominee, managers and all gaming room staff are instructed about the following:*
 - (a) *The Venue Operator’s obligations under Australia’s AML/CTF legislation;*
 - (b) *The consequences of not complying with AML/CTF legislation;*

- (c) *The type of AML/CTF activity staff may see at a gaming premises and the consequences of the risk of this activity; and*
- (d) *How the Venue Operator will meet its obligations, including processes and procedures to identify, manage and mitigate this risk.*

- *This training must be undertaken by the Venue Operator at the Premises once every two (2) years.”⁵⁰*

126. It is noted that the Commission can impose conditions if it grants the Application and that these conditions can be as proposed by the Applicant or in another form that the Commission thinks appropriate.
127. The Commission notes from the VGCCC Report that the average net EGM expenditure per adult in the City of Port Phillip (\$196.97), based on spending in the 2021/22 financial year) is lower than the metropolitan average (\$405.96), and less than the State average (\$409.09).
128. The ShineWing Report submitted that the Applicant’s EGM utilisation record indicated that the Premises’ gaming room operated at peak utilisation for 0.95%⁵¹ (i.e. greater than 70%) of the time during the survey period.

Conclusion – Problem Gambling

129. Overall, the Commission considers that as there is moderate additional net expenditure associated with this Application and therefore there will be a portion of this associated with problem gambling and those experiencing gambling harm. Consistent with Mr Stilwell’s own statement, the Commission considers that ShineWing’s estimates are more likely to underestimate rather than overestimate likely additional expenditure. The Commission also notes that there are improvements to the operating of the Premises that would arise from the imposition of the proposed conditions. Accordingly, the Commission considers the impact of an increase in gaming expenditure associated with problem gambling and the possibility of increased incidence and impact of gambling related harm on the community is both an economic and social disbenefit to which the Commission attributes a marginal to low weight.

Conclusion on economic impacts

130. The Commission’s conclusion on both economic and social impacts is provided at paragraph 158 and 159.

Social impacts

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

Improved services and facilities at the Premises

132. Separate from the economic benefit that may be associated with expenditure involved in capital works at the Premises, there are also potential social benefits to the community that may arise having regard to the nature of the renovations that are intended to take place.
133. As noted at paragraphs 68 to 73 above, the Applicant submitted that capital works are being offered to provide additional facilities as part of this Application.
134. The Ratio Report notes that proposed renovation works to provide “a more cohesive venue that provides a greater range of facilities” will provide a low benefit.
135. In the Symplan Report, Ms Rosen considered that improvements to facilities will have a negligible to low positive impact, but noted that the Grosvenor Hotel bistro is currently being renovated, so there is doubt as to whether this negligible to low social benefit is reliant on this Application being approved.
136. At the Hearing, the Applicant clarified that the proposed renovation works had not commenced and that they were contingent on this Application being approved. Accordingly, the Commission understands the intention is for the Applicant to only conduct the proposed renovations works if this Application is granted.
137. The Commission places no weight to a marginal positive weight on this social benefit.

Increased gaming opportunities for those who enjoy gaming

138. Increased gaming opportunities are a positive impact if the Application will better serve the needs of gaming patrons through providing additional opportunities and choice for those who play EGMs responsibly.

⁵⁰ Proposed Conditions, dated 7 March 2023, paragraphs 4 and 5.

⁵¹ ShineWing Report, paragraph 8.1 – ‘peak utilisation’ is defined as where ostensible demand exceeds supply.

139. The Ratio Report considered that the Application will have a negligible benefit in terms of providing increased opportunities for non-problem gambling. They noted some benefit to patrons of the Premises, given the existing utilisation and improved choice as a result of the increase in EGMs.
140. In the Symplan Report, Ms Rosen assessed this as having a neutral benefit given the Proposed Transfer. The Council submitted that this factor cannot accurately be assessed without 'locking in' the removal of machines from the Dick Whittington Tavern, but considers that it is of limited relevance in any case given that the experts consider it is of neutral to negligible impact.
141. The Commission considers that the existing gaming environment within City of Port Phillip and the Proposed Transfer is unlikely to have a discernible impact. The Commission notes that this benefit is to be weighed against the disbenefit to local community members who wish to avoid EGMs (including both those who are problem gamblers and those who are not). Overall, the Commission assesses this to have no weight.

Community contributions – Economic and Social

142. In determining the net economic and social impact of applications of this nature, both the Commission⁵² and VCAT⁵³ have regularly treated community contributions proposed by an Applicant as a positive benefit. However, for such contributions to be regarded as a benefit associated with the Application, it is necessary that they are properly regarded as community contributions and that they will result as a consequence of the Application being granted.
143. While the Commission continues to acknowledge the potential social and economic benefits of community contributions in assessing whether a net detriment will result, the Commission also considers these contributions (unless directed specifically to harm treatment or reduction) do not mitigate against or lessen any harms that may have been experienced from gambling.
144. In the Ratio Report, this was assessed as a low benefit. Ms Peterson noted that some positive weight is given to the provision of a new annual \$80,000 cash contribution to local community groups and the flow on benefits that can arise from such contributions.
145. As part of this Application, the Applicant has proposed the following conditions relating to community contributions:
- (a) make community contributions in the amount of \$80,000 (increased each year by the increase in CPI) in cash to community groups and sporting clubs in the City of Port Phillip whilst the additional 40 EGMs are in operation at the Premises (**Contributions**); and
 - (b) when distributing the Contributions, the Applicant will:
 - a. have regard to ensuring a broad distribution to a variety of community groups and sporting organisations with a view to the funds, where possible, being used to reduce inequalities within the community and provide tangible social and economic benefits to the residents of Port Phillip; and
 - b. each year will make an offer of contributions to not less than five community organisations who provide services that include reducing inequalities within the community or assisting vulnerable members of the community. The venue operator will keep records of these offers.
146. In the Symplan Report, Ms Rosen considered community contributions as a negligible positive, particularly because there is no "evidence of specific support for the proposed community contributions". The Council submitted Ms Rosen's evidence is more persuasive and the impact of the Applicant's proposed community contributions should be assessed as negligible.
147. As part of their reply to the proposed conditions relating to community contributions, the Council requested that the following conditions be imposed, requiring the Applicant to abide by the following:
- a. *"When planning the distribution of the Contribution for the next financial year the Venue Operator must before 30 April in any year invite in writing, a minimum of five community groups or community organisations who provide services that include reducing inequalities within the community or assisting vulnerable members of the community (**Community Organisations**) to receive the Contributions;*
 - b. *The invitation must provide not less than one month to respond.*

⁵² See e.g., *Application by Richmond Football Club* [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

⁵³ See e.g., *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

- c. *The invitations must be recorded by the Venue Operator and a copy provided to the Commission. If any of those Community Groups decline the invitation, this must be recorded in writing by the Venue Operator.*
- d. *If any of the Community Groups respond accepting the invitation to receive Contributions, 100 per cent of the Contribution funds must be allocated to the Community Group (s) which accept the invitation. In the event that:*
 - a. *No Community Organisation respond within one month of the invitation being sent; or*
 - b. *The Community Organisation(s) that do accept the invitation to receive funds state that they do not wish to receive an amount that in total is greater than 100 per cent of the Contribution, the Venue Operator can distribute the remainder of the Contribution to other community groups or community sporting organisations at the Venue Operator's discretion.*
- e. *Community Organisations that decline an invitation to receive Contributions cannot count towards the minimum five Community Organisations invited for the following year's Contribution distribution process as outlined in Condition a above."*

148. Overall, the Commission considers that the effect of the proposed conditions is to commit the Applicant to making cash community contributions in the amount of \$80,000 per year to community groups and sporting clubs in the City of Port Phillip. Accordingly, the Commission considers that the Applicant's commitment to formalise the community contribution program and to increase the overall amount would be a positive economic and social benefit and considers it appropriate to attribute marginal weight to this positive impact.

Community attitude

149. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,⁵⁴ the Commission recognises that while community apprehension is not an over-riding factor (in the sense that the Application is not a referendum on gaming), it is certainly a relevant factor in the consideration of the particular social impact within, and as part of, the 'no net detriment' test.
150. The Ratio Report stated that community attitudes should be assessed as neutral, but provided no evidence in support of this claim. The Applicant has noted this be given reduced weight given the existing level of access to gaming machines at the venue and the municipality generally.
151. The Symplan Report did not assess community attitude, but an overview of the limited feedback received on the Application from community social support services was provided. The Council submitted that since the finalisation of the Symplan Report:
 - Uniting Church, who provide mental health and social support services, has advised that gambling addiction is encountered by staff and volunteers at their drop-in centre; and
 - Port Phillip Community Group, who provide support services, has advised that their general position is that they oppose the Application.
152. The Council submitted that this goes to the significant negative impact of problem gambling and notes that there are issues with a lack of community consultation.
153. The Commission notes that no community survey was conducted by the Applicant or the Council, therefore leaving the Commission without the capacity to further assess the extent of the broader community attitude to the Application.
154. Whilst the Commission received two submissions generally opposed to increased gambling, one of which was based on a misconception, that there would be a net increase in the number of EGMs in the LGA and an objection from the Council (as representative of the community of the municipality in which the EGMs are located), there is only very limited evidence for the Commission to consider regarding community attitudes in relation to this Application. In the circumstances, the Commission considers it appropriate to attribute no weight to this social impact.

Impact on Community Health and Connectedness/Access to social, leisure, entertainment and recreation facilities

⁵⁴ The *Romsey* case (2008) 19 VR 422, [44] per Warren CJ, Maxwell P and Osborn AJA. See also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [73] per Dwyer DP.

155. Each party only made a submission specifically on one of these two factors. The Commission considers that the impact of each have been adequately assessed by it within other criteria and, accordingly, does not assess either factor as carrying any additional weight.

Conclusion on social impacts

156. After considering the social benefits of the Application balanced against the social disbenefits, the Commission considers that there is likely to be no social impact if the Application is granted.

Net economic and social impact

157. The '*no net detriment*' test in section 3.4.20(1)(c) of the GR Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. As stated in paragraph 24 above, this test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that based on the evidence before it, the net economic and social impact of approval on the well-being of a relevant community will be either neutral or slightly positive.⁵⁵

158. The Commission is satisfied that the approval will result in an impact that is finely balanced and marginally above neutral. Accordingly, the pre-condition set out in section 3.4.20(1)(c) of the GR Act is satisfied.

D. Independence from other gaming venues

159. Section 3.4.20(1)(d) of the GR Act requires the Commission to be satisfied that, if the Premises is proposed to be added to the Applicant's licence as an approved venue and the Applicant (or an associate of the Applicant) operated an approved venue within 100 metres of the Premises, the management and operation of the Premises and other approved venues are genuinely independent of each other.

160. The Commission notes that the Application is not proposing to add the Premises to the Applicant's venue operator's licence (as it already exists on the licence), nor does the Applicant (or an associate) operate an approved venue within 100 metres of the Premises.

161. On this basis, the Commission considers that the mandatory pre-condition set out in section 3.4.20(1)(d) is not applicable to this Application.

General discretion of the Commission

162. As noted in paragraphs 27 to 29 above, the Commission retains an ultimate discretion whether to grant or refuse the Application, once the mandatory preconditions set out in section 3.4.20(1) have been found to be satisfied.

163. In exercising its discretion whether or not to approve the Application, the Commission may take into account relevant matters.⁵⁶ These include broader policy considerations, drawn from the content and objectives of the GR Act as a whole.⁵⁷

164. The Commission notes that the 'policy context' of the GR Act, is referenced through some, if not all, of the following six principles set out in the second reading speech for the Bill:

- developing and reinforcing the government's commitment to responsible gambling through measures that assist and protect problem gamblers and those at risk of becoming problem gamblers, their families and the wider community;
- developing and maintaining the state's commitment to the highest standards of probity for gambling service providers;
- accepting gambling is a valid activity for many Victorians who are entitled to expect ongoing high standards of service, transparency and accountability from the gambling sector;
- ensuring that the legitimate financial benefits of gambling (both private and public) are transparent, appropriately recognisable and fairly distributed to the Victorian community;

⁵⁵ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 at [52] per Dwyer DP.

⁵⁶ Section 3.4.20(1)

⁵⁷ *Ocean Grove Bowling Club v Victorian Commission for Gambling Regulation* [2006] VCAT 1921.

- that to the extent possible consistent with the other principles, gaming service providers operate in a competitive environment; and
- establishing proper consultative processes to ensure that appropriate information is given to, and input is received from, the wide variety of persons interested in gambling including stakeholders, affected parties and, to the widest extent possible, the broader Victorian community.⁵⁸

165. Specific to this Application, the Commission refers the proposed cessation of the operation of the gaming room and of any EGMs at the Dick Whittington Tavern (as discussed at paragraphs 3 and 55 - 58 above).

Decision on review

CONCLUSION

166. On the material that has been put before it, the Commission has determined that the mandatory pre-conditions for approval set out in section 3.4.20(1) have been satisfied in that the “no net detriment” test has been satisfied and that in exercising its discretion it is appropriate, as stated in paragraph 22 to grant the Application.

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

The preceding 168 paragraphs are a true copy of the Reasons for Decision of Mr Andrew Scott, Chair, Dr Ron Ben-David, Deputy Chair and Mr Chris O’Neill, Commissioner.

⁵⁸ Hansard, Legislative Assembly, 6 November 2003 at p 1595 (Hon. John Pandazopoulos, Minister for Gaming).

Appendix A

The conditions of the Decision to vary the number of EGMs permitted in the approved premises, the Grosvenor Hotel, located at 10 Brighton Road, Balaclava (the Premises) from twenty-two (22) to sixty-two (62), imposed under section 3.4.20(3) of the Gambling Regulation Act 2003.

1. Transfer of EGMs

- (a) All of the gaming machine entitlements must be transferred from the Dick Whittington Tavern, 32 Chapel Street Balaclava (**DWT**), to the Premises, prior to the commencement of the operation of any of the additional 40 EGMs (the **Transferred EGMs**) at the Premises.
- (b) Prior to the commencement of the operation of any of the Transferred EGMs at the Premises the Applicant must file with the Victorian Gambling and Casino Control Commission, (the **VGCCC**) evidence that the approval at the DWT has been surrendered and comply with any other requirement which the VGCCC considers is necessary to ensure that no EGMs are permitted to operate at the Dick Whittington Tavern.
- (c) The Applicant acknowledges that any breach of Conditions 1(a) or 1(b) may constitute sufficient grounds for the Commission to take disciplinary action against the Applicant.

2. Community Contributions

- (a) The Venue Operator will make cash contributions in the sum of \$80,000 per annum (indexed to CPI) for as long as any of the Transferred EGMs are operational at the Premises (**the Contribution**).
- (b) The Contribution will be allocated each year to not-for-profit community groups and sporting organisations providing services and facilities to residents within the City of Port Phillip.
- (c) When distributing the Contribution, the Venue Operator must:
 - (i) Have regard to ensuring a broad distribution to a variety of community groups and sporting organisations with a view to the funds, where possible, being used to reduce inequalities within the community and provide tangible social and economic benefits to the residents of Port Phillip; and
 - (ii) Offer to make contributions to not less than five (5) community organisations which provide services that include reducing inequalities within the community or assisting vulnerable members of the community and keep records of these offers.
- (d) If the Contribution is not allocated in each full year in accordance with this condition, the operation of the Transferred EGMs must cease immediately for as long as the Contribution (or part thereof) remains outstanding.
- (e) The Venue Operator must keep detailed financial records of the Contribution (including, but not limited to the offers made to community groups) and must provide:
 - (i) financial accounts evidencing the Contribution to the VGCCC on request; and
 - (ii) a yearly attestation to the VGCCC, signed by a director of the Venue Operator that the Contributions has been made.

- (f) The Venue Operator will continue to provide access to all function facilities free of charge to eligible community and sporting groups.

3. Works

- (a) The Works at the Premises (as defined in clause 3(b)) must be:
 - (i) As to the ground floor substantially completed to the satisfaction of the Commission prior to the commencement of the operation of any of the Transferred EGMs; and
 - (ii) As to the balance, substantially completed to the satisfaction of the Commission by the date that is 18 months after the commencement of the operation of any of the Transferred EGMs at the Premises.
- (b) For the purpose of this clause, the Works must be generally in accordance with the floor plans of the Premises prepared by Lime Design Interiors as presented to the Commission at the hearing but shall also include:
 - (i) The entry from Grosvenor Street being mandated as an exit only;
 - (ii) That the self-closing doors to the Gaming Room are both floor to ceiling and opaque and have screens behind the sliding door or other treatment to prevent vision into the Gaming Room from patrons entering or leaving the bistro and dining areas of the Premises;
 - (iii) The installation of absorptive material to the ceiling of the Gaming Room to provide acoustic attenuation;
 - (iv) All external windows to the Gaming Room must have frosted glass or other treatment to prevent vision into the Gaming Room from patrons entering or leaving the bistro and dining areas of the Premises; and
 - (v) The removal of the smoking lounge adjacent to the Gaming Room.
- (c) If the Works are not substantially completed in accordance with the deadline contained in condition 3(a)(ii) or within 30 months of the date of this decision, whichever is the earlier, then the approval to operate the Transferred EGMs at the Premises will lapse.
- (d) The Commission may, on the request of the Venue Operator agree to extend the time for completion of the Works. The request must be made no later than the date that is three months prior to the applicable date referred to in condition 3(c). Any request for an extension of time must include an explanation as to why the Works have not been substantially completed.

4. Harm Minimisation

- (a) Before the commencement of operation of the Transferred EGMs at the Premises the Venue Operator must submit to, and have approved by, the Commission a harm minimisation policy and procedures manual (**the Policy**).
- (b) The purpose of the Policy is to enshrine timely, pro-active, effective and demonstrable harm minimisation practices in connection with the use of EGMs at the Premises.
- (c) The Policy must at a minimum include:
 - (i) Steps that the Venue Operator will take to minimise harm arising from EGM use (over and above any existing requirements detailed in the Premises' Code of Conduct, the current VGCCC Gaming Venue Checklist and harm minimisation strategies set out in the *Gambling Regulation Act 2003* and/or relevant Regulations);
 - (ii) Confirmation that there will be a minimum of 2 staff on duty in the Gaming Room at all times the Gaming Room is operational; and
 - (iii) Enshrining the current practice prohibiting the service of any food and beverages to patrons whilst seated at EGMs (that is, patrons must collect all food and beverages from the bar).
- (d) When approved the Policy;
 - (i) Is to be implemented at the Premises to the satisfaction of the Commission; and
 - (ii) Is to be provided to the Premises' Venue Support Worker; and
 - (iii) Is to be displayed in the Gaming Room in a manner that invites public attention at all times the Gaming Room is open to the public.
- (e) A director of the Venue Operator must provide a signed attestation to the VGCCC each year that the Gaming Room is being operated in accordance with the Policy.
- (f) If the VGCCC determines that the Venue Operator has not implemented or complied with the Policy and that failure to implement or comply with the Policy is ongoing, the VGCCC may direct the Venue Operator to cease operating EGMs at the Premises until such failure to implement or comply with the Policy is rectified to the satisfaction of the VGCCC.

5. Other Conditions

- (a) The Venue Operator must ensure that food and drink is made available to patrons at all times the Gaming Room is in operation.
- (b) The Venue Operator must install a sign at the Grosvenor Street doorway to the Premises that reads:

Access is only available via the Brighton Road entrance to the Hotel.
- (c) Prior to the commencement of operation of the Transferred EGMs at the Premises, the Venue Operator will engage an external training organisation to provide Anti-Money Laundering (**AML**) and Counter Terrorism Finance (**CTF**) risk awareness training to one (1)

Director of the Venue Operator, the nominee, managers and all Gaming Room staff using a know your customer approach (**AML/CTF Risk Awareness Training Program**).

- (d) The AML/CTF Risk Awareness Training Program must be a written plan that shows that shows how the Venue Operator, the nominee, managers and all Gaming Room staff are instructed about the following:
 - (i) The Venue Operator's obligations under Australia's AML/CTF legislation;
 - (ii) The consequences of not complying with AML/CTF legislation;
 - (iii) The type of AML/CTF activity staff may see at a gaming premises and the consequences of the risk of this activity; and
 - (iv) How the Venue Operator will meet its obligations, including processes and procedures to identify, manage and mitigate this risk.
- (e) This training must be undertaken by the Venue Operator, including by all Gaming Room staff members at the Premises prior to the commencement of the operation of the Transferred EGMs, and thereafter every two (2) years.
- (f) If the VGCCC determines that the Venue Operator has not complied with this condition 5 the VGCCC may direct the Venue Operator to cease operating any of the EGMs at the Premises until such time as compliance is rectified to the satisfaction of the VGCCC.
- (g) For the purpose of these Conditions, "Gaming Room" means the green line area where the cashier and EGMs are operated and does not include the sports bar.

Attachment 1

Letter to the Commission Surrendering Premises Approval for DWT

2023

Victorian Gambling and Casino Control
Commission (VGCCC)
Level 13,
12 Shelley Street
RICHMOND Victoria 3121

By Email Only:
contact@vgccc.vic.gov.au

Dear Sir/ Madam

Trio Taverns Pty Ltd: V04095786
Approved Premises: Dick Whittington Tavern, 32 Chapel Street, Balaclava VIC 3182

As the sole director of Trio Taverns Pty Ltd, the holders of Venue Operator's Licence V04095786 and the holder of the Premises Approval pertaining to the Dick Whittington Tavern, I hereby apply to the Commission pursuant to section 3.3.15 of *The Gambling Regulations Act 2003* to surrender the premises approval pertaining to that approved premises.

Yours faithfully

Jonathan Francis
Sherren Director of
Trio Taverns Pty Ltd

Appendix B

Summary of economic and social impacts

The following table is a summation of the economic and social benefits and disbenefits considered by the Commission in reaching its decision. The table is to be read in conjunction with the main body of the Reasons for Decision, as the weight attributed to each factor is determined in light of the particular circumstances of the Application and the evidence presented.

Economic impacts

	Impact	Paragraph numbers	Weighting
Benefits	<i>Expenditure on capital works</i>	68 - 73	Marginal benefit
	<i>Supply contracts</i>	74 - 76	No weight.

	<i>Complementary expenditure</i>	77 - 80	Nil – marginal benefit
	<i>Additional employment</i>	81 - 87	Nil – marginal benefit
	<i>Gaming expenditure not associated with problem gambling</i>	88 - 93	Nil – marginal benefit

	<i>Increased gaming competition in the City of Port Phillip</i>	94 - 100	Nil – marginal benefit
Disbenefits	<i>Diversion of trade from other gaming and non- gaming venues</i>	101 - 106	Marginal disbenefit

Social impacts

	Impact	Paragraph numbers	Weighting
Benefits	<i>Improved services and facilities at the Premises</i>	132 - 138	Nil - Marginal benefit
	<i>Increased gaming opportunities for those who enjoy gaming</i>	139 - 141	No weight – because any associated benefit has already been accounted for.
Disbenefits	<i>Community attitude</i>	151 - 155	No weight

Social and economic impacts

	Impact	Paragraph numbers	Weighting
Benefits	Community contributions	142 - 148	Marginal benefit
Disbenefits	<i>Gaming expenditure associated with problem gambling and gambling related harm.</i> <i>Possibility of increased incidence and the potential impact of problem gambling on the community</i>	107 - 129	Marginal – low disbenefit