



Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by Werribee Football Club Limited to amend its venue operator's licence to vary the number of electronic gaming machines at the approved premises, the Tiger's Clubhouse, located at 70 Old Geelong Road, Hopper's Crossing, Victoria, from seventy-five (75) to eighty-five (85).

Commission:

Ms Helen Versey, Deputy Chair
Dr Dina McMillan, Commissioner

Appearances:

Ms Sara Porritt of Counsel, instructed by BSP Lawyers, for
the Applicant
Mr Ian Munt of Counsel, instructed by Maddocks Solicitors, for
the Responsible Authority
Ms Lilli Owens-Walton, Counsel Assisting the Commission

Date of Hearing:

5 April 2018 and 6 April 2018

Date of Decision:

4 May 2018

Date of Reasons:

30 May 2018

Decision:

The Application is granted subject to the conditions as outlined at paragraph 139.

Signed:

A handwritten signature in black ink, appearing to read 'Helen Versey'.

Ms Helen Versey
Deputy Chair

REASONS FOR DECISION

INTRODUCTION

1. On 18 December 2018, Werribee Football Club Limited (**the Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) to amend its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) at the approved premises, the Tiger's Clubhouse, located at 70 Old Geelong Road, Hopper's Crossing, Victoria 3029 (**the Tiger's Clubhouse**), from seventy-five (75) to eighty-five (85) (**the Application**).
2. The relevant municipal authority is City of Wyndham (**Council**). By correspondence to the Commission dated 8 February 2018, Council stated that it intended to make a written economic and social impact submission regarding the Application, and it did so on 2 March 2018. Council's economic and social impact submission stated that Council did not support the Application.
3. The Commission considered the Application at a public inquiry conducted on 5 and 6 April 2018 (**the hearing**).¹ The Applicant was represented by Ms Sara Porritt of Counsel, instructed by BSP Lawyers. Council was represented by Mr Ian Munt of Counsel, instructed by Maddocks.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Gaming on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (**GR Act**). The GR Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities, and some members of some communities. For this reason, the GR Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some, and a potentially harmful activity for others.
5. The objectives of the GR Act are set out at section 1.1, which provides:

...

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

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

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

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

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

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

- (1) *The purpose of this Chapter is to establish a system for the regulation, supervision and control of gaming equipment and monitoring equipment with the aims of—*
 - (a) *ensuring that gaming on gaming machines is conducted honestly; and*
 - (b) *ensuring that the management of gaming equipment and monitoring equipment is free from criminal influence or exploitation; and*
 - (c) *regulating the use of gaming machines in casinos and other approved venues where liquor is sold; and*
 - (d) *regulating the activities of persons in the gaming machine industry; and*

- (e) *promoting tourism, employment and economic development generally in the State; and*
- (f) *fostering responsible gambling in order to—*
 - (i) *minimise harm caused by problem gambling;*
 - (ii) *accommodate those who gamble without harming themselves or others.*

(2) *The purpose of this Chapter is also to—*

- (a) *provide for the allocation of gaming machine entitlements in order to maximise the financial and social benefits to the Victorian community within the regulatory framework applying to the allocation of entitlements;*
- (b) *promote a competitive gaming industry with the aim of providing financial and social benefits to the Victorian community.*

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

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

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

...

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

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

9. 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.*

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

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

...

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

...

11. Section 3.4.20(1)(c) provides for what is now commonly described as the '*no net detriment*' test. It requires the Commission to be satisfied that there is no net detriment arising from the approval through positively and objectively establishing that the net economic and social impact will not be detrimental to the well-being of the community.²
12. 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:

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

- (a) the likely economic impacts of approval;
 - (b) the likely social impacts of approval; and
 - (c) the net effect of those impacts on the well-being of the relevant community.³
13. As such, the ‘*no net detriment*’ test is a composite test requiring consideration of a single net impact in economic and social terms on the well-being of the community.⁴ The test will be satisfied if, after weighing 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.
14. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.⁵ On review, decisions in the Victorian Civil and Administrative Tribunal (**VCAT**) have held that for impacts that may be both economic and social – for example the benefits of gaming consumption – it does not matter whether the impact is considered on the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.⁶
15. The Commission has adopted the same approach as VCAT in setting out a table of likely economic and social benefits both to enhance clarity of Commission decisions and facilitate greater consistency between the Commission and VCAT.⁷
16. If the Commission is not satisfied that the ‘*no net detriment*’ test is met, that is clearly fatal to the application before it, as given the opening words of section 3.4.20(1) of the GR Act, satisfaction of the test is a mandatory pre-condition to approval. However, although section 3.4.20(1) sets out certain mandatory considerations for the Commission, the provision is not exhaustive. If the Commission is satisfied that the ‘*no net detriment*’ test is met, it still has an ultimate discretion as to whether or not to grant the approval.⁸ The Commission must decide whether to make the proposed amendment, with or without any changes from that proposed by the applicant, even where the applicant has satisfied the minimum threshold of the ‘*no net detriment*’ test.⁹

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

⁴ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (‘Romsey No. 2’)* [2009] VCAT 2275, [332], [348] per Bell J cited in *Mount Alexander Shire* [2013] VCAT 101, [58] per Dwyer DP.

⁵ *Mount Alexander Shire* [2013] VCAT 101, [57] per Dwyer DP.

⁶ See *Romsey No. 2* [2009] VCAT 2275, [352] per Bell J; *Mount Alexander Shire* [2013] VCAT 101, [58] per Dwyer DP.

⁷ *Mount Alexander Shire* [2013] VCAT 101, [60] per Dwyer DP.

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

⁹ GR Act, section 3.4.20(2).

17. In considering the exercise of this discretion:
- (a) it must be exercised having regard to the purposes of the GR Act and, in particular, the specific purposes of Chapter 3 of the GR Act dealing with the regulation, supervision and control of gaming machines;¹⁰ and
 - (b) it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the GR Act as a whole.¹¹
18. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*¹² that, if all of the mandatory considerations under the GR Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval – other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.
19. Finally, pursuant to section 3.4.20(1)(a) of the GR Act, the Commission must be satisfied that the proposed amendment does not conflict with a Ministerial direction, if any, given under section 3.2.3 of the GR Act. Additionally, pursuant to section 9(4) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)*, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation. There are no relevant directions issued pursuant to section 3.2.3 of the GR Act that relate specifically to this Application.

MATERIAL BEFORE THE COMMISSION

20. The Applicant provided the Commission with the following material in support of the Application:
- (a) application form – Amendment to venue operator’s licence – vary gaming machines, dated 27 November 2017 (**the Application Form**);
 - (b) letter accompanying the Application Form prepared by BSP Lawyers on behalf of the Applicant outlining submissions of the Applicant dated 18 December 2017;
 - (c) a report titled the ‘Werribee Football Club (Tigers Clubhouse) Social and Economic Impact Statement VCGLR Top up application for an additional 10 EGMs,’ prepared by Mr Nick Anderson, (**Mr Anderson**), Senior Management Executive of NBA Group, dated December 2017 (**the NBA Report**). Mr Anderson appeared as a witness at the hearing, adopted the

¹⁰ *Mount Alexander Shire* [2013] VCAT 101, [98] per Dwyer DP.

¹¹ *Ocean Grove* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire* [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M. As to policy principles identified for consideration, see the *Romsey Case* (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

¹² [2013] VCAT 101, [98].

NBA Report as his evidence with amendments and provided oral evidence to the Commission;

- (d) a report titled the 'Tigers Clubhouse Expert's Report in Respect of the Application to Vary the Number of Electronic Gaming Machines from 75 to 85' prepared by Mr Tim Stillwell (**Mr Stillwell**) of ShineWing Australia Accountants and Advisors dated 14 December 2017 (**the ShineWing Report**). Mr Stillwell appeared as a witness at the hearing, adopted the ShineWing Report as his evidence with an amendment and provided oral evidence to the Commission;
- (e) witness statement of Mr Mark Robert Penaluna (**Mr Penaluna**), Chief Executive Officer (**CEO**) of the Applicant, dated December 2017 with attachments:
- (i) curriculum vitae;
 - (ii) summary of the Multi-Cultural Officer's calendar of activities;
 - (iii) cost estimates for capital works at the Tiger's Clubhouse;
 - (iv) letter from the Applicant's Bank, Bendigo Bank, declining an application for additional finance of \$1,932,500;
 - (v) synopsis of the Applicant's dedicated community liaison employee, Mr Mark Gallagher's, activities in 2017; and
 - (vi) suggested conditions to attach to approval of the Application (if the Commission decided to approve the Application).

Mr Penaluna appeared as a witness at the hearing, adopted his witness statement as his evidence and provided oral evidence to the Commission;

- (f) witness statement of Mr Rhys New (**Mr New**), General Manager of the Tiger's Clubhouse, dated December 2017 with attachments:
- (i) bistro, bar and day menus at the Tiger's Clubhouse;
 - (ii) plans for proposed capital works at the Tiger's Clubhouse;
 - (iii) letter from the Tiger's Clubhouse venue support worker, Ms Belinda Opie, regarding responsible service of gaming (RSG) training engagement;
 - (iv) the Tiger's Clubhouse RSG Staff Policy and House Policy; and
 - (v) photographic representations of the Tiger's Clubhouse Your Play Day.

Mr New appeared as a witness at the hearing, adopted his witness statement as his evidence and provided oral evidence to the Commission; and

- (g) witness statement of Mr Leigh James Barrett (**Mr Barrett**) dated 11 December 2017 with attachments:
- (i) curriculum vitae of Mr Barrett;

- (ii) the Tiger's Clubhouse Responsible Gambling Policies and Procedures Manual dated July 2017;
 - (iii) the Tiger's Clubhouse compliance audit findings dated 28 November 2017; and
 - (iv) the Tiger's Clubhouse Responsible Gambling Code of Conduct Independent Evaluation 2016/2017 dated August 2017.
21. On 6 March 2018, Council provided the Commission and the Applicant with an economic and social impact submission in respect of the Application, which included a Social and Economic Impact Assessment¹³ (**the Council Report**). The Council Report was authored by Ms Bonnie Rosen of Symplan. On 4 April 2018, Council provided the Commission and the Applicant with an expert witness statement addendum report (**Addendum Report**), also authored by Ms Rosen. Ms Rosen attended the hearing, adopted the Council Report and Addendum Report as her evidence and provided oral evidence to the Commission.
22. The following material, prepared by Commission officers, was provided to the Applicant and Council and considered by the Commission:
- (a) a report titled *Pre-Hearing Inspection and Compliance Report*, for Werribee Football Club Limited (The Tiger's Clubhouse), dated 7 March 2018 (**the Pre-Hearing Report**);¹⁴ and
 - (b) a report titled *Economic and Social Impact Report, Gaming Machine Increase*, dated November 2017 and updated on 3 April 2018 (**the VCGLR Report**).¹⁵
23. Prior to the hearing, Deputy Chair Versey and Commissioner McMillan each visited the Tiger's Clubhouse.
24. At the hearing, the following further material was provided to the Commission in relation to the Application by the Applicant:
- (a) further written submissions, dated 6 April 2018;
 - (b) confirmation regarding the amounts and recipients of donations and sponsorships made by the Applicant in 2015, 2016 and 2017; and
 - (c) photographs of the Tiger's Clubhouse featuring the recently installed sight screen.
25. At the hearing, the following further material was provided to the Commission by Council:
- (a) further written submissions dated 6 April 2018;

¹³ The Social and Economic Impact Assessment was entitled 'document entitled *'Proposed increase in EGMs at The Tigers Clubhouse Social and Economic Impact Assessment – Expert Witness Statement Attachment A'*, dated 27 February 2018.

¹⁴ The Pre-Hearing Report was provided to the parties on 13 March 2018.

¹⁵ The VCGLR Report was provided to the parties on 25 October 2017.

- (b) plans for capital works initiatives and costs at the Tiger's Clubhouse dated 2009, 2010, and 2014-17;
- (c) VCGLR Community Benefit Statements for the Tiger's Clubhouse for the financial years ending 30 June 2017, 2016 and 2015; and
- (d) An extract of the Wyndham Planning Scheme, in particular clause 52.28 and the schedule to clause 52.28 'Gaming.'

DECISION AND REASONS FOR DECISION

Location

26. The Tiger's Clubhouse is located in the City of Wyndham at 70 Old Geelong Road, Hopper's Crossing, Victoria in a mixed-use area. The Tiger's Clubhouse currently comprises a bistro and a restaurant open daily for meals, an outdoor smoker's area and a gaming area with 75 EGMs. The Tiger's Clubhouse is immediately situated in a commercial district with a residential area to the north. To the south of the Tiger's Clubhouse, on the other side of the highway, is a large area of farmland which has been zoned for redevelopment.
27. The City of Wyndham is a metropolitan local government area (**LGA**) located approximately 30 kilometres south-west of Melbourne and covering an area of 542 square kilometres. According to the VCGLR Report, the City of Wyndham has an adult population of 162,786 which ranks it as the twelfth most populous of the 31 metropolitan municipalities. The annual rate of population growth, projected by the Department of Environment, Land, Water and Planning, for the period 2017 to 2022 is 3.8% compared with the Victorian average of 1.8%. Projections also indicate that by 2022, 23.4% of the population will be over the age of 50.
28. The City of Wyndham contains an area subject to a regional cap on the maximum permissible number of gaming entitlements, in accordance with a Ministerial Order pursuant to sections 3.2.4 and 3.4A.5(3A) of the GR Act. The Tiger's Clubhouse is located within that capped region, where the maximum permissible number of gaming machine entitlements is 638.¹⁶ Currently there are 13 gaming venues operating within the City of Wyndham with approvals to operate a total of 628 EGMs in the capped region, and 893 across the whole City of Wyndham. This Application, if approved, would see the regional capped reached.

¹⁶ See the Ministerial Order under sections 3.2.4 and 3.4A.5(3A) of the GR Act dated 20 September 2017 and taking effect on 3 November 2017 (*Victorian Government Gazette No. S 318 Wednesday 20 September 2017*).

29. The City of Wyndham has an EGM density of 5.5 EGMs per 1,000 adults, which is 5.9% more than the metropolitan LGA average of 5.2% and 0.4% less than the State average of 5.5.¹⁷ This ranks the City of Wyndham as the 15th highest of 31 metropolitan LGAs with gaming machines in terms of EGM density per 1000 adults.
30. The VCGLR Report indicates that in 2016-17 City of Wyndham had an average gaming expenditure of \$601 per adult (based on projections from the 2016 population data),¹⁸ which is 7.0% higher than the metropolitan LGA average of \$561 and 10.8% higher than the State average of \$542.
31. The VCGLR Report states that this Application would (if approved):
- (a) increase the total number of approvals for EGMs within the capped region of the City of Wyndham by 10, to 638 EGMs, which is approximately a 1.59% increase;¹⁹
 - (b) increase the EGM density of the City of Wyndham from 5.5 to 5.55 per 1,000 adults compared with the metropolitan average of 5.2 and State average of 5.5 EGMs per 1,000 adults;²⁰
 - (c) result in new gaming expenditure in the municipality of approximately \$190,463²¹ in the first year of operation which would have equated to approximately 0.19% of total gaming expenditure in the City of Wyndham in the 2016-2017 financial year; and
 - (d) increase the expenditure per adult within the City of Wyndham by \$1 to \$602 (approximately a 2% increase)
32. The City of Wyndham is characterised by a mixed socio-economic profile with indices both above and below metropolitan LGA averages. It is ranked 50th of 79 LGAs in Victoria on the Socio-Economic Indexes for Areas (**SEIFA**) index of relative socio-economic disadvantage,²² (**IRSD**) (1st being the LGA with the greatest disadvantage) indicating the LGA is relatively advantaged, but does contain some areas of disadvantage.
33. In relation to the immediate surrounding area of the Tiger's Clubhouse (within 2.5 kilometres),

¹⁷ The data included in the VCGLR Report is displayed to one decimal place however rounded from real underlying numbers, which will usually have more decimal points than displayed. This explains why the EGM density for the City of Wyndham at 5.5 which is 0.4% lower than the State average which is also 5.5.

¹⁸ Department of Environment, Land, Water and Planning, *Victoria in Future 2016*.

¹⁹ Total number of EGMs within the City of Wyndham as a whole will be 903 if approved.

²⁰ VCGLR current LGA population density and gaming expenditure statistics as at June 2016.

²¹ \$190,463 is the 'high' range estimate from the ShineWing Report.

²² SEIFA is a product developed by the Australian Bureau of Statistics to assist in the assessment of the welfare of Australian communities. The SEIFA Index allows the ranking of regions/areas, providing a method of determining the level of social and economic well-being in each region.

28.4 % of Statistical Areas Level 1 (**SA1s**) are in the 1st quintile²³ of SEIFA IRSD scores, with 27.3% of SA1s in the 4th or 5th quintile. This suggests that the area immediately surrounding the Tiger's Clubhouse is relatively disadvantaged. However, as discussed in paragraph 50, a large area immediately surrounding the Tiger's Clubhouse is small lot farming awaiting redevelopment, which has an impact on the value of the land and its socio-economic profile.

34. The unemployment rate in City of Wyndham is 7.9%, which is higher than the unemployment rate for Victoria of 6%. Despite the creation of an estimated 2,482 jobs in the City of Wyndham over the past year, the unemployment rate increased from 6.9% to 7.9%. In the area immediately surrounding the Tiger's Clubhouse, of the Statistical Area Levels 2 (**SA2s**),²⁴ 66.7%²⁵ are in the first quintile for unemployment indicating there is relatively high unemployment in that area. In the specific SA2 where the Tiger's Clubhouse is situated, Hopper's Crossing – North,²⁶ unemployment is 8.7%.²⁷ These statistics indicate relatively high unemployment in the area immediately surrounding the Tiger's Clubhouse.
35. The equivalised household income (**EHI**) for the immediate surrounding area is \$952.85, which is lower than the EHI for the municipality (\$1001.57) and for metropolitan LGAs (\$1078.08).

Nature of the Tiger's Clubhouse

36. The Tiger's Clubhouse is the social facility for the Werribee Football Club, a not-for-profit football club who fields a side, the Werribee Tigers, in the semi-professional Victorian Football League (**VFL**) competition. It also serves the highly important function of providing a revenue stream for the Werribee Football Club. According to the CEO of the Applicant, Mr Penaluna, the Tiger's Clubhouse was developed in 2001 to establish a licensed facility at which members and guests could socialise, dine and game, as well as providing a social base for football club functions and an additional revenue stream for the Werribee Tigers. The Applicant holds a club venue operator's licence within the meaning of the GR Act, and so is established for a community purpose.²⁸

²³ SEIFA index of relative disadvantage 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).

²⁴ SA2 (Statistical Area 2) is a general purpose medium sized area built from whole SA1s, generally having a population of 3,000 to 25,000.

²⁵ Department of Employment, *Small Area Labour Markets*, December 2017, smoothed data.

²⁶ The NBA Report states that the Tiger's Clubhouse is in Hopper's Crossing South, however 2016 and 2011 ABS data places the Tiger's Clubhouse in the Hopper's Crossing North SA2.

²⁷ Above n 26.

²⁸ In the GR Act, 'community purpose', when not used in Division 2 of Part 6 of Chapter 3 means, amongst other things, any sporting or recreational purpose, including the benefiting of any sporting or recreational club or association. Also, the constituting document of a club must contain provisions prohibiting the distribution of any annual profit or surplus to its members: See GR Act, section 3.4.8(1A).

37. The Tiger's Clubhouse is open from Monday – Saturday from 9.00 am – 5.00 am and Sunday 10.00 am – 3.00 am. The Tiger's Clubhouse currently comprises:
- (a) a 220 seat capacity bistro, open daily between 12.00 pm – 2.30 pm and 6.00 pm – 9.00 pm seven days per week. Food is also available at other times when the Bistro is closed;
 - (b) a gaming room with 75 EGMs;
 - (c) TAB and Sports Bar;
 - (d) seating areas with no gaming or Keno present; and
 - (e) an outdoor smoking area.
38. The Tiger's Clubhouse hosts activities and events each day of the week including:
- (a) bingo and buy-one-get one free meals on Mondays;
 - (b) birthday day for members on Tuesdays;
 - (c) morning melodies on the last Wednesday of the month;
 - (d) poker tournaments on Wednesdays, Thursdays and Saturdays;
 - (e) community raffles on Fridays;
 - (f) live entertainment on Friday – Sunday; and
 - (g) trivia on Sunday nights.
39. As at the end of March 2017, the Tiger's Clubhouse membership base was 6,329 members, with 28% of members residing outside of 2.5km area surrounding the Tiger's Clubhouse.

Financial circumstances of the Werribee Football Club

40. As described in paragraph 36, the Werribee Football Club is a not-for-profit semi-professional football club. The Werribee Football Club's home ground is situated 6.5km to the west of the Tiger's Clubhouse at sporting grounds known as Chirnside Park. The Applicant leases Chirnside Park from the City of Wyndham and has committed \$1 million to the upgrade of that facility. As the upgrade to Chirnside Park is ongoing and the Applicant can honour this existing financial commitment, these works are not contingent upon this Application. However, it is a relevant consideration in the overall assessment of the Applicant's ability to make further community contributions and to upgrade the Tiger's Clubhouse.
41. The Applicant gave evidence that it aims to maintain a VFL standard team in the Werribee/Wyndham area. This is expensive considering VFL fees and salary caps for clubs that are not aligned to an Australian Football League (AFL) team, cost of complying with the VFL's standards for facilities. For example, the upgrade to Chirnside Park was required for the Werribee Football Club to host VFL finals games. The Werribee Football Club lost its alignment with the AFL's North Melbourne Football Club at the end of 2017. The Applicant's CEO, Mr Penaluna,

gave evidence that this resulted in a funding deficit of \$431,000 per year and created pressure to compete with clubs in the VFL who can access the facilities of, and financial support from, professional AFL teams.

Werribee Football Club in the community

42. In its assessment of the social and economic impact of the Application, the NBA Report refers to the positive role the Werribee Football Club plays in the community. The Werribee Football Club provides numerous training and community based initiatives for residents in the area to participate in sport and recreation, with a particular focus on multiculturalism. For example,
- (a) the appointment of a full-time Community Development Manager, Mr Chris Gallagher, in 2009 to establish pathways and opportunities for young aspiring sports people in the region by:
 - (i) increasing the participation of young migrants in sport and recreation activities;
 - (ii) increasing opportunities for participation in sport and volunteering;
 - (iii) raising the cross-cultural awareness of organisations to enable them to provide increased sporting opportunities; and
 - (iv) addressing barriers to participation and thus increase the uptake of programs and, in turn, the social cohesion of the broader community;
 - (b) maintenance of a diversity and inclusion manager and part-time multicultural officer;
 - (c) schools' programs such as the Huddle Schools Football Program, Active Kids Program, Multicultural Programs and the Active-After School Care Program; and
 - (d) other community events and activities such as Weerama Festival, Point Cook Fiesta, Rotary Relay for Life and Unity Cup.
43. Mr Penaluna gave evidence regarding the ambitions of the Werribee Football Club to expand its community programs and activities. For example, as will be discussed in more detail below, the Applicant aspires to establish a team in the women's VFL competition, as well as a learn-to-swim program. These aspirations are indicative of the Applicant's community mindedness but are not contingent upon the grant of this Application and therefore were not assessed as benefit of this Application.
44. The Commission was impressed by the role of the Werribee Football Club in the community. As the Tiger's Clubhouse provides the financial backing for the Applicant to undertake this positive role, by extension, the Commission considers that the Tigers' Clubhouse is critical in enabling the Werribee Football Club to continue to do its good work in the community.

Catchment of the Tiger's Clubhouse

45. The '*no net detriment*' test refers to 'the community of the municipal district in which the approved venue is located.'²⁹ 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.'³⁰ The determination of the likely catchment area is important to the Commission's consideration of the identity of those residents which are likely to be most affected by the Application. Often, the catchment area is the 2.5 kilometre radius around the approved venue, as it is in this Application.
46. Relying on gaming room patron survey data, Mr Anderson gave evidence that 72% of patrons at the Tiger's Clubhouse reside in the suburbs of Hoppers' Crossing, Werribee, Werribee South and Truganina, which fall within a 2.5 kilometre radius of the Tiger's Clubhouse (**Catchment Area**). Council accepted that this was the primary catchment for the Tiger's Clubhouse. The Commission also accepts Mr Anderson's evidence that, due to the new activity centre at Williams' Landing, which is within 3 kilometres of the Tiger's Clubhouse to the east, patrons from that area will figure heavily in the membership of the Tiger's Clubhouse and the Werribee Football Club. For that reason, residents in that area are therefore likely to be affected by the Application and the Commission has therefore included William's Landing in the Catchment Area.
47. As stated above, at paragraph 33, the VCGLR Report states that, of the SA1s within the Catchment Area, 28.4% fall within the first quintile on the SEIFA IRSD. In the NBA Report, Mr Anderson relies upon a different ABS SEIFA index, the Index of Relative Socio-Economic Advantage and Disadvantage (**IRSAD**), when assessing the impacts of the Application on the City of Wyndham. According to the NBA Report (referencing an ABS explanation), the SEIFA IRSAD is preferred in situations where the user:
- (a) wants a general measure of advantage and disadvantage in their particular analysis
 - (b) is not looking at only disadvantage and lack of disadvantage
 - (c) wants advantage to offset any disadvantage in an area.

Mr Anderson therefore concludes that the IRSAD index provides a more balanced review of the municipality by not simply focusing on the disadvantages. At the hearing, Mr Anderson gave evidence that he had consulted with the ABS to obtain those summaries about how each index should be used and that since then he has relied upon the IRSAD index because he believes that

²⁹ GR Act, section 3.2.20(1)(c)

³⁰ See, for example, *Romsey No. 2* [2009] VCAT 2275 (12 November 2009); *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 (7 April 2011).

a socioeconomic impact statement should consider both advantage and disadvantage in a community.

48. As noted above in paragraph 32, the VCGLR Report relies on the IRSD index when assessing the impact of the Application on the municipality. Assessments based on IRSAD data and IRSD data may result in different conclusions because different data sets are utilised.³¹ The Commission finds that, for the purpose of this Application, Mr Anderson's reliance on the SEIFA IRSAD dataset does not have a significant material impact on the economic and social impacts of the Application. The Commission found that both the SEIFA IRSD and the SEIFA IRSAD can be considered when reviewing the merits of the Application, and that they are not mutually exclusive. By way of an illustration, the SEIFA IRSD ranks the City of Wyndham at number 50 of 79 LGAs on scale of disadvantage (79 being the least disadvantaged), whereas the SEIFA IRSAD ranks it as 56. The Commission finds that, in this case, this discrepancy in ranking does not impact on the Application in a material way.
49. Mr Anderson submitted that the City of Wyndham is a municipality that exhibits relatively low levels of disadvantage, based on its SEIFA IRSAD ranking of 56 out of 79. He noted that Hoppers Crossing is ranked in the 5th decile by SA2 and is considered to have an average level of disadvantage on the IRSAD. The Catchment Area also includes the SA2 of Hoppers Crossing South, which has a SEIFA score of 967, which places it within the 3rd decile (the 1st decile being the most disadvantaged), and Hoppers Crossing North, which has a SEIFA score of 992 which also places it in the relatively average 5th decile. Ms Rosen submitted that the Catchment Area includes the most disadvantaged suburbs in the municipality and concluded that it could be said that, on balance, the patron catchment displays mixed areas of socio-economic disadvantage.
50. Mr Anderson submitted that the Catchment Area is less disadvantaged than it appears on a SEIFA IRSD map. SA1s in the 1st quintile of the SEIFA IRSD are relatively disadvantaged and when depicted on a map those areas are coloured red, with SA1s in the 2nd quintile coloured orange. Similarly, for SA1s on the SEIFA IRSAD, there is a significant presence of red and orange shades on the maps (though these are organised by decile, as opposed to quintile). Noting that each SA1 represents a population of 200 people, Mr Anderson submitted that the more disadvantaged SA1s appear to dominate the Catchment Area more than they do in reality. This is because, as briefly touched on in paragraph 33, three of the disadvantaged SA1s (for both

³¹ According to the ABS website referencing 2016 data, the IRSD is a general socio-economic index that summarises a range of information about the economic and social conditions of people and households within an area. The variables used in the index are indicators of disadvantage only, for example, % people with stated household equivalised income between \$1 and \$25,999 per year, % families with children under 15 years of age who live with jobless parents. In contrast, the IRSAD considers the variables which indicate disadvantage, as well as those indicating advantage, for example % people with stated household equivalised income greater than \$78,000, % occupied dwellings paying mortgage greater than \$2,800 per month etc.

IRSD and IRSAD datasets) are in an area south of the Tiger's Clubhouse which has been zoned for residential redevelopment meaning that:

- (a) the value of the land (currently small lot farming) is lower than it will be going forward; and
- (b) the population is dispersed across a greater area when the land is used for farming, giving the appearance that the disadvantage covers a larger area.

51. Mr Anderson submitted that across a municipality, it is normal to see SA1s within each of the different quintiles of disadvantage.
52. Mr Anderson gave oral evidence that the Catchment Area is in an area of high population growth and that the population of the City of Wyndham by the end of the new entitlement period in 2040 will be in excess of 435,000. In response to this, Council submitted that despite 15 years of significant population growth, there has been no material reduction in the level of disadvantage in the City of Wyndham and that future growth in the municipality will carry the same demographic trends as past and present growth in the municipality. Relevantly, Council submitted that over the past 15 years, the municipality had experienced a 260% increase in population yet its ranking on the SEIFA IRSD had experienced a deterioration i.e. the ranking in 2011 was 56 and the ranking in 2016 was 50 (with 1st being the most disadvantaged). While acknowledging that this was a deterioration in ranking, Mr Anderson also submitted that SEIFA scores across different years should not be compared because the ABS relies on different criteria each time.
53. The Commission finds that while the Catchment Area of the Tiger's Clubhouse services an area of moderate disadvantage on the SEIFA IRSD, the explanation provided by Mr Anderson for this ranking was convincing, leading the Commission to find that the Catchment Area is less disadvantaged than it appears.

Issues for determination

54. Pursuant to section 3.4.20 of the GR Act, the Commission cannot grant the Application unless it is satisfied of the following two matters:³²
 - (a) that the relevant regional or municipal limit for EGMs applicable to the City of Wyndham will not be exceeded by the making of the amendment the subject of the Application; and
 - (b) that the net social and economic impact of the increase in EGMs permitted in the Tiger's Clubhouse will not be detrimental to the well-being of the community of the City of Wyndham (the '*no net detriment*' test).

³² The Commission also considered and was satisfied as to the matters set out in section 3.4.20(1)(a) and (d) of the GR Act.

If having determined that these matters have been satisfied, the Commission is then required to exercise its discretion under section 3.4.20 to determine whether or not the Application should be granted; that is, whether or not the proposed amendment to the venue operator's licence should be made.³³

A. *Municipal and Regional limits*

55. As noted in paragraph 28 above, the City of Wyndham is subject to a limit on the number of EGMs under a Ministerial Order pursuant to sections 3.2.4 and 3.4A.5(3A) of the GR Act. The limit within the capped region is 638 and the limit in the City of Wyndham is 893. The current number of EGM approvals within the capped region is 628. Approval of this Application would increase the number of EGM approvals within the City of Wyndham to 638, which is the applicable limit.
56. On that basis, the Commission is satisfied that granting the Application would not cause the relevant municipal limit for gaming machines in the City of Wyndham, in particular, in the capped region, to be exceeded, and hence considers this aspect of the statutory test set out in section 3.4.20 of the GR Act to be satisfied.

B. *'No net detriment' test*

57. The Commission must be satisfied that if this Application is granted the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the Tiger's Clubhouse is located. Set out below (and summarised in tabular form at Appendix One) is the Commission's assessment of the economic and social benefits and disbenefits associated with the Application, including the weighting given to each of these impacts.

Economic Impacts

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

Gaming expenditure not associated with problem gambling

59. To the extent that gaming expenditure is not associated with problem gambling, it has been recognised that such expenditure can be treated as an economic positive.³⁴ As Bell J notes in

³³ See paragraph 18 above. An amendment may be made subject to any conditions the Commission thinks fit: GR Act, section 3.4.20(3).

³⁴ See *Romsey No. 2* at [351] per Bell J.

Romsey No. 2, this approach also brings to account the benefit obtained from pure consumption by the lone gambler who does not use machines for social reasons.³⁵

60. Mr Stillwell, in the ShineWing Report and at the hearing, gave evidence regarding the likely increase in gaming expenditure at the Tiger's Clubhouse should the Application be granted.
61. Mr Stillwell adopted an empirical evidence method (**EE Method**) for estimating additional gross gaming expenditure. The EE method analyses a sample group of venues who have recently introduced a similar number of additional EGMs (**top-up**), and determines a percentage increase in gaming expenditure in comparison to the percentage increase in EGMs. Venues were included in the sample group only if:
- (a) the top-up was approved during the 2013 financial year or early 2014 financial year so that the full impact of the increase can be analysed against the previous year without the top-up;
 - (b) the venue is a club in the Victorian metropolitan region;
 - (c) the venue is a comparatively above average performing venue based on the net machine revenue (**NMR**); and
 - (d) the venue did not experience a decline in expenditure despite the top-up, due to venue specific reasons such as renovations or management issues, increase in competitors to the area and or other competitor venues increasing the number of venues or otherwise increasing the attractiveness of their venues.
62. The EE Method concludes that for every 1% increase in EGMs at a venue, revenue would increase by approximately 0.3704%. Applying the EE Method to the Tiger's Clubhouse,
- (a) with a gross gaming expenditure of \$10,494,069 in the 2017 financial year, this equates to \$518,267 (mid-range estimate) or \$544,180 (higher estimate) per year in additional revenue;
 - (b) approximately 65% of that additional revenue will be transferred expenditure from existing gaming venues within the City of Wyndham;
 - (c) therefore, new gaming expenditure within the municipality is estimated to be 35%,³⁶ or, between \$172,324 and \$190,463 per annum; and
 - (d) new gaming expenditure per adult in the City of Wyndham will increase by \$1 to \$602, as stated above at paragraph 31(d).

³⁵ See *Romsey No. 2* at [351]. Bell J notes further at [352] that the other approach is to say, as did Morris J in *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [79] that gaming extends 'substantial economic and social benefits' to gaming machine users, which treats consumption as a benefit without saying whether it is economic or social. While Bell J states both approaches are correct, for the purposes of this Application this benefit is treated as an economic benefit.

³⁶ The figure equating exactly to 35% is \$181,393, however the Commission has considered the projected range for the purpose of these reasons.

63. The Commission notes that the Council Report did not dispute use of the EE Method in estimating additional gross expenditure. There was no other evidence to suggest that this method did not accurately estimate the overall projected rise in expenditure at the Tiger's Clubhouse. Therefore, the Commission accepts Mr Stillwell's evidence in this instance.
64. In assessing the extent of this benefit, the Commission has had regard to the evidence outlined in paragraphs 90 to 102 below with respect to the potential for problem gambling as a result of this Application. Various factors suggest that the extent of problem gambling at the Tiger's Clubhouse as a result of the additional EGMs is likely to be mitigated by the following:
- (a) the Tiger's Clubhouse is an area of mixed socio-economic disadvantage, as discussed in paragraphs 48 to 53;
 - (b) there is evidence as to the Applicant's proactive approach to the management of problem gambling, including the implementation of responsible service of gambling (**RSG**) measures in advance of the Application in response to Mr Barrett's recommendations and the additional RSG measures, as discussed in paragraph 98; and
 - (c) the Application is for an increase of a relatively minor amount of 10 EGMs.
65. After considering all the matters referred to above the Commission considers that this benefit should only be afforded marginal weight as the proposed new expenditure as a result of the Application is relatively modest.

Economic benefit of community contributions

66. A potential economic benefit associated with the Application is the community contributions promised by the Tiger's Clubhouse.
67. The Application states that, if approved, the Applicant will make an additional \$25,000 in community contributions per year to community groups who apply. This is in addition to \$75,000 in existing community contributions per year which the Applicant has confirmed will continue, regardless of whether or not the Application is approved. The Applicant proposes to establish the "Werribee Football Club Foundation" to facilitate the awarding of these community contributions.
68. Mr Penaluna gave evidence at the hearing that without approval of the Application, the Tiger's Clubhouse can maintain the status quo and continue with the \$75,000 in community contributions. However, it would not be able to expand its community programs as it wishes to do, and as it considers it necessary to do, if it is to maintain its status in the community.
69. Council submitted that it is difficult to measure the impact that the community contributions will have on a municipality. Council gave evidence that community benefit statements submitted by

the Tiger's Clubhouse to the Commission annually for the purpose of tax, demonstrate that the Applicant had not made \$75,000 per year in community contributions, as claimed. In response, Mr Penaluna submitted at the hearing that there could have been errors made in reporting activities that were cash and in-kind contribution. Furthermore, Mr Penaluna explained that the periods it reported \$75,000 aligned with football financial years ending at the end of October, which does not align to the reporting years for community benefit statements which end on 30 June in a given year. The Commission sought clarification about this matter and the Applicant submitted an itemised list of community contributions made in the preceding three years. These statements showed that donations and sponsorship in the 2015 – 2017 financial years exceeded \$75,000, as claimed.

70. The Commission finds that the maintenance of an existing community contribution of \$75,000 per year and the additional \$25,000 per year is an economic benefit resulting from this Application which should be given a marginal weight, given the additional contributions are a modest amount in relation to the City of Wyndham as a whole. The social impact of the community contributions is considered separately below.

Expenditure on capital works

71. A potential economic benefit associated with the Application is the economic stimulus arising from the expenditure on the proposed renovations of the Tiger's Clubhouse.
72. According to the NBA Report, if the Application is successful, the Applicant will be in a position to undertake renovation works at the Tiger's Clubhouse at an estimated cost of approximately \$1.93 million (GST inclusive). The works would consist of:
- (a) a new outdoor eating and drinking area with screens for televising sport (**Beer Garden**);
 - (b) relocation of the designated smoking area;
 - (c) improvement to back of house facilities;
 - (d) redevelopment of the rear entrance which will remove the ability of patrons to access the gaming room without first passing the sign-in desk; and
 - (e) upgrades to fittings and fixtures.
- Collectively, '**the Proposed Works**'.
73. Mr Stillwell submitted an addendum to the ShineWing Report which showed that the Applicant is not in a financial position to undertake the Proposed Works at the Tiger's Clubhouse if the Application is not approved. The Commission therefore accepts that the Proposed Works are contingent on the grant of the Application.

74. The Commission notes that the Applicant is not committing to sourcing the goods and services from the City of Wyndham, which could indicate that the economic benefit may not vest in the municipality. In his oral evidence, Mr New stated that the goods and services required for the Proposed Works would only be procured from a contractor within the City of Wyndham if that contractor submits the most competitive bid. Indeed, a recent renovation at the Tiger's Clubhouse was not undertaken by a local contractor.
75. In light of the reasons above, the Commission considers that the Proposed Works would involve expenditure that constitutes an economic benefit to the City of Wyndham. In this instance, the Commission affords no weight to this economic benefit.
76. The Commission acknowledges that it is important to avoid double counting the benefits associated with capital works, having regard both to the estimated employment impacts of the Proposed Works and the social impact that may result from the improved facilities. These aspects are considered separately, and are detailed below at paragraphs 77 to 80 and 106 to 110 respectively.

Additional employment

77. The economic benefits associated with an application to increase the number of EGMs at a premises may include short term employment benefits associated with the capital works. In this Application, no evidence was provided as to short term employment benefits associated with the capital works (related to, but separate, to the economic benefit associated with the expenditure on capital works). Accordingly, no weight was given to this aspect.
78. Separate to the short term economic benefits associated with the capital works is the potential benefit associated with longer term employment arising from the Application. According to the NBA Report, if the Application is granted, it is expected to result in direct employment of 4.5 full time equivalent employees (FTE) at a combined cost of \$208,000 in salaries. This will include:
- (a) 1 FTE RSG gaming employee
 - (b) 1 FTE bar staff
 - (c) 1 part-time bar/bistro supervisor
 - (d) 1 FTE chef; and
 - (e) 1 FTE marketing manager.
79. The Applicant provided evidence that almost all employees at the Tiger's Clubhouse were from the City of Wyndham and it is likely that the new FTEs would be also. The Commission accepts the evidence of the Applicant that if the Application is granted, this will result in the creation of the equivalent of 4.5 new FTE employees at the Tiger's Clubhouse, one of whom would work in the

gaming room. The Tiger's Clubhouse currently employs 15 staff members on a full, part time and casual basis.

80. The Commission finds that the likely economic impact on employment arising from this Application would be the employment of 4.5 FTE employees. In consideration of the relatively high unemployment rate in the City of Wyndham compared to the metropolitan average (see paragraph 34 above) but also the small scale of the employment increase relative to the unemployment rate and the growing population of the LGA, the Commission considers this is a benefit to the community to which it attributes marginal weight.

Increased gaming competition in City of Wyndham

81. Increasing competition in gaming in the City of Wyndham is a factor to be considered by the Commission in light of the statutory purposes of the GR Act³⁷ and the consumer benefits that derive from competition.
82. Mr Anderson gave evidence that granting the Application would allow the Applicant to remain competitive within an area experiencing a population growth of 270% and stressed the importance of this.
83. The Commission notes that the Tiger's Clubhouse is currently the highest performing club venue in the City of Wyndham, and the fourth highest performing venue overall. Council queried the necessity of the Application in maintaining this position. In response, Mr Anderson gave evidence that it was his understanding that the Tiger's Clubhouse would not go backward absent approval of the Application, but that it would not be able to do any more than it currently does. It was his belief that more would be required to meet the expectations of the growing community.
84. The NBA Report stated that 'peak' periods amount to a 70% utilisation rate in the gaming room on average for 2-3 hours per week, typically on Friday and Saturday nights.
85. The Commission notes that granting the Application could be considered to increase gaming competition in the City of Wyndham by ensuring that the Tiger's Clubhouse remains competitive.
86. The Commission finds that the Application represents a relatively small proportional increase in the number of EGMs in the City of Wyndham and within the area subject to the municipal limit. As such, for the purposes of this Application, the Commission considers there is only a small benefit associated with an increase in gaming competition in the City of Wyndham as a result of

³⁷ See GR Act, section 3.1.1(2).

the addition of 10 EGMs at the Tiger's Clubhouse, and hence gives this impact nil to marginal weight.

Complementary expenditure and supply contracts

87. Complementary expenditure is a potential economic benefit where it results in increased economic activity in the municipal district in which the premises that are the subject of an application are located, where the expenditure is a consequence of new spending on local goods and services.
88. The Application stated that, if approved, complementary expenditure to the value of \$380,000 would be expended in the 12 months following approval and \$130,000 in supply contracts, 30% of which would be provided by suppliers from within the municipal district. However, no further evidence was provided in the NBA Report or by way of oral evidence at the hearing.
89. Consequently, on the information available, the Commission considers there is no evidence to support the estimates made, as such, places no weight any benefit associated with complementary expenditure or supply contracts.

Gaming expenditure associated with problem gambling

90. To the extent that a portion of the new gaming expenditure is attributable to problem gambling and gambling related harms, this represents an economic disbenefit.³⁸ In assessing this impact (and other effects of gambling related harms), the Commission recognises that harms associated with problem gambling and gambling related harms may be experienced directly and indirectly as a consequence of gaming undertaken by those who may be defined as 'problem gamblers', as well as those who may be otherwise be regarded as 'low-risk' or 'moderate-risk' gamblers.
91. In assessing the extent of this disbenefit, the Commission has regard to the expenditure evidence set out in paragraphs 58 to 65 above. In doing so, the Commission recognises that in considering this aspect of the '*no net detriment*' test it does not include consideration of transferred expenditure because such expenditure cannot be said to exacerbate the impact of problems related to gambling.³⁹

³⁸ 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* [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.

³⁹ See *Bakers Arms* [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.

92. The extent to which new gaming expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with the Application, will be influenced by, among other factors, the socio-economic status and vulnerability of the community of the Catchment Area discussed at paragraphs 45 to 52.⁴⁰ This is because communities characterised by socio economic disadvantage are considered to be more vulnerable to the harms arising from problem gambling.⁴¹ The impact on problem gambling may be mitigated by the location of the premises (in particular, whether it is a destination or convenience venue)⁴² and the strength of the venue's RSG practices.
93. As stated in paragraph 62 above, the Commission accepts Mr Anderson's evidence that the Application will result in estimated new expenditure of between \$172,324 and \$190,463 in the first 12 months of the additional 10 EGMs being attached. It accepts that a proportion of this expenditure will be associated with problem gambling and gambling related harms.
94. The Commission finds that the Catchment Area exhibits relatively mixed levels of socio-economic disadvantage, which would indicate that some areas are more vulnerable to the risks of gambling harms, whereas some areas could be said to be more resilient. Ms Rosen agreed that, overall, the City of Wyndham is not exceptionally vulnerable to gambling related harms. However, she cited other characteristics of the Catchment Area that would render it more vulnerable including the high (and increasing) levels of unemployment, housing stress and welfare recipients, as well as low educational attainment.
95. The Commission is persuaded by Mr Anderson's evidence that the apparent dominance of disadvantaged areas on the SEIFA IRSAD and SEIFA IRSD maps, as discussed at paragraphs 48 to 51, is not a true reflection of the disadvantage in the Catchment Area due to the fact that some of the SA1s in the area are zoned for redevelopment. The Commission also accepts Mr Anderson's evidence that the quality of growth of the new suburbs of Point Cook, Sanctuary Lakes and Truganina in the Catchment Area was above average. However, the Commission accepts Council's argument that the Applicant cannot assume population growth will positively impact the level of disadvantage in the City of Wyndham and improve its resilience to problem gambling and gambling related harms.
96. The Commission accepts Council's submission that accessibility increases the potential for convenience gambling, which is associated with problem gambling. At the hearing, Ms Rosen

⁴⁰ This common-sense approach accords with the VCAT's treatment of this issue in *Molwin Pty Ltd v Mornington Peninsula SC* [2015] VCAT 1982 (23 December 2015), [68].

⁴¹ *Ibid.*

⁴² *Darebin CC v Victorian Commission for Gambling and Liquor Regulation & Anor* [2013] VCAT 1389, [78]-[80] per Wright SM and Rae M citing *Pink Hills Hotel Pty Ltd v Yarra Ranges SC & Ors* [2013] VCAT 954.

gave evidence that the location of the Tiger's Clubhouse is a key risk factor in considering the impact of the Application on problem gambling in municipality. The Tiger's Clubhouse is situated 350 meters from a supermarket and, according to Ms Rosen, is visually and functionally integrated with a strip shopping centre that is prohibited in the planning scheme. Council submitted the relevant extract from the planning scheme, which states that '*a gaming machine is prohibited in all strip shopping centres on land covered by the planning scheme.*'⁴³ Mr Anderson did not agree that the Tiger's Clubhouse was in a strip shopping centre. Mr Anderson acknowledged that it was 350-odd meters from a Woolworths Supermarket and while 400 meters is considered to be walking distance for planners, he did not consider it to be a convenience venue due to the difficulty of access. To walk from the supermarket, he pointed out that one would have to cross carparks and step over fences, and when driving from the Supermarket it is also difficult to access because of the need to cross the highway.

97. The Commissioners both visited the venue prior to the hearing. The Commission finds that the venue is not easy to access from the supermarket and is unlikely to be used for convenience gambling, The Commission also finds that the Tiger's Clubhouse will be implementing further RSG improvements through the Proposed Works to restrict the rear access to the gaming room, as well as other having already implemented other measures proposed by Mr Barrett.

Responsible service of gambling

98. In considering the extent to which new gaming expenditure may give rise to an increased risk of problem gambling and gambling related harms, the manner in which gaming is conducted at the Tiger's Clubhouse is also a relevant consideration.
99. In relation to the Applicant's current RSG practices, the Commission notes that the Applicant has implemented positive measures which suggest that it would continue to effectively manage RSG at the venue and attempt to mitigate the risks associated with problem gambling and gambling related harms. In particular,
- (a) the approach of the Board, which is to review RSG incident reports prepared by Mr Penaluna and Mr New at monthly and quarterly meetings;
 - (b) staff training in relation to RSG;
 - (c) the installation of a sight screen between the bistro and the gaming room following an external audit of its RSG policies and procedures by Mr Barrett toward the end of 2017; and
 - (d) improved the CCTV coverage in the venue achieved by relocating the CCTV monitor to the cash desk from the office, giving staff the ability to better monitor patron behaviour.

⁴³ Wyndham Planning Scheme, Schedule to clause 52.28 Gaming, subclause 2.

100. While the RSG measures above are not contingent upon this Application, the Commission considers that they demonstrate the Applicant's commitment to good RSG. In addition, the Commission notes the following positive RSG measures will be implemented which may mitigate the impact of problem gambling and gambling related harms:
- (a) appointment of a dedicated responsible gambling officer; and
 - (b) the Proposed Works which would see the rear access point to the gaming room eliminated.
101. The Commission considers the evidence of Mr New at the hearing to be illustrative of the Applicant's responsive approach to RSG at the Tiger's Clubhouse. Mr New gave evidence that, of the 140 people on the self-exclusion register at the Tiger's Clubhouse, he is yet to see a member on the register. Mr New also described the protocols at the Tiger's Clubhouse for identifying and managing problem gambling. This included, for example, communication between staff opening EFTPOS facilities to ensure that if a patron is making frequent withdrawals, the matter is escalated to a manager to screen for other signs of problem gambling.
102. Overall, the Commission considers with respect to the Application that the potential increased expenditure associated with problem gambling and gambling related harm is a negative economic impact upon which it should place a low weight due to the increased protective measures at the Tiger's Clubhouse. Issues relating to the negative social impacts associated with problem gambling are considered further in paragraphs 126 to 129 below.

Diversion of trade from other gaming venues

103. Mr Stillwell gave evidence that the introduction of the additional EGMs at the Tiger's Clubhouse would divert trade from other gaming venues within the municipality resulting in a transfer rate of 65%. No further evidence was given in relation to the detrimental impact that the anticipated diversion of trade would have on venues in the area. Accordingly, the Commission assigns no weight to this impact.

Conclusion on economic impacts

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

Social Impacts

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

Additional and improved services and facilities at the premises

106. Ancillary to the economic benefit from capital works expenditure that will occur if this Application is granted,⁴⁴ the Proposed Works will result in additional facilities being available to the community. Access to additional or improved facilities is an outcome which the Commission⁴⁵ and VCAT⁴⁶ have regularly determined is a positive social impact associated with applications of this nature. The physical nature of the additional facilities is described in detail in paragraph 72.
107. Of particular relevance to this social impact, according to Mr Anderson in the NBA Report, is the Beer Garden, which will diversify the offering of the Tiger's Clubhouse and minimise the venue's focus on gaming.
108. Council submitted that, because the Tiger's Clubhouse already has an outdoor drinking and smoking area, the Beer Garden should be treated as an improved, as opposed to a new, facility. Ms Rosen gave evidence that, from a planning perspective, the activities undertaken in the existing outdoor area are the same as those currently undertaken and therefore she did not consider that the diversity of the offering would change at the Tiger's Clubhouse. The Commission notes that the existing outdoor smoking area would be moved to a new location, and that, due to smoking laws prohibiting dining in a smoking area, as an outdoor seated area where patrons can eat, as well as drink, the Beer Garden would be a new social offering at the Tiger's Clubhouse.
109. At the hearing, Mr New gave evidence that the Beer Garden would be available for use as a function space and Mr Anderson submitted it would provide a space for outdoor dining and entertainment. Plans provided to the Commission showed screens for watching sport. The Commission finds that it follows that a social benefit would result from the addition of an outdoor area where patrons can enjoy a meal, watch sport or attend a function, which does not currently exist in the designated smoking area.
110. The Commission refers to its findings in paragraph 73 above, that the Proposed Works will not proceed if the Application is not granted. Therefore, the social benefits arising from the community's access to and use of the new facility is a benefit of this Application. The Commission regards access to this expanded facility as a positive social impact, upon which it places a marginal to low weight. In allocating this weight, this Commission did not double count the economic benefits resulting from expenditure on capital works detailed at paragraphs 71 to 76 above.

⁴⁴ See paragraphs 72 to 76 above.

⁴⁵ See, for example, *Glenroy RSL Sub-branch Inc at Glenroy RSL premises* [2015] VCGLR 40 (22 October 2015).

⁴⁶ See, for example, *Bakers Arms* [2014] VCAT 1192.

Increased gaming opportunities for those who enjoy gaming

111. Increasing gaming opportunities is a positive impact if the Application will better serve the needs of gaming patrons in the City of Wyndham through providing additional opportunities and choice for those who choose to play EGMs.
112. The Applicant submits that the proposed addition of 10 EGMs will improve game choice of current patrons. Mr Anderson and Mr New gave evidence that the new machines will enable the Tiger's Clubhouse to compete with other venues in the area and meet demand of the growing population, as discussed in paragraph 82. Two separate gaming room patron surveys were undertaken by the Applicant between 17 – 28 February 2017 and 9 – 22 July 2017 which showed utilisation only exceeded 70%, between 9 and 18 hours per fortnight (200 hours). The Applicant stated that the peak periods coincided with dinner times, in particular, Friday and Saturday nights. The utilisation rates at the Tiger's Clubhouse do not indicate that demand for gaming is outstripping supply for significant periods of time during the surveyed periods, but the Commission is nevertheless satisfied that there are periods where use exceeds 70%.
113. The Commission acknowledges that there is a benefit in increasing machine choice for recreational players and catering for non-problem gambling demand. While the Commission notes that the utilisation rate only exceeds 70% usage for a small number of hours in the week, the level of consumer choice for people choosing to play EGMs for recreational purposes would be improved by the addition of 10 EGMs at the Tiger's Clubhouse during the peak periods. Therefore, the Commission considers this to be a social benefit to the community in the City of Wyndham itself, and one on which it places marginal weight.

Community hub

114. The Applicant submitted that the installation of a "community hub" was a social benefit derived from approval of the Application. The community hub would include free community access to computers with internet access, telephones, printers and pamphlets with relevant information for patrons experiencing problem gambling to address their issues. Mr New stated that the community hub would not be installed unless the Proposed Works go ahead because the location for the community hub will not be available unless the Beer Garden is established.
115. Mr Barrett gave evidence at the hearing that he had heard of community hubs being introduced at other venues and that he liked the idea, though he had not seen any evidence of their effectiveness. Council submitted that weight should not be placed on the installation of a community hub as a benefit of the Application. This is due to the fact that the community hub

proposed is just a computer and a few pamphlets, and most patrons would already have access to a smartphone to access responsible service of gambling websites.

116. Further to this point, the Council expert, Ms Rosen, submitted that there had been no research undertaken on the effectiveness of community hubs in reducing the impact of problem gambling, and therefore she did not consider the community hub to be a benefit associated with the Application. Ms Rosen also submitted that, in the form proposed, the community hub was a detrimental impact of the Application. This was due to a risk that it could be considered as a drawcard for people to visit the Tiger's Clubhouse, particularly for problem gamblers who did not need another incentive to visit the venue. Ms Rosen submitted that, if a community hub was to be installed, it should be away from the gaming room at the Tiger's Clubhouse, and she suggested locating it at Chirnside Park.
117. The Commission has previously afforded weight to community hubs installed at venues applying for increased EGMs at their premises. The Commission was not persuaded by the evidence of Ms Rosen that the community hub should be installed at Chirnside Park because it formed the view that the community hub would not in itself be an incentive for a person to visit the Tiger's Clubhouse. The Commission considers that the RSG material and resources to be installed in the community hub should be near the gaming room in order to be immediately available to patrons attending the gaming room at the Tiger's Clubhouse.
118. In light of the matters outlined above, the Commission is of the view that the community hub is contingent on the approval of the Application, and is a positive social impact of the Application to which it affords marginal weight.

Social benefit derived from increased community contributions

119. In determining the net economic and social impact of applications of this nature, both the Commission⁴⁷ and VCAT⁴⁸ have regularly treated community contributions as a positive benefit in that they can improve the social fabric of the community in which they are made. 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. It is also important that the Commission does not conflate this benefit with the economic benefit associated with such contributions, discussed above at paragraphs 66 to 70.
120. According to the Application, the Applicant will maintain its existing cash contributions of at least \$75,000 per year and commit an additional \$25,000 in cash contributions, taking the Applicant's

⁴⁷ See, for example, *Application by Richmond Football Club* [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

⁴⁸ See, for example, *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms* [2014] VCAT 1192.

overall cash contribution to \$100,000 per year. The Applicant proposed to establish a Werribee Football Club Foundation which will administer the cash contributions. The Applicant submitted that it intended the additional cash contribution to operate for as long as the additional EGMs are in operation at the Tiger's Clubhouse. Such terms are commonly conditions for applications to increase EGMs in approved venues or for the approval of venues.⁴⁹

121. At the hearing, Council produced community benefit statements for the Tiger's Clubhouse which showed different figures for the community cash contributions made by the Applicant in the previous three years. In response to this, the Applicant explained that the discrepancy was due to a difference in reporting years between that adopted by the VCGLR, which follows a traditional financial year, and that adopted by the Applicant, which is based around the football season. Subsequently, the Applicant handed up evidence which stated that the Applicant in fact contributed \$89,072.73 in 2015, \$83,589.36 in 2016 and \$84,981.83 in 2017 in sponsorships and donations to community organisations. The community organisations who have benefitted from these cash contributions in the past include schools, not-for-profit organisations, sporting clubs, charities and community organisations.
122. The Applicant gave evidence at the hearing and in written submissions about community programs and activities that it ran, aside from the cash contributions. As discussed in paragraphs 42 - 44, this includes:
 - (a) the Huddle Schools Football Program;
 - (b) an Active Kids Program;
 - (c) a Multicultural Schools Program; and
 - (d) the maintenance of a full-time Community Development Manager undertaking positive activities in the community;
123. Council submitted that, if the Applicant was already making generous community contributions, there was no evidence to suggest the increase in contributions would not occur regardless. In response to this, Mr Anderson and Mr Penaluna gave evidence that the current level of community contribution was sustainable, but that the Applicant wanted the Werribee Football Club to do more than its existing revenue would allow, particularly in consideration of the non-alignment with North Melbourne Football Club and the impact that this had on its VFL expenses.
124. The Applicant gave evidence that it hoped to establish a learn-to-swim program and a women's VFL Team, and provided costings for the VFLW team. However, the Applicant did condition these

⁴⁹ See, for example, also in relation to the operation of an additional 10 EGMs, *Kilmore Racing Club Inc at Bendigo Club premises (Gaming – EGM Increase)* [2017] VCGLR 40 (21 December 2017) and *Portarlington Golf Club Inc at Portarlington Golf Club premises (Gaming – EGM Increase)* [2017] VCGLR 36 (20 October 2017).

activities upon the approval of the Application and therefore, the Commission did not assess these as benefits deriving from this Application.

125. The Commission accepts that the additional community contributions and, to a lesser extent, the continuation of the existing contributions will have a positive social impact. The Commission is further satisfied that the additional contributions will only occur if the Application is granted. Having regard to the increase in the community contributions that will occur, and the breadth of these contributions across community and sporting groups operating in the City of Wyndham (in accordance with conditions of the approval of this Application), the Commission considers these contributions to be a positive benefit to which it affords a marginal weight.

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

126. Wherever accessibility to EGMs is increased there is always a risk of an increase in problem gambling and gambling related harms, which leads to other costs such as adverse health outcomes, relationship breakdowns, emotional harms and other social costs. Accordingly, the Commission accepts there is potential for a negative social impact on the community through possible increased problem gambling expenditure associated with this Application.
127. In relation to gambling-related harms, the Commission notes the evidence submitted by Council which, in summary, states:
- (a) there are mixed levels of socio-economic disadvantage and vulnerability to gambling related harms in the Catchment Area (see paragraphs 90 to 102 above);
 - (b) despite the profile of the City of Wyndham's SEIFA score indicating that it would not be vulnerable to harms from problem gambling, research has demonstrated that it is not only people experiencing socio-economic disadvantage who are at risk of gambling related harms; and
 - (c) despite the Applicant's implementation of RSG measures and high degree of compliance with those measures, VCAT has acknowledged there is limited potential for RSG measures to prevent and minimise harms associated with problem gambling.⁵⁰
128. The Commission refers to and relies upon the evidence set out in paragraphs 90 to 102 above with respect to the economic impact of problem gambling on the community, which similarly applies to the social impact of problem gambling. As is concluded there, the Commission is satisfied that there is potential for increased risk in problem gambling and gambling related harms as a result of this Application. This gives rise to a negative social impact. The Commission accepts (as outlined in paragraph 90 above) that harms associated with the incidence of problem gambling

⁵⁰ Council Report, citing *Mount Alexander Shire* [2013] VCAT 101.

are wide-ranging and attributable to all categories of gamblers and across the community more broadly.

129. The Commission further finds that the Catchment Area is characterised by a mixed socio-economic disadvantage (see paragraphs 45 to 52), which includes pockets of disadvantage which increases its vulnerability to the impacts of problem gambling and gambling harms.⁵¹ Relying on its findings in relation to the economic impact of gambling harms (including but not exclusive to problem gambling) at paragraphs 90 to 102 above, the Commission accepts that the risk of an increased incidence and potential impact of gambling harms on the community due to granting this Application is lower than the socio-economic profile of the Catchment Area would infer. In reaching this assessment, the RSG practices of the Applicant detailed above in paragraph 98 to 102, and the fact that this is an application for 10 EGMs only bolster this Application. The Commission considers the protective factors in this case result in an assessment of this impact as having low weight.

Community attitude

130. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,⁵² 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 a relevant factor in the consideration of particular social impact of an application as part of the 'no net detriment' test. In determining this impact, the Commission recognises that the Council's role, as the representative body of the relevant community and charged with statutory duties under various pieces of legislation, includes representing the community attitude.
131. The evidence before the Commission with respect to the community attitude is found in six objections received from concerned members of the community of Wyndham in relation to the Application and evidence submitted by Council in the Council Report, and the oral evidence of the author of the Council Report, Ms Rosen at the hearing.
132. While the Council Report contains a discussion on the social and economic impact of the Application on the municipality in general, as noted by Ms Rosen, there was no specific community engagement process undertaken with regard to this specific application and therefore it does not contain any specific evidence regarding the attitude in the City of Wyndham to this Application. The six objections received were more general in nature and none spoke specifically

⁵¹ *Molwin Pty Ltd v Mornington Peninsula SC* [2015] VCAT 1982 (23 December 2015), [68].

⁵² (2008) 19 VR 422, [44] per Warren CJ, Maxwell P and Osborn AJA. See also *Mount Alexander Shire* [2013] VCAT 101, [73] per Dwyer DP.

about gambling related harm at the Tiger's Clubhouse and hence were not specific to the Application.

133. In conclusion, the Commission considers that there is some evidence of community opposition to this Application. The Commission notes that, while representative of community views by virtue of its legislative mandate, Council did not broadly canvass the community's views regarding this Application when apportioning weight to this potential negative impact. On the basis of the above the Commission attributes no weight to this potential negative social impact of the Application.

Conclusion on social impacts

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

Net economic and social impact

135. The '*no net detriment*' test in section 3.4.20(c) of the GR Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. This test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impact of approval on the well-being of a relevant community will be either neutral or positive.⁵³
136. After consideration of the material before it, including the evidence provided at the hearing (and weighted as outlined above and summarised in tabular form at Appendix 1 of these Reasons for Decision), the Commission is satisfied that the social and economic impact to the well-being of the community of the municipal district in which the Tiger's Clubhouse is located if the Application is approved will be neutral.

Determination of Application

137. On the material that has been put before it, the Commission has determined that the '*no net detriment*' test has been satisfied and that the total number of EGMs will not exceed the relevant municipal limit.
138. Accordingly, the Commission approves the Application and makes the proposed amendment to the Venue Operator's licence to vary the number of EGMs permitted in the Tiger's Clubhouse from seventy five (75) to eighty five (85) subject to conditions listed below.

⁵³ *Mount Alexander Shire* [2013] VCAT 101 at [52] per Dwyer DP.

139. In accordance with section 3.4.20(3), it is a condition of this amendment and the venue operator's licence that:

1. Community Contributions

- (a) The Venue Operator will establish the Werribee Football Club Foundation (**the Fund**) and undertake to do the following:
- i. Make cash contributions annually in the sum of \$25,000 (increased each year by the increase in CPI) (**the Additional Contribution**) for as long as any of the 10 additional electronic gaming machines (**Additional EGMs**) are in operation at the Premises.
 - ii. The Additional Contribution will be allocated each year to not-for-profit community groups and sporting organisations providing services and facilities to residents in the City of Wyndham.
 - iii. Continue to pay existing cash contributions to not-for-profit community and sporting groups in the City of Wyndham in the sum of \$75,000 per annum (**the Existing Contributions**), in addition to the Additional Contribution, for as long as any of the additional EGMs operate at the Premises.
 - iv. Distribute the Existing Contributions and the Additional Contribution as determined by a committee (**the Committee**) established by the Venue Operator comprising:
 - Two representatives of the Venue Operator; and
 - One representative of Council, or in the event that Council is unwilling to provide a representative, a community representative nominated by the Venue Operator.
- (b) The Committee will advertise annually in a newspaper circulating in the City of Wyndham area for submissions from not-for-profit community and sporting organisations, providing services and facilities to residents within the City of Wyndham, regarding the distribution of the Existing Contributions and Additional Contributions to be made by the Venue Operator each year. The Committee will assess requests for cash contributions in accordance with guidelines to be established by the Committee.

2. Works

- (a) The Works at the Premises (as defined in clause 2(b)) must be substantially completed to the satisfaction of the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) by the date that is 24 months after the commencement of the operation of any of the Additional EGMs at the Premises.
- (b) For the purpose of this clause, the Works must generally accord with the floor plan of the Premises contained at Annexure 2 of the Witness Statement of Mr Rhys New dated December 2017.

- (c) If the Works referred to in condition 2(b) are not substantially completed by the date that is 24 months after the commencement of the operation of any of the Additional EGMs at the Premises then the approval to operate the Additional 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 referred to in condition 2(b). The request must be made no later than the date that is 21 months after the commencement of the operation of any of the Additional EGMs. Any request for an extension of time must include an explanation as to why the Works have not been substantially completed.
- (e) If the Commission agrees to extend the time for completion of the Works in accordance with condition 2(d), the Commission may require that any of the Additional EGMs cease operation during the period of any extension of time granted by the Commission.

The preceding 139 paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey, Deputy Chair and Dr Dina McMillan, Commissioner.

Appendix One – Summary of Economic and Social Impacts

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

Economic impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
Benefits	Gaming expenditure not associated with problem gambling	59 to 65	The portion of new expenditure not attributable to problem gambling is an economic benefit. The Commission adopts Mr Stillwell's estimate that, taking into consideration the 65% transfer rate, new expenditure will be in the range of \$172,324 to \$190,463. Having regard to the evidence with respect to problem gambling and the factors outlined in these reasons, the Commission finds that it is likely that the majority of new expenditure will not be associated with problem gambling. The Commission gives this impact a marginal weight.	Marginal
	Community Contributions	66 to 70	The commitment of \$25,000 that is contingent upon this Application is a positive economic impact to which the Commission affords a marginal weight.	Marginal
	Expenditure on Capital Works	71 to 76	The Applicant proposes to undertake renovations at the Tiger's Clubhouse at an estimated cost of \$1.93 million. The Commission notes that the Applicant could not guarantee that supply contracts for the Proposed Works would be won by vendors from the municipality. In consideration of the factors outlined in these reasons, the Commission considers this factor to be a positive economic impact to which it affords no weight.	No weight
	Employment creation	77 to 80	The Commission is satisfied that the Application will result in the creation of an additional 4.5 FTE positions, which will be sourced from within the City of Wyndham. There was no discussion about short term employment associated with this Application. In consideration of the factors set out in these reasons, in particular the high unemployment rate in the municipality, the Commission attributes a marginal weight to this economic benefit.	Marginal

Economic impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
	Increased gaming competition in City of Wyndham	81 to 86	Increased gaming competition in the City of Wyndham is an economic benefit. The Commission takes into account the small number of additional machines compared to the overall market in the capped region within the City of Wyndham which will reach its cap with the approval of this Application, as well as the utilization rates at the Tiger's Clubhouse which exceed 70% for 2 – 3 hours during the week. The Commission gives this benefit nil – marginal weight.	Nil to marginal
	Complementary and expenditure and supply contracts	87 to 89	The Application stated that complementary expenditure to the value of \$380,000 would be expended in the 12 months following approval and \$130,000 in supply contracts, 30% of which would be provided by suppliers from within the municipal district. However, no further evidence was provided nor detail about this complementary expenditure. As such, the Commission places no weight on this benefit.	No weight
Disbenefit	Gaming expenditure with associated problem gambling	90 to 102	While the Commission accepts that the SEIFA index shows the Catchment Area houses residents that could be vulnerable to gambling-related harms, the Commission is persuaded by the evidence of Mr Anderson that a large portion of the Catchment Area is zoned for re-development which means that its value of the land is yet to be realised. The Commission also finds that the Tiger's Clubhouse is difficult to access which will serve as a protective factor against impulse gambling in conjunction with good RSG practices. The Commission places a low weight on this negative impact.	Low
	Diversion of trade from other gaming venues	103	The Commission is satisfied that the Application will result in a transfer rate of 65% from other venues within the City of Wyndham. However as no further evidence was provided in relation to this impact, the Commission placed no weight on this impact.	No weight

Social impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
Benefits	Additional and improved services and facilities at the premises	106 to 110	The Commission finds that the Proposed Works will result in additional facilities being available to the community, and this a positive social impact derived from this Application. The Beer Garden will diversify the offering at the Tiger's Clubhouse to which it affords a marginal to low weight.	Marginal to low
	Increased gaming opportunities for those who enjoy gaming	111 to 113	Increasing gaming opportunities is a positive impact if the Application will better serve the needs of gaming patrons in the City of Wyndham. The Commission finds that the addition of 10 EGMs would improve game choice of current patrons and enable the Tiger's Clubhouse to compete with other venues in the area and meet demand of the growing population in the City of Wyndham. The Commission gives this positive social impact a marginal weight.	Marginal
	Community hub	114 to 118	The Commission finds that the community hub could have a positive impact on the City of Wyndham and is contingent upon this Application. The Commission gives this a marginal weight.	Marginal
	Social benefit derived from increased community contributions	119 to 125	The Commission accepts that the additional community contributions of \$25,000 per year and to a lesser extent the continuation of the existing contributions of \$75,000 per year will have a positive social impact of which it affords a marginal weight.	Marginal
	Disbenefits	Possibility of increased incidence and the potential impact of problem gambling on the community	126 to 129	The Commission finds that the Catchment Area is characterised by a mixed socio-economic disadvantage including pockets of disadvantage which increase its vulnerability to the impacts of problem gambling. However, the commission accepts the evidence of Mr Anderson that the SEIFA index is not a reliable assessment of vulnerability in this instance due to it including a large area that is zoned for redevelopment. The Commission is further satisfied that, in light of the fact that this is an Application for a small number of machines in the context of the City of Wyndham, the protective factors of the Applicant's RSG practices and the inaccessibility of the Tiger's Clubhouse will serve to mitigate the risk of an increased incidence of problem gambling. The Commission affords a marginal weight to this negative impact.

Social impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
	Community attitude	130 to 133	<p>The Commission finds that there is evidence of community opposition to this Application due to it having received an objection from City of Wyndham and six objections from residents. However, Council did not canvass views of the community in relation to this Application specifically and the residential objections are also general in nature. For this reason, it affords no weight to this negative social impact.</p>	No weight