



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 Minus Pty Ltd for amendment of its venue operator's licence to vary the number of electronic gaming machines at the approved premises, the Diamond Creek Tavern, located at 29 Main Hurstbridge Road, Diamond Creek from forty (40) to fifty (50).

Commission:

Dr Bruce Cohen, Chair
Ms Deirdre O'Donnell, Commissioner

Appearances:

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

Ms Diana Bell for the Shire of Nillumbik

Mr Cameron Warfe as Counsel Assisting the Commission

Date of Hearing:

14 October 2015

Date of Decision:

2 November 2015

Date of Reasons:

2 November 2015

Decision:

The application is granted subject to the condition outlined in Paragraph 108 of these Reasons for Decision

Signed:

Deirdre O'Donnell
Commissioner



REASONS FOR DECISION

INTRODUCTION

1. This is an application by Minus Pty Ltd (**the Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Diamond Creek Tavern, 29 Main Hurstbridge Road, Diamond Creek (**the Premises**), from 40 to 50 (**the Application**).
2. The Premises is located in the Shire of Nillumbik and the relevant municipal authority is the Nillumbik Shire Council (**Council**).
3. By email correspondence to the Commission dated 29 July 2015, the Council indicated that it would make submissions in opposition to the Application. On 3 September 2015, Council lodged a submission addressing the economic and social impacts of the Application on the municipality.
4. The Commission considered the Application at a public inquiry conducted on 14 October 2015, at which the Applicant was represented by Ms Nicola Collingwood of Counsel. Ms Diana Bell, Senior Health Planner, appeared at the inquiry on behalf of the Council.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

5. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (**Act**). The Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities, and some members of some communities. For this reason the Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some, and a potentially harmful activity for others.
6. The objectives of the Act are set out in s 1.1, which provides, inter alia:
...
(2) *The main objectives of this Act are—*
 - (a) *to foster responsible gambling in order to-*
 - (i) *minimise harm caused by problem gambling; and*
 - (ii) *accommodate those who gamble without harming themselves or others;*
 - (ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*
 - (b) *to ensure that gaming on gaming machines is conducted honestly;*
 - (c) *to ensure that the management of gaming equipment and monitoring equipment is free from criminal influence and exploitation;*



- (d) *to ensure that other forms of gambling permitted under this or any other Act are conducted honestly and that their management is free from criminal influence and exploitation;*
- (e) *to ensure that-*
 - (i) *community and charitable gaming benefits the community or charitable organisation concerned;*
 - (ii) *practices that could undermine public confidence in community and charitable gaming are eliminated;*
 - (iii) *bingo centre operators do not act unfairly in providing commercial services to community or charitable organisations;*
- (f) *to promote tourism, employment and economic development generally in the State.*

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

- (1) *The purpose of this Chapter is to establish a system for the regulation, supervision and control of gaming equipment and monitoring equipment with the aims of—*
 - (a) *ensuring that gaming on gaming machines is conducted honestly; and*
 - (b) *ensuring that the management of gaming equipment and monitoring equipment is free from criminal influence or exploitation; and*
 - (c) *regulating the use of gaming machines in casinos and other approved venues where liquor is sold; and*
 - (d) *regulating the activities of persons in the gaming machine industry; and*
 - (e) *promoting tourism, employment and economic development generally in the State; and*
 - (f) *fostering responsible gambling in order to—*
 - (i) *minimise harm caused by problem gambling;*
 - (ii) *accommodate those who gamble without harming themselves or others.*
- (2) *The purpose of this Chapter is also to—*
 - (a) *provide for the allocation of gaming machine entitlements in order to maximise the financial and social benefits to the Victorian community within the regulatory framework applying to the allocation of entitlements;*
 - (b) *promote a competitive gaming industry with the aim of providing financial and social benefits to the Victorian community.*

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

9. Section 3.4.18 to 3.4.19 of the Act provide for the manner in which requests for amendments under section 3.4.17(1)(b) are to be made. Relevantly for this 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.

10. Further, section 3.4.19(1) of the Act provides:

- (1) *Subject to this section, after receiving a copy of a request for an amendment referred to in section 3.4.18(2), a municipal council may make a submission to the Commission—*
 - (a) *addressing the economic and social impact of the proposed amendment on the well-being of the community of the municipal district in which the approved venue is located; and*
 - (b) *taking into account the impact of the proposed amendment on surrounding municipal districts.*

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

- (1) *Without limiting the matters which the Commission may consider in deciding whether to make a proposed amendment the Commission must not amend a venue operator's licence unless—*
 - ...
 - (b) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the regional limit or municipal limit for gaming machines for the region or municipal district in which the approved venue is located will not be exceeded by the making of the amendment; and*
 - (c) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the net economic and social impact of the amendment will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located;*
 - ...

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

13. The Act does not specify the matters which the Commission must consider in deciding whether this 'no net detriment' test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:



- (a) the likely economic impacts of approval;
 - (b) the likely social impacts of approval; and
 - (c) the net effect of those impacts on the well-being of the relevant community.²
14. As such, the 'no net detriment' test is a composite test requiring consideration of a single net impact in economic and social terms on well-being of the community.³ The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.
15. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues, and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.⁴ On review, decisions in the Victorian Civil and Administrative Tribunal (VCAT) have held that for impacts that may be both economic and social – for example the benefits of gaming consumption – it does not matter whether the impact is considered on the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.⁵
16. The Commission also notes that on review, it has been indicated by VCAT that:

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

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

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

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

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

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

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

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

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



17. If the Commission is not satisfied that the 'no net detriment' test is met, then an application must fail in accordance with the opening words of s 3.4.20(1) of the Act. The test is a mandatory precondition to approval. However, although s 3.4.20(1) sets out certain mandatory considerations for the Commission, the provision is not cast in exhaustive terms. If the Commission is satisfied that the 'no net detriment' test is met, it still has an ultimate discretion as to whether or not to grant the approval.⁸ The Commission must decide whether to make the proposed amendment, with or without any changes from that proposed by the Applicant, even where the applicant has satisfied the minimum threshold of the 'no net detriment' test.⁹
18. In considering the exercise of this discretion:
- (a) it must be exercised having regard to the purposes of the Act and, in particular, the specific purposes of Chapter 3 of the Act dealing with the regulation, supervision and control of gaming machines;¹⁰ and
 - (b) it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the Act as a whole.¹¹
19. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*¹² that if all of the mandatory considerations under the Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval - other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.
20. The Commission notes that one category of matters which has been a relevant consideration in this exercise of discretion has been the impact that an increase in gaming machines may have on surrounding municipalities. This approach was taken by VCAT in *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation*,¹³ and also previously by the

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

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

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

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

¹² [2013] VCAT 101, [98].

¹³ [2014] VCAT 1192, [127] per Code PM and Nelthorpe M.



Commission.¹⁴ The impact on surrounding municipalities as a relevant consideration for the Commission is also reflected in the requirement under section 3.1.18(1)(c)(ii) for submissions to be provided by the Applicant on this issue, and for the relevant municipal council to make similar submissions pursuant to section 3.1.19(1)(b).

MATERIAL BEFORE THE COMMISSION

21. The Applicant provided the Commission with the following material in support of its Application:
- (a) Social and Economic Impact Statement, prepared by Ratio Consultants Pty Ltd (**Ratio**), dated June 2015;
 - (b) Expenditure Report, prepared by Mr Richard Whitehouse of PVS Australia Pty Ltd (**PVS**), dated May 2015;
 - (c) Witness Statement of Mr Joseph Peter Scerri, Director of the Applicant, dated June 2015;
 - (d) Witness Statement of Mr Richard Victor Gray, Venue Manager of the Premises, dated June 2015;
 - (e) Witness Statement of Mr Leigh James Barrett, Director and Principal Consultant of Leigh Barrett and Associates Pty Ltd, dated 1 June 2015;
 - (f) Social and Economic Impact: Addendum prepared by Ratio, dated October 2015 (**Ratio Addendum Report**);
 - (g) Addendum Report prepared by Mr Richard Whitehouse of PVS, dated September 2015 (**PVS Addendum Report**); and
 - (h) Suggested condition to attach to the approval should the Commission determine to grant the Application.
22. In opposition to the Application, the Council provided the following material to the Commission:
- (a) Economic and Social Impact Submission prepared by Council, dated 2 September 2015 (**Council Report**);
 - (b) Extract of the 2011 Census QuickStats obtained from the Australian Bureau of Statistics (**ABS**), dated 17 July 2015;

¹⁴ In the matter of an application from the Bakers Arms Hotel Pty Ltd to amend the venue operator licence to vary the number of gaming machines at the Braybrook Hotel, determined 31 October 2013, at [116].



- (c) Report on Community Consultation: Poker Machine Gambling in Nillumbik, dated July 2015 (**Community Consultation Report**); and
 - (d) Letters of Support from the Banyule City Council, City Of Whittlesea and Nillumbik Health.
23. The following material, prepared by Commission officers, was provided to the parties and considered by the Commission:
- (a) Economic and Social Impact Report, dated October 2015 (**VCGLR Report**); and
 - (b) Pre-Hearing Inspection and Compliance Report, dated 30 August 2015 (**Inspection Report**).
24. Further, the Commission was provided with written submissions prepared by Counsel for the Applicant on the day of the hearing.
25. Following the hearing, Commissioner O'Donnell undertook a site visit of the Premises.

SHIRE OF NILLUMBIK AND THE DIAMOND CREEK TAVERN

26. The Premises are located at 29 Main Hurstbridge Road, Diamond Creek. It is located on the north-west corner of Main Hurstbridge Road and Station Creek, approximately 200 metres west of the main retail precinct of the Diamond Creek Major Activity Centre. Additionally, access to the drive-through bottle shop of the Premises is directly from Main Hurstbridge Road.
27. The Premises comprises a range of facilities, including:
- (a) a traditional style sports bar with TAB facilities and an outdoor courtyard;
 - (b) a bistro with capacity for approximately 185 patrons, including a children's play area;
 - (c) a modest first floor function room with capacity for approximately 100 patrons;
 - (d) a gaming room with 40 EGMs;
 - (e) a lounge area;
 - (f) a drive-through bottle shop; and
 - (g) on-site parking.



28. As detailed in the VCGLR Report:

- (a) the Shire of Nillumbik is a metropolitan municipality located approximately 25 kilometres north-east of Melbourne and covering an area of approximately 432 square kilometres. It incorporates major centres such as Eltham, Diamond Creek and Hurstbridge;
- (b) the Shire of Nillumbik has an estimated adult population of 48,202 and the annual rate of population growth was projected by the then Victorian Department of Transport, Planning and Local Infrastructure to be 0.4% for the period 2016 to 2021, as compared with the Victorian average of 1.7%;
- (c) the Shire of Nillumbik is subject to a municipal limit of 464 EGMs.¹⁵ Currently, there are two gaming venues within the municipality with approvals to operate a total of 97 EGMs. However, the number of EGMs actually in operation in these venues, as opposed to the number permitted to be operated, is 80 EGMs;
- (d) the Shire of Nillumbik has an EGM density of 1.7 EGMs per 1000 adults, which is 69.3% lower than the metropolitan average (5.4) and 71% lower than the State average (5.7). This ranks it as the 30th of 31 metropolitan municipalities in terms of EGM density per 1000 adults. If the Application is approved, this would rise by 12.5% to 1.9 EGMs per 1000 adults, which would still be less than half both the metropolitan and State averages;
- (e) the Shire of Nillumbik has an average gaming expenditure of \$156 per adult, which is 73% lower than the metropolitan average (\$576) and 71.8% lower than the State average (\$553). Applying the estimate of increased gaming expenditure received from the Applicant, approval of the Application would result in an increase in average gaming expenditure per adult of 2.8%. Overall gaming expenditure within the Shire of Nillumbik has decreased by 36.3% in real terms over the past five years (to June 2015), whilst the metropolitan average has experienced a decrease by 18.9% in real terms over the past five years;
- (f) in relation to the area immediately surrounding the Premises (i.e. within 2.5km), only a very small percentage of SA1s¹⁶ within 2.5km of the Premises are in the most or second most disadvantaged quintile of the SEIFA¹⁷ index of relative socio-economic disadvantage scores; and

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

¹⁶ Statistical Area Level 1 (SA1) has been designed by the ABS as the smallest unit for the release of Census data.

¹⁷ Socio-Economic Indexes for Areas (SEIFA) is a product developed by the ABS that ranks areas in Australia according to relative socio-economic advantage and disadvantage. It consists of four different indexes, including the Index of Relative Socio-economic Disadvantage. A higher SEIFA score indicates a lower level of disadvantage.



(g) the unemployment rate in the Shire of Nillumbik is 2.7%, which is below the metropolitan unemployment rate of 6.5%. Unemployment in the Shire of Nillumbik has decreased from 2.9% to 2.7% over the past 12 months.

29. The Commission is satisfied that in accordance with section 3.4.20(1)(b) of the Act, approval of this Application would result in an increase in the number of EGMs within the Shire of Nillumbik that would not exceed the municipal limit.

APPLICANT WITNESSES AND SUBMISSIONS

Ms Colleen Yvonne Peterson

30. Ms Peterson is the Managing Director of Ratio, which is a planning and development consultancy firm. She is a qualified town planner and urban development professional. The Commission accepts that Ms Peterson has the experience to provide expert opinion on the assessment of socio-economic impact that she has undertaken for this Application.
31. Ms Peterson prepared the Social and Economic Impact Statement dated June 2015 and the Ratio Addendum Report (together the **Ratio Reports**). Ms Peterson adopted the Ratio Reports as well as giving oral evidence to the Commission in relation to the Application.
32. Ms Peterson provided information to the Commission in relation to gaming within the Shire of Nillumbik. She gave evidence that only two gaming venues are currently located in the Shire of Nillumbik, the other being the Eltham Hotel, which is approximately seven kilometres away from the Premises. Ms Peterson further noted that:
- (a) gaming machine density in the Shire was substantially lower than the metropolitan and State averages, as was gaming expenditure per adult;
 - (b) the Shire of Nillumbik has substantially more adults per venue (24,101) than the metropolitan and State averages of 10,920 and 9,131 respectively; and
 - (c) there are currently 80 EGMs operating in the Shire of Nillumbik, which is substantially less than the 464 EGMs that are permitted.
33. Ms Peterson also provided the Commission with information in relation to gaming taking place at the two venues within the Shire of Nillumbik, and in particular at the Premises. Ms Peterson highlighted that:
- (a) the Premises has a net machine revenue (**NMR**) of \$280.63 and expenditure of \$4,097,128.18 in 2014/15. Comparatively, the Eltham Hotel has an NMR of \$234.06 and



expenditure of \$3,417,218.26 in that year. Further, while the NMR at the Premises had increased from the previous financial year, it remained well below the metropolitan hotel average NMR of \$372;

- (b) the gaming room at the Premises operates at peak utilisation (i.e. when 70% or more of EGMs are in use) for approximately seven hours per week, and this generally occurs in the early evening, which coincides with before and after dinner peak periods. Thursday and Friday evenings recorded the highest utilisation, the former of which coincided with Members Night; and
- (c) the higher utilisation recorded in the early evening coincides with meal times, indicating a strong correlation between gaming and other non-gaming activities, and demonstrates that alcohol is less likely to have an impact on player behaviour than, for instance, may be the case at venues that experience peak utilisation in the late evening/early morning hours.

34. Ms Peterson indicated that the patron demographic and socio-economic profile within the catchment area is a factor that the Commission should consider to be protective when assessing the impact of gaming on the community of the Shire of Nillumbik. In particular, Ms Peterson highlighted that:

- (a) almost half of the patrons are residents of Diamond Creek (45.2%). The secondary catchment area comprising Eltham and Hurstbridge total only 11% and 7.3% of the patrons at the Premises respectively; and
- (b) the primary and secondary patron catchments exhibit few signs of social and economic disadvantage, with households in both primary and secondary catchment areas being characterised by higher household and disposable income, as well as low levels of unemployment.

35. Ms Peterson stated further that the Shire of Nillumbik shows few signs of social and economic disadvantage and made reference to the results of the SEIFA Index of Relative Disadvantage scores for the areas within the municipality as follows:

- (a) the SEIFA score for the Shire of Nillumbik (1098) is significantly higher than the median for Victorian Local Government Areas (**LGAs**) (993);
- (b) the suburb of Diamond Creek, where the Premises is located, has a SEIFA score of 1090, which is above the median SEIFA score for Victorian suburbs and sitting within the 10th



decile;

- (c) the secondary patron catchment area, comprising Eltham and Hurstbridge, also have SEIFA scores significantly above the Victorian median score;
 - (d) an area outside of the primary patron catchment area records a spike in disadvantage, which places it in the 2nd decile of disadvantage. However, Ms Peterson considers this to be an anomaly and can be explained by reference to the Liscombe House residential aged care facility that is located in the area;
 - (e) whilst the municipality experiences higher levels of housing stress comparative to metropolitan areas, this is offset by the higher incomes in the patron catchment, which indicate that the percentage of income devoted to mortgage payments are a matter of choice, as opposed to necessity;
 - (f) the level of disposable income in the suburbs within the municipality is high, with Diamond Creek (54.2% greater), Eltham (53% greater) and Hurstbridge (33% greater) all ranking well above the metropolitan average;
 - (g) unemployment in the Shire of Nillumbik is 2.7%, which is well below the metropolitan (6.5%) and State (6.4%) averages.
36. Ms Peterson considered the Premises to be a destination venue. Her evidence was that whilst the Premises is located within a Major Activity Centre, it is separated from the retail core by way of a railway reserve, creating a physical barrier to access. The Premises is also located within areas zoned for commercial and industrial use, not in a shopping complex or strip shopping centre, and therefore it is not in a location that should give rise to concerns about convenience gambling or impulse decisions to gamble.
37. Ms Peterson provided evidence that the Applicant has demonstrated a clear and consistent commitment to Responsible Service of Gambling (**RSG**). The Applicant ensures gaming staff are provided training in relation to problem gambling including recognising signs of problem gambling, approaching persons who need help, services available at Gambler's Help and the best practice for customer service at the Premises. The Applicant has a high level of interaction with their Gambler's Help venue support worker and, in the view of Ms Peterson, management at the Premises have shown initiative beyond the mandatory RSG requirements and appear well positioned to address any potential problem gambling issues.
38. Further, with respect to problem gambling, Ms Peterson noted that the application before the



Commission is a 'top-up' application, as opposed to a new premises application, and therefore the increased risk of problem gambling is only incremental.

39. Ms Peterson indicated that the Applicant intends to use the increased revenue generated by the additional EGMs for a proposed redevelopment of the Premises (**Proposed Redevelopment**). The Proposed Redevelopment is estimated to cost \$2.2 million and is to include –
- (a) an expanded bistro;
 - (b) the creation of a private dining room;
 - (c) refurbishment of the upper floor function room;
 - (d) expansion of the sports bar and creation of attached terrace;
 - (e) expansion of the drive-through bottle shop;
 - (f) the creation of a disability compliant entrance from car park;
 - (g) the creation of a new terrace from the smoking room; and
 - (h) relocation of cool rooms and other back-of-house facilities to a purpose built area at the rear of the Premises.
40. Ms Peterson stated that the additional 10 EGMs would create the requirement for 6.5 full-time or equivalent staff members. Ms Peterson expects the proposal to also attract short term employment at the Premises during construction of the Proposed Redevelopment.
41. Ms Peterson also gave evidence that once redeveloped, greater supply contracts in the local area would be required to service the Premises. She estimated that this would result in an increase in food and beverage supply costs of 20-30%. Ms Peterson further indicated that the redevelopment would result in complementary expenditure that was estimated in the order of \$3.5 million per annum.
42. Ms Peterson stated that the Applicant intends to commit between \$15,000 and \$20,000 per annum in cash contributions to the local community. The proposed contributions are intended to be made to local sporting organisations and community groups.
43. In response to the evidence submitted in the Council Report, Ms Peterson disagreed on a number of matters. In summary:
- (a) Ms Peterson did not consider that Council had accepted that as the Premises has existing



EGMs there is an existing underlying risk of problem gambling at the Premises, irrespective of whether the Application is granted;

- (b) the level of community opposition, as outlined by the Council Report, is "generally consistent with Victorians across the board" in relation to gaming applications in a broad sense. However, it did not address the Application with specificity as to the impact that an approval would have in this particular instance. In the view of Ms Peterson, Council has not presented evidence that the social character of the area would be detrimentally impacted by approval of the Application, or that there would be a material detriment to the local community (in social or economic terms); and
- (c) the disbenefits outlined by Council have, to some extent, been overstated. In particular, reference was made to the issue of the proximity to social housing to the Premises, which the Council considered would give rise to a disbenefit. Ms Peterson stated that the level of social housing in the Shire of Nillumbik is below the metropolitan average. Further, those on pensions in social housing (as the case is in this Application, where an aged care facility is within the catchment area) are underrepresented as problem gamblers. On that basis, Ms Peterson considered that Council have overstated this particular disbenefit in respect of the real impact on the community.

- 44. Ms Peterson gave evidence that the Applicant is keen to develop and modernise the Premises to meet the needs of the Shire of Nillumbik. The increased revenue the Applicant would receive as a result of this Application would enable the Applicant to enhance the existing facilities and increase community contributions.
- 45. Ms Peterson stated that, in her view, the addition of 10 EGMs to the Premises will result in an overall net beneficial socio-economic impact on the Shire of Nillumbik.

Mr Richard Anthony Whitehouse

- 46. Mr Whitehouse is a director of PVS. He has been involved in the gaming industry for over 15 years, as well as broader experience in accountancy across a range of industries, including gaming and hospitality. As a result, he has developed an in depth knowledge of gaming industry performance and regulatory requirements. The Commission accepts that Mr Whitehouse is qualified to give expert opinion on gaming expenditure predictions.
- 47. Mr Whitehouse adopted his written report of May 2015 and the September 2015 PVS Addendum Report (together the **PVS Reports**) as well as giving oral evidence to the Commission in relation to the Application.



48. Mr Whitehouse gave evidence that the Shire of Nillumbik had experienced a decrease in gross gaming expenditure over the five years to June 2014, and that it was his understanding it had the lowest gaming expenditure out of the metropolitan LGAs with gaming. In the view of Mr Whitehouse, there was nothing long term to suggest that this trend will change.
49. Mr Whitehouse also gave evidence in relation to the utilisation of EGMs at the Premises. He stated that if a venue already has a number of EGMs, and they are not being fully utilised (as was the case at the Premises), then adding more machines will not be expected to result in gaming expenditure at the venue increasing as if the expenditure on each of the new EGMs will be exactly the same as is currently the case for the existing machines.
50. As to the likely effect that a further 10 EGMs would have on the Applicant's gross gaming expenditure, Mr Whitehouse stated that based on utilisation statistics and analysis of historical trends and recent trends in gaming expenditure, a reasonable conclusion would be that the additional 10 EGMs at the Premises would generate additional gaming expenditure in the trade area of the Premises of \$251,804 per annum. In the municipality, he estimated there would be an increase in total gaming expenditure of \$209,730. These figures were adjusted from earlier estimates provided by Mr Whitehouse to take account of the release of 2014/15 gaming expenditure data. While Mr Whitehouse had not been able to run the full model used to predict future expenditure, he believed an increase of his initial forecasts by 15% was appropriate.
51. Mr Whitehouse gave further evidence that, of the total anticipated additional expenditure at the Premises, it is likely that approximately 53.6% would be transferred expenditure from other gaming venues, with the remainder being new expenditure, estimated to be \$116,887.
52. Mr Whitehouse concluded that an increase of 10 EGMs at the Premises would increase gaming expenditure, but not significantly from the current levels. Mr Whitehouse asserted that this is due to the sustained periods of under-utilisation of the existing EGMs and the relatively low NMR for the Premises.
53. In response to the Council Report, Mr Whitehouse gave evidence that the positions put by the Council were inconsistent because on the one hand it argued there is no demand for extra EGMs, while on the other hand that if approved, the new EGMs would perform at a level equivalent to that of the existing EGMs at the Premises. He argued that the Council's estimates significantly overstated the expenditure forecast.
54. Finally, Mr Whitehouse stated that in the second half of the 2014/15 financial year, there had been an increase in gaming expenditure of 33% at the Premises, compared to a decline of 10% at the Eltham Hotel. In response to questions from the Commission, Mr Whitehouse noted that



these changes had occurred in circumstances where there had been no change in EGM numbers. He stated that the increase in expenditure at the Premises may have resulted from changes in the quality of the service being provided, but that this was not a factor that was incorporated into the model he used to estimate future gaming expenditures.

Mr Leigh James Barrett

55. Mr Barrett is the Director and Principal Consultant of Leigh Barrett and Associates Pty Ltd who specialise in the provision of a range of regulatory compliance services and staff training for gaming venues in Victoria. He adopted his witness statement dated 1 June 2015 and provided oral evidence to the Commission.
56. Mr Barrett was engaged by the Applicant to review its responsible gambling policies and procedures and conduct an audit of the Applicant's compliance with its responsible gambling code and regulatory requirements at the Premises.
57. Mr Barrett gave evidence that the audit of the Applicant found it to be strongly committed to its responsible gambling obligations. He gave evidence that he is confident that the Applicant's staff are appropriately trained and are highly skilled in dealing with issues that might arise with customers to minimise the incidence of problem gambling at the Premises. Further, Mr Barrett characterised the approach to responsible gambling taken by the Applicant at its other venues (Dorset Gardens and Roxburgh Park) as "consistently good" in terms of compliance
58. Mr Barrett stated that during his visits to the Premises he consistently witnessed very high levels of interaction between the patrons and staff and he confirmed his opinion that strong customer interaction is a key to responsible gambling practices.
59. Mr Barrett told the Commission that the Premises' layout gives him confidence that the increase in EGMs at this Premises will not increase the potential for problem gambling. It was the evidence of Mr Barrett that his concerns in relation to the door of the gaming room remaining open were addressed by the Applicant, with the door to remain closed at all times, requiring patrons to physically open the door to gain access to the gaming room. Mr Barrett also noted that the design for the Proposed Redevelopment, that he had a part in, includes the design for a door directly at the bar in the sports bar into the gaming room that would enable staff members to know exactly who is going in and out of the gaming area.
60. Mr Barrett stated that the range of non-gambling, recreational opportunities on offer at the Premises provided a protective factor against the potential for problem gambling to occur and that an increase in the number of EGMs at the Premises would have a negligible impact on



problem gambling prevalence in the Shire of Nillumbik. Mr Barrett noted further that the risk of an increase in problem gambling was negligible as the Premises were located at the border of an activity centre rather than the centre, and even with the proposed increase from 40 to 50 EGMs, the Premises would still be a low to medium sized venue.

Mr Joseph Peter Scerri

61. Mr Scerri is the director of the Applicant. Mr Scerri adopted his witness statement dated June 2015 and gave oral evidence to the Commission.
62. Mr Scerri provided evidence to the Commission in relation to his involvement with licensed venues for over 17 years, including those with gaming machines, and outlined his role in relation to the Premises.
63. Mr Scerri stated that he works at the Premises throughout the week, and particularly during peak service times. Mr Scerri believes that a variety of facilities makes a venue more attractive to prospective patrons, but in particular is of the view that a strong food and beverage offer is crucial to the ongoing success of a hospitality venue.
64. Mr Scerri confirmed that he currently holds an RSG certificate and an RSA certificate and that the Applicant works actively with Gambler's Help. He gave evidence that all hotels within his group had engaged Leigh Barrett and Associates in relation to the provision of RSG, and that the strength of delivery of RSG at his hotels was second to none.
65. Mr Scerri explained that the Premises requires substantial redevelopment works to increase its attractiveness to patrons. Mr Scerri stated that both the current layout of the Premises, as well as the management of the Premises by the previous operator, were not inviting or conducive to patrons attending, particularly those from the local area.
66. Mr Scerri indicated that the Applicant anticipated it would commit between \$15,000 and \$20,000 in cash contributions to sporting and community organisations within the Shire of Nillumbik. Mr Scerri also indicated that, if the Application is approved, the Applicant may be able to commit a greater amount as the Premises becomes more profitable. However, Mr Scerri noted that there had been no cash contributions made in the current financial year as yet.
67. Mr Scerri stated that, should the Application be granted, the Applicant would be keen to ensure that both the installation of EGMs and completion of the Proposed Redevelopment occurred promptly, and indicated that the Applicant would be willing to commit to a condition of approval that the Proposed Redevelopment be completed within twelve months from the date of



installation of any EGMs.

68. Mr Scerri stated that the Applicant is motivated to increase its number of EGMs in order to generate funds to improve the amenities for its members, improve its competitiveness as a gaming and community destination and improve the financial position of the Applicant. In addition, when the Proposed Redevelopment is completed it is anticipated that additional revenue will result from an increase in such services as food and beverage and will make the Applicant less reliant on gaming revenue. In cross-examination, Mr Scerri accepted that where there was an increase in such expenditure at the Premises, there could be a related decrease in expenditure at other competing businesses.

Mr Richard Victor Gray

69. Mr Gray is the Venue Manager of the Premises. Mr Gray adopted his witness statement dated June 2015 and gave oral evidence to the Commission. Mr Gray has over 15 years of experience within the hospitality industry.
70. Mr Gray has been at the Premises since late 2014, and has taken a hands-on role to managing the Premises since that time. Mr Gray has retrained the staff at the Premises since beginning there, with a renewed focus on customer service. There have also been some minor cosmetic changes to the Premises, as well as extending the period for which the food and beverage service is provided to patrons.
71. Mr Gray indicated that staff loyalty was high, with most members of staff at the Premises having been employed there for at least five years.
72. Mr Gray gave evidence in relation to RSG practices and procedures at the Premises, and in particular, the interaction with Gambler's Help. Mr Gray indicated that he intended to have Mr Barrett conduct training with staff members in the third quarter of 2015 so as to ensure that staff members are fully aware and trained in relation to RSG. Currently, Mr Gray considers that staff engage frequently with customers to assess whether a patron is at risk of problem gambling. Mr Gray also noted that staff are instructed to check the self-excluded patron book daily, and that since having commenced at the Premises there have been no breaches of self-exclusion.
73. Mr Gray also stated that the loyalty program in place at the Premises is linked to attendance at the Premises, as opposed to spending within the Premises. As such, any spending on food, beverage or gaming does not provide members with any additional loyalty benefit.
74. Mr Gray addressed questions in cross-examination and from the Commission in relation to an



alleged breach of a minor entering the gaming room. In that instance, Mr Gray indicated that a patron had entered the gaming room with their child, and was immediately noticed by staff at the Premises and informed that the child was not permitted to be in that area. Mr Gray also indicated that the Premises use security staff during the evening trade period, as the entrance to the Premises is quite close to the entrance of the gaming room.

75. In conclusion, Mr Gray considered the staff at the Premises to be properly trained to respond to any RSG matters, and that the addition of 10 EGMs will not create any particularly onerous additional monitoring issues for staff.

COUNCIL SUBMISSION

76. Ms Bell appeared on behalf of the Council at the hearing. The Council relied on the Council Report and made oral submissions at the hearing, but did not call any witnesses.¹⁸ The Council also relied on the Community Consultation Report and letters from Banyule City Council, Nillumbik Health and City Of Whittlesea Council, each of which supported the Council position in opposition to the Application.

77. The Council submitted that it is in the process of developing a policy in relation to gambling in the Shire of Nillumbik. As a part of this process, consultation with the Nillumbik community (**the Community**) was undertaken and the Community position can be summarised as follows:

- (a) the Community has no desire for more EGMs and sees them as more harmful than beneficial;
- (b) 54% of the Community believes that EGM gambling is a serious social problem in the Shire;
- (c) the Community views EGMs as addictive in nature, and feel that they cause problems for gamblers and their friends and families;
- (d) the Community feels that EGMs result in the displacement of other activities such as live music at venues, and have a negative effect on the ambience of venues.

78. In both the Council Report and in oral submissions, the Council stated with respect to the social and economic impact of the Application that:

- (a) there is no evidence supporting demand for more EGMs at the Premises beyond those that are already operating;

¹⁸ As a result, the Applicant did not have an opportunity to cross-examine any witness in respect of the materials relied upon by the Council.



- (b) any employment benefits during the construction phase from the proposed redevelopment will be very small and temporary, and it is not guaranteed that they would be enjoyed by the Diamond Creek community;
- (c) any employment benefits from the improved ongoing operation of the Premises are overstated, and in any event it does not necessarily mean increased employment in the municipality;
- (d) the addition of more EGMs will result in more gaming expenditure, potentially to the detriment of other businesses in the municipality;
- (e) the existing EGMs in the municipality already means that approximately \$4 million currently leaves the municipality, and additional EGMs would mean this would increase;
- (f) the provision of cash and non-cash community contributions from an operator of a gaming venue can be problematic in that it contributes to the normalisation of gambling, and in any event it was not clear what cash contributions would be made by the Applicant;
- (g) with respect to problem gambling:
 - (i) the Council has taken a public health approach, and considers that EGMs give rise to problem gambling which is associated with a range of adverse social and economic outcomes;
 - (ii) the location of the Premises provides for convenience gambling, which increases the risk of problem gambling. Further, Council submitted that the most vulnerable people within the Community live closest to the Premises;
 - (iii) the Council submitted that problem gambling increases with the availability of EGMs. Further, an additional 10 EGMs will significantly increase the level of expenditure at the Premises and that most of this will be from people living within the vicinity of the Premises;
- (h) the Shire of Nillumbik is a green wedge shire; EGMs are misaligned with family and community values; and that they adversely affect the close knit communities in the area.

79. The Council stated that the Premises needs the Proposed Redevelopment and that the improvements would bring the hotel up to a reasonable standard. However, in summary the Council submitted that there were no positive social or economic impacts associated with the



Application, but rather that it would give rise to a range of negative social and economic impacts which meant the Application should be rejected.

'NO NET DETRIMENT' TEST

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

ECONOMIC IMPACTS

81. The Proposed Redevelopment is estimated to cost approximately \$2.2 million, which represents a substantial investment to upgrade the Premises. As such, it represents an economic benefit which the Commission gives moderate weight. In considering this benefit and its relationship to this Application, the Commission is mindful of VCAT's decision in *Monash CC v L'Unico Pty Ltd (Review and Regulation)*,¹⁹ where it held it was unconvinced with this type of top-up application that it is appropriate under the relevant statutory framework to either engage in a 'project feasibility' or 'existing financial capacity' assessment, but rather (with two provisos) that it is appropriate to simply take the proposal for what it is and then assess its likely social and economic impacts as per the *'no net detriment'* test. The first proviso was that common sense suggests that there needs to be a reasonable degree of corroborating information, to at least provide comfort that the "estimated project value" of the proposed works is more than just an ambit or "back of the envelope" calculation. As such, less weight should be given to purported proposed works where there is a concern about the bona fides of the "project value" figure being relied upon. The second proviso was that it seemed appropriate to recognise that the proposed works may in practice be easier to achieve financially if the Application were approved. The Commission considers that the approval of 10 additional EGMs will create an improved financial position for the Applicant, and as such would facilitate the Proposed Redevelopment. The Commission also notes that the Applicant has proposed that any approval of the Application should be subject to a condition related to the completion of the works associated with the Proposed Redevelopment.
82. The Commission accepts the evidence of Mr Whitehouse that approval of this Application is likely to result in an increase in gaming expenditure at the Premises of approximately \$251,804 per annum. The Commission also accepts that approximately 53.6% of this increase in gaming expenditure consists of transferred expenditure from the surrounding area.



83. To the extent that this increased gaming expenditure is not related to problem gambling, which the Commission considers is of minimal risk in this particular Application, this portion of expenditure is viewed as an economic benefit.
84. The Commission notes that some portion of increased expenditure is also likely to be derived from patrons who live outside the Shire of Nillumbik, given the higher likelihood for patrons residing in this region to travel further than is typically the case. However, the Commission considers that the increased gaming expenditure at the Premises is, in any event, not likely to be significant and the NMR will remain low. Therefore, the Commission attributes low weight to this benefit.
85. To the extent that a portion of new expenditure may be attributable to problem gambling, this represents an economic disbenefit.²⁰ In assessing the extent of this disbenefit, the Commission recognises that it does not include transferred expenditure because such expenditure cannot be said to exacerbate problem gambling.²¹ The Commission also recognises that as the increased gambling expenditure at the Premises is not likely to be significant, any amount attributable to problem gambling is also likely to be low. In any event, the Commission considers that any increase in problem gambling as a result of the Application is likely to be minor due to the –
- (a) relatively low level of anticipated new expenditure in the Shire of Nillumbik;
 - (b) location of the Premises in an area of low disadvantage; and
 - (c) active mitigation approach taken to problem gambling by the Applicant.

Accordingly, the Commission attributes a low weight to this impact.

86. The Commission considers that community contributions could be an economic benefit to the community. However, in this Application the proposed contributions are not substantial and do not appear to be an increase from the current level of contributions, nor is there any certainty that they will be made. Accordingly, the Commission ascribes no weight to this economic benefit.

¹⁹ [2013] VCAT 1545.

²⁰ The Commission recognises that on review, the key likely disbenefit of 'problem gambling' has for convenience been treated under the heading of 'social impacts' in various instances: see *Mount Dandenong Tourist Hotel Pty Ltd v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted: see, for example: *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [178] and following per Dwyer DP. For completeness the Commission considers both the economic and social impacts of problem gambling in its assessment of this Application.

²¹ See *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [113] per Code PM and Nelthorpe M; *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J.



87. The Commission also considered other economic benefits associated with the Application, all of which are assigned a low weighting. These include:

- (a) Employment of 6.5 full time equivalent employees as well as short-term employment in relation to the undertaking of building works: the building works required to carry out the Proposed Redevelopment will provide economic stimulus to the area, however, this is balanced by the likelihood that such stimulus will only be a short term benefit;
- (b) Complementary expenditure: Ms Peterson argued the redevelopment will update the layout and interior of the Premises so as to make it more attractive to local patrons and visitors, resulting in increased expenditure that is a medium benefit. However, there was little evidence provided as to the likely levels of complementary expenditure. The introduction of new and improved facilities to the Premises would enable greater use of the Premises' facilities, but the extent to which it would attract new patrons is uncertain. Further, as Mr Scerri stated in his evidence, any increase in such expenditure at the Premises is likely to be offset by reductions in expenditure elsewhere. The potential disbenefit of the effect of increased expenditure at the Premises on other local businesses was explicitly highlighted in the Council Report;
- (c) Supply contracts for other local businesses: similar to the factor above, the Commission finds that there was little evidence provided to support this benefit, and any increase associated with the Proposed Development may be offset by related reductions in supply contracts from other local businesses; and
- (d) Increase in competition in gaming in the Shire of Nillumbik: while this is an important factor in light of the statutory purposes of the Act and the consumer benefits that derive from competition, in the current Application – given the low number of additional EGMs proposed for the Premises and the existing low EGM utilisation rates – the impact will likely be negligible.

88. Overall, the Commission considers that there will be minor, but positive, economic impact on the Shire of Nillumbik if the Application were to be approved.

SOCIAL IMPACTS

89. Wherever accessibility to EGMs is increased there is always a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, family breakdowns and other social costs. Accordingly, the Commission accepts there is the potential for negative social impacts through possible increased problem gambling expenditure.



90. The Commission accepts the evidence of Mr Barrett that the Premises exhibits factors that may decrease the risk of problem gambling including:
- (a) the venue size, in that the Premises is a low to medium sized venue; and
 - (b) the range of non-gambling recreational opportunities and substantial facilities on offer at the Premises.
91. The Commission finds that the Application will not negatively impact these protective factors through the introduction of 10 additional EGMs. Further, if the Proposed Redevelopment proceeds then the protective factor in paragraph 90(b) above is likely to be enhanced. Therefore, the Commission considers it likely that these protective factors will have some positive impact on the risk of problem gambling at the Premises.
92. The Commission also accepts that the Applicant has suitable compliance procedures in place and a strong commitment to RSG practices, which are likely to mitigate the risk from any increased problem gambling as a consequence of additional EGMs at the Premises.
93. Further, the Commission accepts that the Application will result in a small increase in EGM density per adult in the Shire of Nillumbik and that there may be a marginal increase to EGM expenditure per adult as a result of this Application. However, given the current low number of EGMs and gaming expenditure within the Shire of Nillumbik, the Commission finds that approval of the Application would have a low impact on the risk of problem gambling in the Shire of Nillumbik.
94. Finally, the Commission considers that the Premises are located in an area with a high SEIFA ranking, indicating a general low level of disadvantage (though noting that there is also some social housing within the relevant trade area). The Commission also accepts that the Premises are located at the border of an activity centre, and physically separated from nearby retail and activity precincts. The Commission is, therefore, satisfied that the risk for an increase in problem gambling at the Premises is low, and hence applies a low weighting to this impact in this Application.
95. The Commission finds that the increased number of EGMs at the Premises will better serve the needs of recreational gaming patrons through providing a wider variety of EGMs from which to choose. However, given the relatively low level of peak utilisation of EGMs currently experienced at the Premises, the weight given to this benefit for recreational gamblers is low.



96. The Commission accepts that the Proposed Redevelopment to the Premises will provide some benefit to the community to the extent that a local venue will be improved aesthetically and will incorporate improved facilities. Taking into account the proposed Condition that the Applicant carry out the Proposed Redevelopment within 12 months, the Commission considers this to be a social benefit to which it gives a moderate weight.
97. The Commission considers that additional community contributions could have a positive impact on local community organisations, which is a social benefit. However, given the uncertainty as to the value of any additional contributions, the Commission attributes no weight to this impact.
98. Finally, as was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,²² the Commission recognises that whilst community apprehension is not an over-riding factor (in the sense that the Application is not a referendum on gaming), it is certainly a relevant factor in the consideration of particular social impact *within*, and as part of, the 'no net detriment' test.
99. The Commission has taken into account the views of the Community with respect to EGMs that were contained in the Council Report, Community Consultation Report and outlined in the Council's oral submissions. It also recognises that the Shire of Nillumbik, while a metropolitan municipality, is a green wedge Shire in which many of its suburbs and townships remain as distinct communities. However, the Commission also notes that the survey and broader consultations undertaken by the Council were general in nature, and did not address this Application or the Premises specifically. Moreover, the Commission notes that this Application relates to an increase in the number of gaming machines, rather than the establishment of a new venue. Hence the potential impact on Community well-being in the sense discussed in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor* is different from what might otherwise be the case if there were no existing gaming venues. In all of these circumstances, the Commission considers it appropriate to attribute a low weighting to this impact.
100. To the extent that the factual matters put forward by the Council are consistent with the Applicant's expert witnesses Ms Peterson and Mr Whitehouse, they are accepted. Where there was discrepancy, the Commission preferred the evidence of Ms Petersen and Mr Whitehouse.
101. After considering the social benefits of the proposal balanced against the disbenefits, the Commission considers that, on balance, there is likely to be a minor, but positive, social impact by granting the Application.

²² , (2008) 19 VR 422, [44] per Warren CJ, Maxwell P And Osborn AJA. See also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [73] per Dwyer DP.



NET ECONOMIC AND SOCIAL IMPACT

102. The '*no net detriment test*' in section 3.4.20(1)(c) of the Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.²³
103. After consideration of the material put forward by the Applicant and the Council, and after attributing weight to the relevant factors as outlined above and summarised in tabular form at Appendix One of these Reasons for Decision, the Commission has concluded that there is likely to be a minor net positive social and economic impact to the well-being of the community in the municipal district in which the Premises is located if the Application is approved.

OTHER RELEVANT CONSIDERATIONS

104. Having determined that the '*no net detriment*' test has been satisfied, there remains a discretion in the Commission to determine whether or not to approve the Application. In determining whether or not to grant the application, the Commission may take into account other relevant matters, including broader policy considerations drawn from the Acts as a whole.²⁴
105. In circumstances where the '*no net detriment*' test has been satisfied, the Commission accepts that the exercise of an overriding discretion requires clear and compelling justification. What amounts to compelling justification will depend on the circumstances of each individual application. A feature of this Application is that the Premises are located near the boundaries of neighbouring municipalities. As was the case in *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation*,²⁵ where the Premises are located close to the boundary of other municipal districts, then as gaming expenditure will be transferred from some venues in those districts, and as residents of those municipalities may use any new EGMs, the Commission accepts that the impact of the Application on those municipalities is a relevant consideration in the exercise of its ultimate discretion as to whether or not to approve the Application.

²³ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.

²⁴ *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M.

²⁵ [2014] VCAT 1192, [127] per Code PM and Nelthorpe M.



106. Having regard to the material that has been put before it, the Commission is satisfied that it would not be appropriate to exercise its overriding discretion under the Act to refuse the Application.

107. The Commission is also satisfied that the Applicant understands and will continue to act in accordance with its obligations to, so far as is reasonable, take measures to prevent problem gambling. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the Application.

DECISION

108. The Commission has taken into account the Applicant's plan to carry out the Proposed Redevelopment at the Premises if the Application is granted and believes it is appropriate to make this approval subject to the following condition:

1. **Works**

- (a) *The works at the Premises (as defined in clause 1(b)) must be substantially completed by the date that is twelve (12) months after the commencement of the operation of any of the additional 10 EGMs approved under this Application (**Additional EGMs**).*
- (b) *For the purpose of this clause, **the Works** comprise the works referred to on page 11 of the Social and Economic Impact Statement dated June 2015 prepared by Ratio Consultants Pty Ltd, and being the Buildings and Works that are the subject of Planning Application 231/2015/06P lodged with the Nillumbik Shire Council.*
- (c) *If the Works referred to in condition 1(b) are not substantially completed by the date that is twelve (12) 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 1(b). The request must be made no later than the date that is eleven (11) 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.*

The preceding paragraphs are a true copy of the Reasons for Decision of Dr Bruce Cohen, Chair, and Ms Deirdre O'Donnell, Commissioner.

Appendix One

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

Summary of social and economic impacts

Economic impacts

	Impact	Para	Comment relevant to weight
Benefit	Capital improvements to the Premises	81	Proposed Redevelopment is estimated to cost approximately \$2.2 million, which represents a substantial investment to upgrade the Premises. Moderate weight.
	Increase in gaming expenditure not associated with problem gambling	82 - 84	Direct and measurable benefit to the community. Extent of additional expenditure not significant. Low weight.
	Community contributions	86	Proposed community contributions could be an economic benefit to the community. However, the proposed contributions are not substantial, do not appear to be an increase from the current level of contributions and nor is there any certainty that they will be made. No weight.
	Additional employment	87(a)	6.5 full time equivalent employees as well as short-term employment in relation to the undertaking of building works. Low weight.
	Complementary expenditure	87(b)	Redevelopment will update the layout and interior of the Premises so as to make it more attractive to local patrons and visitors. However, there was little evidence provided as to the likely levels of complementary expenditure, and also may be offset by reduced expenditure at other local businesses. Low weight



	Supply contracts for other local businesses	87(c)	<p>Redevelopment will update the layout and interior of the Premises so as to make it more attractive to local patrons and visitors, requiring more supply contracts for local business. However, there was little evidence provided as to the likely levels of additional supply contracts.</p> <p>Low weight.</p>
	Increase in gaming competition in the community	87(d)	<p>Important factor in light of purposes of the Act and consumer benefits. However, in this Application of limited importance given the low number of additional EGMs proposed for the Premises and the existing low EGM utilisation rates.</p> <p>Low weight.</p>
	Impact	Paragraph	<p>Comment relevant to weight</p>
Disbenefit	Possibility of increased incidence and impact of problem gambling.	85	<p>Low level of anticipated new expenditure is indicative of the potential increase in problem gambling being low. In assessing the extent of this disbenefit, the Commission recognises that it does not include transferred expenditure because such expenditure cannot be said to exacerbate problem gambling. Thorough approach taken to problem gambling demonstrated by the Applicant.</p> <p>Low weight.</p>



Social impacts

	Impact	Par.	Comment relevant to weight
Benefit	Wider variety of choice of EGMs for recreational gamblers	95	The increased number of EGMs at the premises will better serve the needs of recreational gaming patrons. Balanced against increase in EGM numbers and utilisation rates at the Premises. Low weight.
	Enhancement of facilities at Premises for local patrons	96	The Premises are to be redeveloped providing some benefit to the community to the extent that a local venue will be improved aesthetically and will incorporate improved facilities. Moderate weight.
	Community contributions	97	Additional community contributions could have a positive impact on local community organisations, which is a social benefit. However, any additional contributions are uncertain. No weight.
	Impact	Par.	Comment relevant to weight
Disbenefit	Possible increase in risk of problem gambling, increased health and social service requirements and costs.	89-94	The Commission accepts there is potential for negative social costs through possible increased problem gambling expenditure. However, this risk is mitigated by the location of the Premises, the RSG practices at the Premises, current access to EGMs, and the socio-economic profile of the catchment area. Low weight.
	Community views	98-99	Recognise community concerns, but also that survey and broader consultations undertaken by the Council were general in nature, and did not address this Application or the Premises specifically. Moreover, the Commission notes that this Application relates to an increase in the number of gaming machines, rather than the establishment of a new venue. Low weight