



**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 Waurm Ponds Management Pty Ltd to amend its venue operator's licence to vary the number of electronic gaming machines at the approved premises, the Waurm Ponds Hotel located at 1154 Princes Highway, Waurm Ponds from seventy (70) to eighty-one (81).

- Commission:** Ms Helen Versey, Deputy Chair  
Mr Andrew Scott, Commissioner
- Appearances:** Mr Daniel Robinson of Counsel for the Applicant  
(instructed by BSP Lawyers)  
Mr Ian Munt of Counsel for the City of Greater Geelong  
Mr Paul Davies, Counsel Assisting the Commission
- Date of Hearing:** 27 October 2020
- Date of Decision:** 17 November 2020
- Date of Reasons:** 24 December 2020
- Decision:** The Application is granted subject to the conditions specified at Appendix A.

**Signed:**

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

**Helen Versey**  
Deputy Chair

## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by Waurm Ponds Management Pty Ltd (the **Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) to amend its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the approved premises, the Waurm Ponds Hotel, located at 1154 Princes Highway, Waurm Ponds (the **Hotel**), from 70 to 81 (the **Application**).
2. The relevant municipal authority is the City of Greater Geelong (the **Council**). By correspondence to the Commission dated 8 September 2020, the Council provided the Commission with a written submission in opposition to the Application (**Council Submission**).
3. The Commission considered the Application at a public inquiry<sup>1</sup> conducted on 27 October 2020 (the **Hearing**). The Applicant was represented by Mr Daniel Robinson of Counsel, instructed by BSP Lawyers. The Council was represented by Mr Ian Munt of Counsel.

### 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*

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<sup>1</sup> A public inquiry is required to be conducted by the Commission 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), see also Pt 2 Div 3 VCGLR Act (Performance and exercise of the Commission's functions, powers and duties).



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- (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*



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

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

8. The relevant provision concerning the Application is section 3.4.17(1)(b) of the GR Act, which states that variation of the number of EGMs permitted in an approved venue may be amended in accordance with Division 2, Part 4 of Chapter 3 of the GR Act.
9. Sections 3.4.18 to 3.4.19 of the GR Act provide for the manner in which requests for amendments under section 3.4.17(1)(b) are to be made. Relevantly for the Application, section 3.4.18 provides, inter alia, that:
- (1) *A request by a venue operator for an amendment of licence conditions—*
    - ...
    - (c) *in the case of ... an amendment to increase the number of gaming machines permitted in an approved venue, must be accompanied by a submission—*



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- (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 GR Act provides:

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

11. Section 3.4.20 sets out matters that are required to be considered by the Commission with respect to such a proposed amendment, as follows:

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



*not be detrimental to the well-being of the community of the municipal district in which the approved venue is located;*

...

12. 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.<sup>2</sup>
13. The GR Act does not specify the matters which the Commission must consider in deciding whether the ‘*no net detriment*’ test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:
- (a) the likely economic impacts of approval;
  - (b) the likely social impacts of approval; and
  - (c) the net effect of those impacts on the well-being of the relevant community.<sup>3</sup>
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 the well-being of the community.<sup>4</sup> 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.
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.<sup>5</sup> 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

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

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

<sup>4</sup> *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.

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



the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.<sup>6</sup>

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

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

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

17. 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.<sup>8</sup> 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.<sup>9</sup>

18. 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;<sup>10</sup> 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.<sup>11</sup>

<sup>6</sup> 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.

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

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

<sup>9</sup> GR Act, section 3.4.20(2).

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

<sup>11</sup> *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



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*<sup>12</sup> 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.
20. Finally, it is noted that pursuant to section 3.4.20(1)(a) of the GR Act the Commission must be satisfied that the proposed amendment of the licence does not conflict with a direction, if any, given under section 3.2.3 of the GR Act. Additionally, pursuant to section 9(4) of the VCGLR Act, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation.
21. There is no relevant direction issued pursuant to section 3.2.3 of the GR Act that relates specifically to this Application. However, on 14 October 2013, a Ministerial guideline was published in the Victorian Government Gazette pursuant to section 5 of the VCGLR Act concerning applications for approvals of venues for EGMs and children’s play areas incorporated in the venue (**Guidelines**). The Guidelines concerned the assessment of the suitability of a premises for gaming. As such, it appears primarily to apply to a premises applying to be a new gaming venue, rather than an increase in the number of EGMs at an existing gaming venue. While this guideline is therefore not directly applicable to this Application, the Commission’s view is that it is proper to have regard to the underlying policy intent of such a guideline (which in this instance appears to relate to the legislative objective under section 1.1(2)(ab) of the GR Act that minors are neither encouraged to gamble nor allowed to do so) when considering the Application. To that end, the Commission has had regard to the Guidelines in making its decision.

## MATERIAL BEFORE THE COMMISSION

22. The Applicant provided the Commission with the following material in support of the Application:
- a. Application form – Amendment to venue operator’s licence – vary gaming machines, dated 1 July 2020;

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Dwyer DP; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M. As to policy principles identified for consideration, see the *Romsey* case (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

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



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- b. Social and Economic Impact Statement, prepared by Ratio Consultants, dated July 2020 (**Ratio Report**);
- c. Expenditure Analysis, prepared by Mr Tim Stillwell, director of ShineWing Australia, dated 1 July 2020 (**ShineWing Report**);
- d. Waurm Ponds Hotel RSG Management Report, prepared by Mr Andrew Jeynes, Compliance Manager for PVS Pty Ltd dated July 2020 (**Jeynes Report**);
- e. Witness Statement of Mr Mitchell Koroneos (**Mr Koroneos**), Director of Waurm Ponds Management Pty Ltd, Licensee and Operator of the Hotel, dated July 2020 with annexures entitled 'Suggested Conditions', 'Rosters' and 'List Of The Hotel's Suppliers'; and
- f. Witness Statement of Ms Margaret Teresa Spence (**Ms Spence**), Manager of the Hotel, dated July 2020.

23. In opposition to the Application, the Council provided the Council Submission.

24. The following material, prepared by Commission officers, was considered by the Commission:

- a. report titled *Economic and Social Impact Report*, dated August 2020; and
- b. report titled *Economic and Social Impact Report – Updated*, dated 6 October 2020,  
(together, the **VCGLR Report**).

25. The Commission received correspondence in opposition to the Application from two individuals residing in the City of Greater Geelong, along with correspondence from the Gambling Project Team at the Victorian Local Governance Association and the CEO of Encompass Community Services.

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

- a. Mr Tim Stillwell of ShineWing;
- b. Mr Mitchell Koroneos;
- c. Ms Margaret Spence;
- d. Mr Andrew Jeynes of PVS Australia; and
- e. Ms Colleen Peterson of Ratio Consultants.

## DECISION AND REASONS FOR DECISION

### *Location*

27. The Hotel is located at 1154 Princes Highway, in the township of Waurin Ponds, on the south-western periphery of the city of Geelong. It is in a bulky goods precinct at the interchange of Colac Road and the Geelong Ring Road, approximately 1 km south-west of the local convenience shopping and retail centre.
28. The City of Greater Geelong (**Greater Geelong**) is a regional local government area (**LGA**) located approximately 75 kilometres south-west of Melbourne and covers an area of 1248 square kilometres. Major centres in Greater Geelong include Geelong, Ocean Grove and Leopold. According to the VCGLR Report, Greater Geelong has an estimated adult population of 207,369, which ranks it as the most populous of the 13 regional municipalities in Victoria.
29. For the purposes of the VCGLR Report, the “immediate surrounding area” is defined by a 2.5 kilometre radius due to its relatively large population. Accordingly, the immediate surrounding area considered includes all statistical areas within a 2.5km radius.
30. The cap placed on the number of EGM entitlements in the combined region of Greater Geelong and the Borough of Queenscliffe is 1,421.<sup>13</sup> The number of EGMs attached to approved venues within the capped region is not yet at capacity. According to the VCGLR Report, there are currently 1,324 EGMs with attached entitlements operating within Greater Geelong.
31. When compared with other regional municipalities, Greater Geelong has a lower EGM density and a higher venue density. Greater Geelong has an EGM density of 6.4 EGMs per 1,000 adults, which is 10.0% less than the regional average (7.1) and 26.5% more than the State average (5.0). This places Greater Geelong at 12<sup>th</sup> for EGM density per 1000 adults of the 13 regional municipalities where 1<sup>st</sup> indicates the highest number of EGMs per 1,000 adults. Further, Greater Geelong is ranked 3<sup>rd</sup> of 13 regional municipalities for gaming venue density with an adult population of 8,295 per gaming venue, where 1<sup>st</sup> is the highest number of adults per gaming venue.<sup>14</sup> This is 30.1% more adults per gaming venue than the regional average (6,376) and 22.5% less than the state average (10,703).
32. The VCGLR Report indicates that in the 2019-20 financial year, Greater Geelong had an

<sup>13</sup> Under a determination made by the Minister for Consumer Affairs, Gaming and Liquor pursuant to section 3.4A.5(3A) of the GR Act with effect from 3 November 2017: see [https://www.vcglr.vic.gov.au/sites/default/files/Ministerial\\_Order\\_-\\_new%20regional\\_caps\\_and\\_municipal\\_limits.pdf](https://www.vcglr.vic.gov.au/sites/default/files/Ministerial_Order_-_new%20regional_caps_and_municipal_limits.pdf)

<sup>14</sup> Due to an error, the VCGLR Report only lists 12 LGAs for gaming venue density – the City of Warrnambool is missing. Greater Geelong’s position of 3<sup>rd</sup> remains the same regardless of the inclusion of the City of Warrnambool in the data.



average gaming expenditure of \$424.63 per adult, which is 4.7% lower than the regional LGA average (\$445.58) and 12.46% higher than the State average (\$377.57). Applying the higher estimate of increased gaming expenditure received from the Applicant as discussed in further detail below at paragraph 55, the Application (if granted) would result in an increase in average gaming expenditure per adult of 0.4% in the first year of operation without allowance for population changes. Gaming expenditure within Greater Geelong has decreased by 36.16% in real terms (indexed to CPI) since the 2010/11 financial year. The real gaming expenditure index value of 63.84 in the City of Greater Geelong is 4.1% less than the index value of 66.60 for regional LGAs. The City of Greater Geelong is ranked 13<sup>th</sup> of 13 regional municipalities by indexed real adult gaming expenditure.

33. The VCGLR Report indicates that in terms of crime rate, Greater Geelong is ranked 13<sup>th</sup> of 13 regional municipalities but 30<sup>th</sup> of 79 across all LGAs which indicates a lower rate of crime relative to its position when compared with its regional LGA counterparts and slightly higher when compared across the entire state. The VCGLR Report provides data that during the 2019/20 financial year, 10,660 crimes were committed per 100,000 adults which is 23.2% lower than the regional crime rate (13,882 crimes per 100,000) but 4.8% higher than the State crime rate (10,176 crimes per 100,000).
34. Greater Geelong is characterised by a socio-economic profile with indices that are generally better than regional averages, with a small number of indices falling below regional averages. According to the VCGLR Report, Greater Geelong is ranked 40<sup>th</sup> out of 79 LGAs in Victoria on the Socio-Economic Indexes for Areas (**SEIFA**) scale of disadvantage,<sup>15</sup> indicating some disadvantage within the LGA (1<sup>st</sup> being the LGA with the greatest disadvantage). When compared with regional LGAs, Greater Geelong is ranked 13<sup>th</sup> of 13, making it the least disadvantaged of the regional municipalities.
35. According to the VCGLR Report, in relation to the immediate surrounding area of the Hotel (within 2.5 kilometres), 1.8% of SA1s<sup>16</sup> are in the 1<sup>st</sup> quintile<sup>17</sup> of SEIFA scores, compared with a regional average of 33.2%. There is also 12.3% of SA1s in the 5<sup>th</sup> quintile, which indicates the

<sup>15</sup> SEIFA is a product developed by the ABS to assist in the assessment of the welfare of Australian communities. The SEIFA Index allows the ranking of regions/areas, providing a method of determining the level of social and economic well-being in each region.

<sup>16</sup> According to the ABS, SA1s (Statistical Areas Level 1) are geographical areas. Whole SA1s aggregate to form Statistical Areas Level 2 (SA2) in the Australian Statistical Geography Standard (ASGS) Main Structure. The SA1s have generally been designed as the smallest unit for the release of census data. SA1s have a population of between 200 and 800 people with an average population size of approximately 400 people.

<sup>17</sup> 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).



least disadvantage. Therefore, 85.9% of the SA1s in the area immediately surrounding the Hotel fall within the 2<sup>nd</sup> – 4<sup>th</sup> quintiles for disadvantage which suggests that the majority of the area immediately surrounding the Hotel is characterised by a moderately low level of disadvantage.

### ***Nature of the Hotel***

36. The Applicant has operated the Hotel since 2007. The Hotel operates as an all-round venue catering to all ages with the following range of services and opening hours:

- (a) Bistro Bar - 12:00pm to 8:30pm (Monday to Sunday); 12:00pm to 8:30pm (Monday to Sunday);
- (b) Café - 8.30am to 3.00pm (Monday to Sunday);
- (c) Bottle shop - 10:00am to 10:00pm (Sunday to Thursday); 10:00am to 11:00pm (Friday); 9:00am to 11:00pm (Saturday);
- (d) Gaming Room - 9.00am to 12:00am (Sunday to Wednesday); 9:00am to 3:00am (Thursday to Saturday); and
- (e) Sports Bar - 9:00am to 3:00am (Monday to Sunday)

37. During this period, the Applicant has undertaken extensive works at the Hotel to upgrade the venue and in order to meet the needs of the growing population in the region.

38. The first stage of renovation works at the Hotel was the redevelopment of the drive-through bottle shop at a cost of \$1.1 million and completed in early 2007 (Stage 1 Works). Renovation and construction of the main bar, sports bar, gaming lounge and alfresco areas (on the east side of main entry), at a cost of approximately \$2.6 million, were completed in February 2012 (Stage 2 Works). In April 2013 works were proposed to construct new bistro, function rooms and associated works estimated to cost \$3 million. These works also included approval from the VCGLR to increase the number of gaming machines at the venue from 56 to 70. The scope of works originally envisaged under stage 3 was expanded to include construction of a new kitchen, new alfresco dining areas and associated courtyards, children's playground and games room, and new toilets and entry from the car park. The cost of these works more than doubled to approximately \$6.5 million and were completed in October 2013 (Stage 3 Works).

### ***Catchment of the Hotel***

39. The '*no net detriment*' test refers to the net economic and social impact on the 'the community

of the municipal district in which the approved venue is located.<sup>18</sup> 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 areas serviced by the relevant premises, which are generally referred to as the 'catchment areas.'<sup>19</sup> The determination of the likely catchment area in this instance is important in the Commission's consideration of the identity of those residents which will be most affected by the Application in terms of gambling-related benefits and harms.

40. As discussed in paragraph 29 above, the VCGLR Report considers the immediate surrounding area for the purpose of the Application to be a 2.5 kilometre radius around the Hotel Having regard to the Ratio Report and, in particular, the patron gaming survey, the Commission considers that the catchment area for most potential patrons for the Hotel (and therefore most likely to be affected by this Application) are the residents within the 5 kilometre radius of the Hotel (**Catchment Area**).

#### **Issues for determination**

41. Pursuant to section 3.4.20 of the GR Act, the Commission cannot grant the Application unless it is satisfied of the following matters:

- (a) that the amendment of the venue operator's licence does not conflict with a direction given under section 3.2.3 of the GR Act;
- (b) that the relevant regional or municipal limit for EGMs applicable to Greater Geelong will not be exceeded by the making of the amendment the subject of the Application; and
- (c) that the net social and economic impact of the increase in EGMs permitted in the Club will not be detrimental to the well-being of the community of Greater Geelong (the '*no net detriment*' test).

Having determined that these matters are 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.<sup>20</sup>

#### **A. Directions given under section 3.2.3**

<sup>18</sup> See GR Act, section 3.4.20(1)(c).

<sup>19</sup> See for example, *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation & Anor (Occupational and Business Regulation)* [2009] VCAT 2275 (12 November 2009); *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 (7 April 2011).

<sup>20</sup> See paragraph 19. An amendment may be made subject to any conditions the Commission sees fit: GR Act, section 3.4.20(3).



42. As outlined in paragraph 21 above, the Commission is satisfied that there are no relevant directions given under section 3.2.3 that are applicable to this Application.

43. On this basis, the Commission is satisfied that granting the Application would not conflict with a direction given under section 3.2.3 of the GR Act, and therefore considers that mandatory pre-condition set out in section 3.4.20(1)(a) of the GR Act is satisfied.

#### **B. *Municipal limits and regional caps***

44. As discussed in paragraph 30, the cap placed on the number of EGM entitlements in the combined region of Greater Geelong and the Borough of Queenscliffe is 1,421<sup>21</sup> and there are currently 1,324 EGMs with attached entitlements operating within Greater Geelong. This is below the cap for the combined region of Greater Geelong and the Borough of Queenscliffe.

45. The Commission is satisfied that granting the Application would not cause the relevant regional cap for gaming machines for Greater Geelong and the Borough of Queenscliffe to be exceeded, and therefore considers that mandatory pre-condition set out in section 3.4.20(1)(b) of the GR Act is satisfied.

#### **C. *'No net detriment' test***

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

#### **Economic impacts**

47. The materials before the Commission, including the evidence given at the Hearing, provided the evidentiary basis for, a range of economic benefits and disbenefits associated with this Application.

##### **Expenditure from capital works**

48. A potential economic benefit associated with the Application is the economic stimulus arising from the expenditure on the proposed capital works at the Hotel. It is proposed to construct a retractable roof over the beer garden which will enable greater use of this area at all times of the

<sup>21</sup> Under a determination made by the Minister for Consumer Affairs, Gaming and Liquor pursuant to section 3.4A.5(3A) of the GR Act with effect from 3 November 2017: see [https://www.vcglr.vic.gov.au/sites/default/files/Ministerial\\_Order\\_-\\_new%20regional\\_caps\\_and\\_municipal\\_limits.pdf](https://www.vcglr.vic.gov.au/sites/default/files/Ministerial_Order_-_new%20regional_caps_and_municipal_limits.pdf)



year. A new multiscreen video wall will also be installed which will create a 3 metre x 3 metre or 4 metre x 4 metre screen. It will also have the capability to be split into smaller screens thus allowing screening of multiple sports at the same time. This space is currently underutilized during winter months due to its exposure to the elements.

49. It is also proposed to undertake internal works to the gaming room that will create an airlock in the north-eastern corner and installing a solid wall to screen the gaming machines from view of the general public entering the “chill out” lounge. In addition, a new solid wall will be installed inside the entrance of the gaming room from the bistro.
50. The overall effect of these works to the gaming room will be to decrease the level of visibility of the gaming machines from each entrance to the Hotel and from within key areas of the venue. The estimated cost of all works is \$503,000 and it is expected that the works will be completed within 12 months of the installation of the machines. The works to the gaming room will be completed prior to installation of the additional machines. Mr Koroneos in his written statement said the Applicant would not proceed with these works if the Application is not granted.
51. The Commission accepts that the Capital Works at an anticipated cost of \$503,000 is an economic benefit of this Application. However, in light of the modest value of capital works to existing facilities, this is a benefit for which the Commission gives marginal weight.

Gaming expenditure not associated with problem gambling

52. To the extent that gaming expenditure is not associated with problem gambling, it has been recognised (by, for example, the Productivity Commission in its 1999 report) that such expenditure can be treated as an economic positive.<sup>22</sup> As Bell J further notes, this approach also brings to account the benefit obtained from pure consumption by the lone gambler who does not use machines for social reasons.<sup>23</sup>
53. Mr Stillwell, in the ShineWing Report and at the Hearing, gave evidence regarding the likely increase in gaming expenditure should the Application be granted. Specifically, he gave evidence regarding the likely increased gaming expenditure in the first 12 months of operation of the additional 11 EGMs at the Hotel.

<sup>22</sup> See *Romsey #2* at [351] per Bell J.

<sup>23</sup> See *Romsey #2* at [351]. Bell J notes further at [352] that the other approach is to say, as did Morris J in *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [79] that gaming extends ‘substantial economic and social benefits’ to gaming machine users, which treats consumption as a benefit without saying whether it is economic or social. While Bell J states both approaches are correct, for the purposes of this Application this benefit is treated as an economic benefit.



54. The ShineWing Report sets out the different methodologies commonly used to estimate EGM expenditure. Mr Stillwell noted that he considered that the 'empirical' method' is the most appropriate in the circumstances of the Application for estimating expenditure in the first 12 months of operating the additional 11 EGMs.<sup>24</sup>
55. On the basis of the above and compared with an analysis of historical and recent trends in gaming expenditure, Mr Stillwell estimated that:
- a. the level of additional gross gaming expenditure generated from the Application in the first 12 months of trade would be between \$534,236 and \$590,472 per annum post installation of the additional 11 EGMs. For the purposes of analysis of additional gross gaming expenditure in the circumstances of the COVID-19 pandemic, an adjustment of 10% was made. Mr Stillwell gave evidence that he had assessed a mid-point of \$562,000 of additional gross gaming expenditure;
  - b. 40% of gross gaming expenditure would be transferred expenditure from a number of existing gaming venues within Greater Geelong;
  - c. adopting the estimated level of 40% transferred expenditure, new gaming expenditure is estimated to be between \$320,542 and \$354,283 in the first 12 months of trade post installation of the additional 11 EGMs; and
  - d. based on the 2019 adult population, the estimated additional gaming expenditure would result in a \$1 or 0.28% increase in the average net gaming expenditure per adult in Greater Geelong in the first 12 months of trade post installation of the additional 11 EGMs.
56. The Commission accepts the expert prediction of \$620,000 additional gross gaming expenditure, adjusted due to the impact of COVID-19 to \$562,000 in the first 12 months of operation. The Commission further accepts the estimated new gaming expenditure set out in para 55(c) above.
57. In assessing the extent of this benefit, the Commission has had regard to the evidence outlined in paragraphs 69 to 75 below with respect to the incidence of problem gambling. The Commission accepts that, while some portion of the new expenditure resulting from this Application will be attributable to problem gambling, the portion of new expenditure not

<sup>24</sup> The empirical evidence method is based on a group of sample venues which have recently introduced additional gaming machines into comparable venues as the result of a successful top-up application: ShineWing Report, paragraph 8.1.



attributable to problem gaming is an economic benefit. Overall, having regard to the extent of gambling expenditure associated with problem gambling, the Commission considers that the majority of new expenditure is not likely to be associated with problem gambling and accordingly, the Commission considers that this benefit should be given marginal weight.

Increased gaming competition in Greater Geelong

58. Increasing competition in gaming in Greater Geelong is a factor to be considered by the Commission in light of the statutory purposes of the GR Act<sup>25</sup> and the consumer benefits that derive from competition.

59. In this regard, the Commission refers to and relies on the evidence set out in paragraph 58 in relation to the anticipated transfer of gaming expenditure within Greater Geelong.

60. The Commission considers that this Application would (if approved):

- a. increase the number of EGMs operating within Greater Geelong from 1,324 to 1,335; The municipality is generally a mature market, with 25 gaming venues in Greater Geelong.
- b. increase the EGM density of the municipality in which the Hotel is situated from 6.38 EGMs per 1,000 adults to 6.44 EGMs per 1,000 adults (compared with the regional average of 7.1 EGMs per 1,000 adults and state average of 5.0 EGMs per 1,000 adults); and
- c. based on the upper range of its estimations, increase the gaming expenditure per adult in Greater Geelong from \$424.63 to \$426.34 in the first year of operation following approval of this Application. This is an increase of 0.4% of total gaming expenditure in Greater Geelong.

61. Granting approval of the Application, whilst providing 11 additional EGMs at which patrons may choose to play, would represent a relatively small proportional increase in the number of EGMs in Greater Geelong. The anticipated additional expenditure at the Hotel does not suggest a substantial increase in gaming competition in the municipal district. The Commission therefore finds this to be of marginal economic benefit.

Additional employment.

<sup>25</sup> See GR Act, section 3.1.1(2).



62. Employment benefits associated with the Application may result from the increased number of operational EGMs and increased patronage of existing facilities at the Hotel. This could include short term employment benefits associated with the proposed capital works as well as long term employment benefits. In the Application it was noted that three full-time equivalent (**FTE**) positions would be created at the Hotel, one of which will be in the gaming room, should the Application be approved. The majority of the FTE positions created would be filled by people residing within Greater Geelong.
63. The Applicant further noted that the 3 FTE positions could be spread out across the Hotel, in the public bar, bistro and bottle shop as demand increases. Following approval of the 2013 application and stage 3 works, an additional 9 FTE positions were created, as opposed to the 2 FTE positions originally estimated.
64. The Commission accepts the Applicant's estimate that 3 FTE positions will be created as a result of the Application, and the Commission accepts that high unemployment within the hospitality sector as a result of the COVID-19 pandemic will place greater value on any new jobs. Overall, the Commission gives this benefit marginal weight.

#### Supply contracts and Complementary expenditure

65. Increases to supply contracts is a factor commonly accepted by the Commission as a potential economic benefit for the municipality in which a venue is situated due to an increase in EGMs. The Applicant estimated \$125,000 increase in supply contracts for food and beverage specifically from local suppliers, and an ongoing increase in economic activity in the municipality.
66. Complementary expenditure is a potential benefit where it results in increased economic activity in the municipal district in which the premises that are the subject of an application are located (separate from any anticipated additional expenditure on EGMs). However, the extent of this benefit will depend upon a range of factors, including:
- a. the extent to which the expenditure is a consequence of new spending (i.e. as a result of additional people coming to the municipal district as tourists as compared to transferred expenditure from other venues within the municipality); and
  - b. the extent to which that complementary expenditure results in additional spending on local goods and services.
67. In the submission, the Applicant states that the value of complementary expenditure for the first 12 months following approval of the Application would be \$1.56 million. There was no direct



evidence whether the increase in complementary expenditure is new or transferred but it can be assumed some complementary expenditure likely to be transferred from other venues, including non-gaming.

68. The Commission has considered the estimated economic benefits to the municipality of the local supply contracts and complementary expenditure together and finds this to be a marginal to low economic benefit

Gaming expenditure associated with problem gambling.

69. To the extent that a portion of the new gaming expenditure is attributable to problem gambling, this represents an economic disbenefit.<sup>26</sup> In assessing this impact (and other effects of problem gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gaming undertaken by those who may be defined as ‘problem gamblers’, as well as those who may be otherwise regarded as ‘low-risk’ or ‘moderate-risk’ gamblers.

70. In assessing the extent of this disbenefit, the Commission has regard to the expenditure evidence set out in paragraph 52 above. In doing so, the Commission recognises that in considering this aspect of the ‘*no net detriment*’ test it does not include consideration of transferred expenditure because such expenditure cannot be said to exacerbate problem gambling.<sup>27</sup>

71. The extent to which new gaming expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with the Application, will be influenced by the socio-economic status and vulnerability of the community of Greater Geelong, and in particular those living in the immediate surrounding area and what the Ratio Report describes as the “primary patron catchment area”<sup>28</sup> of the Hotel, which covers the majority of the Catchment Area. This is because communities characterised by relative socio-economic disadvantage are considered more vulnerable to the harms arising from problem gambling.

<sup>26</sup> The Commission recognises that, on review, the key likely disbenefit of ‘problem gambling’ has, for convenience, been treated under the heading of ‘social impacts’ in various instances: see *Mount Dandenong Tourist Hotel Pty v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted; see, for example, *Mount Alexander Shire Council* [2013] VCAT 101 at [178] and following per Dwyer DP. For completeness, the Commission separately considered both the economic and social impacts of problem gambling in assessing this Application.

<sup>27</sup> See *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192 at [11] per Code PM and Nelthorpe M; *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J.

<sup>28</sup> Social & Economic Impact Assessment, paragraph 5.1.5.



72. Ms Peterson gave evidence at the Hearing that the Hotel is not in a relatively disadvantaged area and stated that the economic profile in the southern part of Geelong, which includes Waurn Ponds, is one of the least disadvantaged areas in Geelong and Victoria. In contrast with other areas further to the north, SEIFA levels are either relatively advantaged or mid-range (SEIFA level for the area surrounding the venue is 1081, compared to the state average of 1020). Waurn Ponds itself sits within the 92nd percentile of the SEIFA Index of Disadvantage. The area beyond the immediate surrounding area of the Hotel is varied, but generally within the fourth decile (for example, Grovedale and Belmont) or above.
73. Other factors that suggest there is lower risk of increased incidence and economic impact of problem gambling in the Catchment Area of the Hotel should this Application be granted, include:<sup>29</sup>
- a. Ms Peterson gave evidence that the suburb of Waurn Ponds performs well on incomes and housing stress. "Housing stress" is generally defined as where 30% or more of household income is spent on rent or mortgage repayments<sup>30</sup>. Overall, most of the primary patron catchment has lower levels of housing stress than the Greater Geelong and regional Victoria averages. The VCGLR report notes that the level of housing stress in the immediate surrounding area is 58.1%, lower than Greater Geelong which is 58.6% and Victoria which sits at 60.2%. Therefore, the venue draws patrons from an area with a relatively sound socio-economic profile, one with few signs of significant disadvantage or vulnerability, and one that is far removed from the more disadvantaged suburbs at Geelong's northern and eastern edges;
  - b. the application is for a modest increase of 11 EGMs, an incremental application, responsive to the growth of the Hotel. It does not change the nature of the venue. The community already has access to gaming at the venue. The introduction of an additional 11 EGMs will have significantly lesser impact on community wellbeing than the creation of a new venue, regardless of the proximity of other gaming venues in the locality;
  - c. the gaming room is not increasing in size;
  - d. the witnesses for the Applicant showed a genuine and serious approach to responsible service of gaming in their evidence;

<sup>29</sup> Urbis Report, paragraph 2.3.

<sup>30</sup> Social & Economic Impact Assessment, paragraph 11.1.1.



- e. a Responsible Service of Gambling (RSG) management audit was carried out by PVS Australia Pty Ltd across February and March 2019. The audit covered the areas of; RSG Code compliance, RSG signage compliance, Hotel information provision, staff training and RSG management systems procedures. The recommendations of the audit were implemented expediently and the author, Mr Jeynes, in his evidence to the Commission was confident that if the Hotel was successful in obtaining the additional 11 EGMs, staff have the necessary range of experience, skills and expertise to deal with any customer issues that may arise at the Hotel. Mr Jeynes was of the view that this commitment makes it likely that gambling at the Hotel will continue to be conducted in a safe and responsible manner;
- f. there is regular training of staff at the venue with management also participating. Ms Spence gave evidence demonstrating an ability of staff to recognise warning signs of gambling harm to gaming patrons and act on them;
- g. although the venue can operate until 5am, it does not do so in practice. The Licensee gave evidence at the hearing that the gaming room closes at 12 am on Sunday and early in the week and closes at 3 am towards the end of the week. The gaming room is closed for a minimum of 6 hours;
- h. the venue has a broad range of offerings and other activities available. The Application will not change the balance of gaming to other activities offered at the Hotel. The patron survey shows peak hours are around meal times and this suggests that a number of patrons attend the venue for reasons not limited to gambling;
- i. generally, the Application meets present Council Electronic Gaming Policy.

74. The Commission also considered the Council Submission which stated that although the Hotel has a wide non-gaming offering, it still currently offers 70 EGMs. The Council submitted that, in line with well-established research on the issue of gambling-related harms, it is likely that a substantial proportion of new expenditure will be from those whose gaming harms themselves or others.

75. Overall, notwithstanding the Council's submission, the Commission considers with respect to the Application that with the mitigating factors (including, importantly, the experience and culture of senior management) the potential expenditure associated with problem gambling is a marginal to low disbenefit. Issues relating to the negative social impacts associated with problem gambling are considered further in paragraphs 92 to 94 below.

Diversion of trade from other gaming venues

76. In the ShineWing Report, Mr Stillwell estimated that an estimated 40% of gaming expenditure would be transferred from other gaming venues within Greater Geelong. Mr Stillwell arrived at this transfer rate in consideration of the fact that, while there are multiple gaming venues within a 10 kilometre radius of the Hotel, there are only two other gaming venue within 5 kilometres. That estimate is derived from an analysis of sample venues which indicates a 0.596% increase in revenue for every 1% increase in EGMs – a ‘top-up’ only makes much of a difference at peak times, when the higher number of machines will actually be utilised.
77. Of the gaming patrons surveyed at the venue, approximately 59% reside in the primary and secondary patron catchment areas, being the nearby suburbs of Grovedale, Belmont, Highton, Marshall, Mount Duneed and Waurm Ponds. This demonstrates that a material component of gaming patronage is local. A large portion of the gaming patrons who reside in those suburbs would also have easy access to a high performing hotel competitor (Grovedale Hotel). The Commission accepts this evidence that with the increased availability of gaming machines at the Hotel, it is highly likely that some of these residents would transfer their gaming patronage from this competitor venue to the Hotel.
78. The Commission accepts the Applicant’s evidence that an estimated 40% of anticipated additional expenditure would be transferred from other venues within Greater Geelong. The Commission considers that there is potential that the diversion of trade will have a detrimental economic impact on other venue operators, however notes, according to that evidence, that the transfer rate would be low. There was no evidence to suggest that it would significantly impact on other gaming venues that would result in disbenefit to the municipality rather than encourage competitiveness. Having regard to these factors, the Commission is not satisfied this diversion of trade would have a negative impact on the municipality.

Diversion of trade from retail facilities.

79. Ms Peterson sets out in the Ratio Report that there are a number of other facilities that provide entertainment and recreational facilities in the area surrounding Waurm Ponds that are readily accessible to residents. This includes Leisurelink Aquatic and Recreation Centre, Geelong Regional Baseball Centre, Waurm Ponds Valley Parklands, Burdoo Recreation Reserve, John

Croft Reserve, Barwon Valley Golf Club and Belmont Bowling Club. There are a number of restaurants and cafes located in surrounding suburbs as well as in central Geelong.

80. The Commission notes that the extent of any revenue lost by retail facilities in the local area would be difficult to determine as it is unknown whether that expenditure would necessarily have been spent elsewhere and there was no evidence to support how it would sufficiently impact on the municipality to amount to a disbenefit. As such, and given the relatively low amount of new expenditure at the Hotel, the Commission finds that there is a negligible economic disbenefit associated with the diversion of trade from retail facilities within Greater Geelong as a result of this Application, and as such places no weight on this factor.

### Conclusion on Economic Impacts

81. After considering the economic benefits of the Application against the detriments, the Commission considers that, on balance, there is likely to be a nil to marginal positive economic impact of the Application.

### **Social Impacts**

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

### Improved facilities enabling a greater range of services

83. Ancillary to the economic benefit from the proposed capital works expenditure that will occur if this Application is granted, the capital works will result in improved facilities being available to the community. Access to such improved and additional facilities is an outcome which the Commission<sup>31</sup> and VCAT<sup>32</sup> have regularly determined is a positive social impact associated with applications of this nature. The physical nature of these improved facilities has been described in detail in paragraphs 51 to 54 above.

84. At the Hearing and by way of written submissions, the Applicant submitted that the works proposed at the venue will result in new non-gaming services and facilities that are not currently on offer at the Hotel. These include works on an outdoor area, that is presently used as a smoking area. The space has had limited previous use, due to weather. However, the works will include a retractable roof (to allow utilisation all year round, including in inclement weather), as

<sup>31</sup> See, for example, *Glenroy RSL Sub-branch Inc at Glenroy RSL Premises* [2015] VCGLR 40 (22 October 2015).

<sup>32</sup> See, for example, *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

well as large screens to enable patrons to watch major sporting events and meal service. The Commission gives these benefits a marginal to low social benefit.

Increased gaming opportunities for those who enjoy gaming

85. Increasing competition in gaming in Greater Geelong is a factor to be considered by the Commission in light of the statutory purposes of the GR Act<sup>33</sup> and the consumer benefits that derive from competition.
86. The Commission acknowledges that there would be a positive impact if the Application will better serve the needs of gaming patrons through providing additional opportunities and choice for those who choose to play EGMs. The Applicant submits that the proposed addition of 11 EGMs would improve game choice of current patrons in EGMs during peak periods.
87. The Applicant submitted that the venue has significant periods, as demonstrated by patron survey data, when the gaming room is at capacity. Utilisation increases when large groups attend in the bistro area leading to increased numbers in the gaming room, during meal service periods. The addition of 11 EGMs would increase the Applicant's ability to meet the needs of those wishing to enjoy gaming without harm as well as offering an increased choice of machines. The venue is in an area where no other venues exist within 2.5km and only two venues exist within a 5km radius. The patron survey shows the majority of patrons attending the gaming room come from within 5km. The Commission acknowledges that there is a benefit in increasing machine choice for recreational players and catering for (non-problem gambling) demand. The Commission considered this to be a marginal social benefit.

Social and economic benefit derived from increased community contributions

88. In determining the net economic and social impact of applications of this nature, both the Commission<sup>34</sup> and VCAT<sup>35</sup> have regularly treated community contributions as a positive benefit. However, for such contributions to be regarded as a benefit associated with the Application, it is necessary that they are properly regarded as community contributions and that they will result as a consequence of the Application being granted. The Commission has considered both the economic and social value of the community contributions.

<sup>33</sup> See GR Act, s 3.1.1(2)

<sup>34</sup> See, for example, *Application by Richmond Football Club* [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

<sup>35</sup> See, for example, *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.



89. Mr Koroneos gave evidence that the Applicant provided a \$30,000 cash contribution each year as required (**Existing Contribution**). The Ratio Report stated that in the last financial year the Applicant made additional cash and in-kind contributions to local community organisations of approximately a further \$30,000. In addition, the Applicant has voluntarily committed to providing \$10,000 per year to Anam Cara hospice which the Applicant will continue for 3 years over and above its Existing Contribution. Following approval of the additional 11 EGMs an annual additional \$15,000 contribution (**Additional Contribution**) will be donated to a range of community organisations for the life of the entitlements. This will bring the total of cash contributions to a minimum \$45,000 per year. Mr Koroneos also gave evidence at the Hearing that the Applicant intends to continue its in-kind community contributions.
90. The Commission has had regard to the nature of the recipients of the Existing Contribution and the \$10,000 annual cash donation to Anam Cara which the Applicant will continue for 3 years. Mr Koroneos also gave evidence at the Hearing that the Applicant has made a number of voluntary donations to small local organisations which have sought assistance and that it intends to continue its in-kind community contributions to community organisations. On the basis of the above, the Commission is satisfied that groups supporting the social fabric of the community will benefit from the Additional Contribution.
91. The Commission is satisfied, based on the evidence provided, that additional social benefits similar to those already felt, will vest in the community as a result of the Application. The Commission accepts that Additional Contributions will have a positive social and economic 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 that these contributions will be made to a range of community, sporting and support groups in Greater Geelong (in accordance with conditions of any 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*

92. Wherever accessibility to EGMs is increased there is always a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, relationship breakdowns, emotional harms and other social costs. Accordingly, the Commission accepts there is potential for negative social costs through possible increased problem gambling expenditure. The Commission also accepts that to the extent that approval of this Application

would result in an increase to gambling-related crime and other social disturbances (including family violence) it would constitute a social disbenefit of this Application.

93. The Commission refers to and relies upon the evidence set out in paragraphs 69 to 75 above with respect to the economic impact of problem gambling on the community, which equally apply to the social impact of problem gambling. The Commission accepts that harms associated with the incidence of problem gambling are wide-ranging and attributable to low-risk, moderate-risk and problem gamblers and across the community more broadly.

94. The Commission is therefore of the view that granting this Application has the potential to increase the incidence and impact of problem gambling in Greater Geelong but only to a minimal extent, taking into account the expected low increase in new gambling expenditure, the existing level of gaming available at the Hotel, the socio-economic status of gaming patrons, and the current RSG practices of the Hotel. As such, the Commission accepts that the disbenefit associated with problem gambling is a negative social impact upon which it places marginal to low weight.

#### Community attitude

95. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,<sup>36</sup> the Commission recognises that while community apprehension is not an over-riding factor (in the sense that the Application is not a referendum on gaming), it is certainly a relevant factor in the consideration of particular social impact of an application as part of the 'no net detriment' test.

96. The evidence before the Commission regarding community attitude towards this Application is contained in:

- a. the Council Submission in opposition to the Application, as the representative body of the relevant community and charged with statutory duties under legislation;<sup>37</sup>
- b. submissions by four members of the public who submitted objections to the Application; and
- c. a submission from Mr Munt of Counsel for and on behalf of the Council, dated 27 October 2020.

<sup>36</sup> (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.

<sup>37</sup> See also *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [42]; *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275 at [249] and [288]-[321].



97. The Commission finds that a negative attitude towards the Application from the community survey conducted by the Council was reflective of community attitudes generally towards EGMs rather than in relation to this Application. The Commission notes that the Application which was considered by Council was initially deemed to conform with Council policy with respect to gaming venues and accordingly was accompanied by a recommendation to approve. Accordingly, the Commission considers that it is appropriate that less weight is given to community attitude in this matter than would otherwise be the case. The Commission considers community attitude to this application to be a nil to marginal social disbenefit.

### Conclusion on Social Impacts

98. After considering the social benefits of the Application and balanced against the disbenefits, the Commission considers that, on balance, there is likely to be a nil to marginal positive social impact of the Application.

### **Net economic and social impact**

99. The '*no net detriment*' test in section 3.4.20(1)(c) of the GR Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. This test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impact of approval on the well-being of a relevant community will be either neutral or positive.<sup>38</sup>

100. 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 net social and economic impact to the well-being of the community of the municipal district in which the Hotel is located if the Application is approved will be slightly positive.

### **Determination of Application**

101. Overall, on the material put before it, the Commission does not consider that the net economic and social impact of approving the Application would be detrimental to the well-being of the community in the municipal district in which the premises are located. The Commission has

<sup>38</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 at [52] per Dwyer DP.



determined that the '*no net detriment*' has been satisfied, and therefore considers that the mandatory pre-condition set out in section 3.4.20(1)(c) of the GR Act is satisfied.

102. The Commission notes that there remains a discretion to determine whether or not to grant the Application. The Commission is satisfied that the Applicant understands and will continue to act in accordance with its obligations to, so far as reasonable, take measures to prevent problem gambling. Further, the Commission is not aware of any other matter that would warrant it to refuse to grant the Application. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the Application.

103. Accordingly, the Commission approves the Application to make the proposed amendment to the venue operator's licence to vary the number of EGMs permitted in the Waurin Ponds Hotel from seventy (70) to eighty-one (81) subject to the conditions specified at Appendix A below.

***The preceding 103 paragraphs and the following Appendices are a true copy of the Reasons for Decision of Ms Helen Versey, Deputy Chair, and Mr Andrew Scott, Commissioner.***

## Appendix A

Conditions of the Decision of the Commission dated 17 November 2020 to vary the number of electronic gaming machines (**EGMs**) permitted in the Approved Premises, the Waurin Ponds Hotel, located at 1145 Princes Highway, Waurin Ponds, from 70 to 81.

### **Conditions imposed under section 3.4.20 of the *Gambling Regulation Act 2003***

#### 1. The Works:

In accordance with section 3.4.20(3C) of the *Gambling Regulation Act 2003 (GR Act)*, the amendment the subject of this Decision does not take effect until the Initial Works defined in clause 1(b) are completed to the satisfaction of the Victorian Commission for Gambling and Liquor Regulation (**the Commission**).

For the purpose of clause 1(a), “the Initial Works” comprise the works to the Approved Premises shown in the Social and Economic Impact Assessment prepared by Ratio Consultants (referred to in paragraph 4.1.4, under Improvements to the Venue and Appendix D) dated July 2020 and which include:

- i. Creating an airlock in the north-eastern corner of the gaming room; and
- ii. Installation of solid walls to screen EGMs.

In accordance with section 3.4.20(3) of the GR Act, the Remaining Works defined in clause 1(d) must be substantially completed in accordance with clause 1(d) to the satisfaction of the Commission by the date that is 12 months after the commencement of the operation of any of the additional eleven (11) EGMs (**the Additional EGMs**) at the Approved Premises.

For the purpose of clauses 1(c) – 1(g) the “Remaining Works” are the works to the Approved Premises referred to in paragraph 4.1.2 of the Social and Economic Impact Assessment prepared by Ratio Consultants dated June 2020, which relate to the construction of a retractable roof over the beer garden and associated refurbishment of the area.

If the Remaining Works are not completed by the date that is 12 months after the commencement of the operation of any of the Additional EGMs at the Hotel, the operation of the Additional EGMs must cease immediately until the Commission is satisfied that the Remaining Works have been substantially completed.

The Commission may, on the request of the Venue Operator, agree to extend the time for completion of the Remaining Works. The request must be made no later than the date that is 9 months after the commencement of the operation of any of the Additional EGMs. Without limiting the matters that may be taken into consideration by the Commission in determining any extension of time, any request for an extension of time must include an explanation as to why the Remaining Works have not been completed.

If the Commission agrees to extend the time for completion of the Remaining Works in accordance with clause 1(f), the Commission may require that any of the Additional EGMs cease operation during the period of any extension of time granted by the Commission.

#### 2. Community Contributions

The Venue Operator will make cash contributions to community groups referred to in clause 2(b), in addition to the Existing Contributions defined in clause 2(c), in the sum of \$15,000.00 (increased each



year by the increase in CPI) (**the Additional Contributions**) for each year during which any of the Additional EGMs operate at the Approved Premises for as long as any of the Additional EGMs are in operation at the Approved Premises.

The Additional Contributions will be allocated each year to not-for-profit community groups and sporting organisations providing services and facilities to residents in the City of Greater Geelong.

The Venue Operator will continue to pay existing cash contributions to not-for-profit community and sporting groups in the City of Greater Geelong in an amount not less than \$30,000.00 per annum (**the Existing Contributions**), in addition to the Additional Contributions, for as long as any of the Additional EGMs are in operation at the Approved Premises.

If any part of the Existing Contributions or Additional Contributions remain unallocated at the end of each annual reporting period, the Venue Operator must cease the operation of all Additional EGMs at the Approved Premises for as long as the Existing Contributions or Additional Contributions (or part thereof) remain unallocated.



## **Appendix B**

### **Summary of economic and social impacts**

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

#### ***Economic impacts***

	<b>Impact</b>	<b>Paragraph numbers</b>	<b>Comment relevant to weight</b>
<b>Benefits</b>	Expenditure on development works	48 to 51	A total expenditure of \$503,000 on improvements to existing facilities, increasing supply contracts, and capital works expenditure. The Commission gives this marginal weight.
	Additional employment	62 to 64	The increase of 11 EGMs will add one additional employee in the gaming room and two elsewhere in the venue. The additional employees are likely to come from within the municipality. The Commission gives this marginal weight.
	Community contributions	88 to 91	\$15,000 additional contribution (increased each year by CPI) for as long as any of the additional EGMs are in operation at the venue. 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 Greater Geelong. The Applicant in its evidence provided details of community contributions in kind and economic over & above mandated community contributions. The Commission is satisfied the Applicant has a genuine commitment to supporting local community. The Commission gives this marginal weight.
	Increased gaming competition in the City of Greater Geelong	58 to 61	Only two other venues exist within 5km radius of the venue and the application is for a small increase in EGMs (11). The municipality is generally a mature market, with 25 gaming venues in the City of Greater Geelong.  While an increase in the number of gaming machines may increase gaming competition by possibly a wider variety of types of machines or games at the venue, at which patrons may choose to play, in this case, there would be a relatively small proportional increase in the number of EGMs in Greater Geelong. The Commission gives this marginal weight.



	Impact	Paragraph numbers	Comment relevant to weight
	Supply contracts and complementary expenditure	65 to 68	Supply contracts are expected to increase by 10% of which \$125,000 will come from local suppliers. Complementary increase is estimated 1.56 million in the first 12 months. There was no direct evidence whether the increase in complementary expenditure is new or transferred but it can be assumed some complementary expenditure likely to be transferred from other venues, including non-gaming. The Commission gives this marginal to low weight.
	Gaming expenditure not associated with problem gambling	52 to 57	<p>The portion of new expenditure not attributable to problem gambling is an economic benefit.</p> <p>The venue is in a catchment area that is mixed yet overall above average on the SEIFA scale of disadvantage compared to other areas of the municipality.</p> <p>The increase is 11 new EGMs. The expenditure expert prediction of \$620,000 additional gross gaming expenditure has been adjusted due to the impact of COVID-19 to \$562,000 gross gaming expenditure in the first 12 months of operation. The Commission refers to its findings on the venue's commendable approach to responsible service of gaming. The Commission gives this marginal weight.</p>



	Impact	Paragraph numbers	Comment relevant to weight
<b>Disbenefits</b>	Gambling expenditure associated with problem gambling	69 to 75	<p>A proportion of total gaming expenditure at the venue will be associated with problem gambling contributed by a small proportion of total gaming patrons at the venue. Adverse impacts include health, jobs, finances, emotional states and relationships. However a number of mitigating factors exist;</p> <ul style="list-style-type: none"><li>- The application is for a modest increase of 11 EGMs and does not change the nature of the venue;</li><li>- The gaming room not increasing in size;</li><li>- The witnesses for the Applicant showed genuine and serious approach to RSG in their evidence;</li><li>- The recommendations of the audit were adopted.</li><li>- There is regular training of staff at the venue with management also participating;</li><li>- Margaret Spence demonstrated an ability to recognise warning signs of gaming patrons and ability to act on them;</li><li>- Although the venue can operate until 5am it does not do so in practice. The Licensee gave evidence that the gaming room closes at 12 am on Sunday and early in the week, and closes at 3 am towards the end of the week;</li><li>- The venue has broad offerings. The patron survey shows peak hours are around meal times, this suggests that a number of patrons attend the venue for reasons other than only gambling.</li><li>- Generally, the Application meets present Council Electronic Gaming policy</li><li>- SEIFA key indicators for the catchment area of the venue are either positive or mid-range (above on housing stress).</li></ul> <p>The Commission gives this marginal to low weight.</p>



	<b>Impact</b>	<b>Paragraph numbers</b>	<b>Comment relevant to weight</b>
	Diversion of trade from other gaming venues	76 to 78	It is a comparatively low transfer rate. There was no evidence to suggest that it would significantly impact on other gaming venues that would result in disbenefit to the municipality rather than encourage competitiveness. The Commission gives this no weight.
	Diversion of trade from non-gaming businesses	79 to 80	There was no evidence to support where this would come from or how it would sufficiently impact on municipality to be a disbenefit. The Commission gives this no weight.



**Social impacts**

	<b>Impact</b>	<b>Paragraph numbers</b>	<b>Comment relevant to weight</b>
<b>Benefits</b>	Increased gaming opportunities for those who enjoy gaming	85 to 87	The venue has significant periods, as demonstrated by patron survey data, when the gaming room is at capacity. Utilisation increases when large groups attend in the bistro area leading to increased numbers in the gaming room, during meal service periods. The addition of 11 EGMs will increase the Applicant's ability to accommodate those wishing to enjoy gaming without harm as well as offering an increased choice of machines. The venue is in an area where no other venues exist within 2.5 km and only two venues exist within a 5km radius. The patron survey shows the majority of patrons attending the gaming room come from within 5km. The Commission gives this marginal weight.
	Social benefit derived from increased community contributions	88 to 91	See comments re economic benefit. Given the small increase to community contributions the Commission considers this will be of marginal social benefit. The Commission gives this marginal weight.
	Improved facilities enabling greater range of services	83 to 84	The works proposed at the venue are to an outdoor area, that is presently used as a smoking area. The space has had limited previous use, due to weather. However, the works will include a retractable roof (to allow utilisation all year round, including in inclement weather), as well as large screens to enable watching major sporting events and meal service. The Commission gives this marginal to low weight.



	Impact	Paragraph numbers	Comment relevant to weight
<b>Disbenefits</b>	Possibility of an increased incidence and potential impact of problem gambling on the community	92 to 94	See comments re economic disbenefit. The Commission The Commission refers to its findings on the venue's commendable approach to responsible service of gaming. The Commission gives this marginal to low weight.
	Community attitude	95 to 97	A negative attitude towards the Application from the community survey conducted by council was reflective of community attitudes generally towards EGMs rather than in relation to this application. The Commission notes that when application went to council it was deemed to conform with Council policy with respect to gaming venues with a recommendation to approve. Less weight should be given to community attitude, in the circumstances of this existing venue, applying for a modest increase, in a mature gaming market, as compared to a new venue applying for substantial increase in EGMs in the municipality. The Commission gives this nil to marginal weight.