



# Victorian Commission for Gambling and Liquor Regulation

## DECISION AND REASONS FOR DECISION

In the matter of an application by Australian Leisure and Hospitality Group Pty Ltd under section 3.3.4(1) of the *Gambling Regulation Act 2003* for approval of the premises, the Commercial Hotel, located at 820 Plenty Road, South Morang, as suitable for gaming with forty (40) electronic gaming machines.

**Commission:**

Mr Ross Kennedy, Deputy Chair  
Ms Deirdre O'Donnell, Commissioner

**Appearances:**

Ms Susan Brennan SC with Ms Nicola Collingwood of Counsel  
for the Applicant (instructed by Minter Ellison)

Mr John Rantino for the Council (instructed by Maddocks)

Mr Cameron Warfe as Counsel Assisting the Commission

**Date of Hearing:**

15-17 November 2016

**Date of Decision:**

8 December 2016

**Date of Reasons:**

12 December 2016

**Decision:**

The Application is refused.

**Signed:**



**Ross Kennedy**  
Deputy Chair

## REASONS FOR DECISION

### INTRODUCTION

1. On 20 May 2016, Australian Leisure and Hospitality Group Pty Ltd (**the Applicant**) lodged an application with the Victorian Commission for Gambling and Liquor Regulation (**Commission**) for approval of the Commercial Hotel, located at 820 Plenty Road, South Morang (**Premises**), as suitable for gaming with forty (40) electronic gaming machines (**EGMs**) pursuant to section 3.3.4(1) of the *Gambling Regulation Act 2003* (**Act**).
2. The relevant municipal authority is the City of Whittlesea (**the Council**). On 2 August 2016, the Council provided the Commission and the Applicant with a written submission (together with supporting documents) in opposition to the application.
3. On 12 August 2016, the Applicant lodged an amended application to the Commission pursuant to section 3.3.5AB of the Act (**the Application**). On 11 October 2016, the Council lodged an amended submission (together with supporting documents) in opposition to the Application.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the 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.
5. The objectives of the Act are set out in section 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;*



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- (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 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.*

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 provisions concerning this Application are to be found in sections 3.3.7 and 3.3.8 of the Act:

(a) section 3.3.7 provides:

- (1) *The Commission must not grant an application for approval of premises as suitable for gaming unless satisfied that—*
  - (a) *the applicant has authority to make the application in respect of the premises; and*
  - (b) *the premises are or, on the completion of building works will be, suitable for the management and operation of gaming machines; and*
  - (c) *the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located.*
- (2) *In particular, the Commission must consider whether the size, layout and facilities of the premises are or will be suitable.*
- (3) *The Commission must also consider any submission made by the relevant responsible authority under section 3.3.6.<sup>1</sup>*
- ...
- (5) *The Commission cannot approve an area as a gaming machine area unless that area is wholly indoors.*

(b) section 3.3.8 provides, inter alia:

- (1) *The Commission must determine an application by either granting or refusing to grant—*
  - (a) *approval of the premises as suitable for gaming; and*
  - (b) *if applicable, approval for 24 hour gaming on the premises on any one or more days.*
- ...
- (2) *An approval must specify—*
  - (a) *the number of gaming machines permitted; and*
  - (b) *the gaming machine areas approved for the premises; and*
  - (c) *if applicable, the days on which 24 hour gaming is permitted on the premises.*
- ...

9. Section 3.3.7(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

<sup>1</sup> Section 3.3.6 of the Act allows the Council to make a submission addressing the economic and social impact of the proposal for approval on the well-being of the community of the municipal district in which the premises are located; and taking into account the impact of the proposal on surrounding municipal districts.

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>

10. 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:
  - the likely economic impacts of approval;
  - the likely social impacts of approval; and
  - the net effect of those impacts on the well-being of the relevant community.<sup>3</sup>
11. 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, 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.
12. 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 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>
13. The Commission also accepts the position expressed by Morris J in *Branbeau Pty Ltd v Victorian Commission for Gaming Regulation* [2005] VCAT 2606 at [51] that:

*“Although the [no net detriment] test requires consideration of the impact of approval on the well-being of the community of the municipal district in which the premises are located, logic and common sense require this to be considered in the context of the spatial impact of the gaming machines to be installed in the venue concerned.”<sup>7</sup>*

<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.

<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> See also *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation & Anor* [2009] VCAT 2275, [274] per Bell J.

14. 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.<sup>8</sup>*

This approach has been adopted in a number of VCAT decisions.<sup>9</sup> To facilitate greater consistency between the Commission and VCAT, the Commission has adopted the same approach in this matter.

15. If the Commission is not satisfied that the 'no net detriment' test is met, that is clearly fatal to the application given the opening words of section 3.3.7(1) of the Act. The test is a mandatory precondition to approval. However, although section 3.3.7(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.<sup>10</sup> The Commission must decide whether to grant the approval, even where an applicant has satisfied the minimum threshold of the 'no net detriment' test.<sup>11</sup>
16. 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;<sup>12</sup> 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.<sup>13</sup>
17. 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>14</sup> that if all of

<sup>8</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [60] per Dwyer DP.

<sup>9</sup> 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.

<sup>10</sup> See *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [97] and following per Dwyer DP; see also *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.

<sup>11</sup> *Gambling Regulation Act 2003*, section 3.3.8(1).

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

<sup>13</sup> *Ocean Grove Bowling Club v Victorian Commission for Gambling 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]



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.

18. Finally, it is noted that 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.
19. On 16 October 2013, Ministerial decision-making guidelines were published in the Victorian Government Gazette pursuant to section 5 of the VCGLR Act concerning applications for approvals of venues for EGMs (**Ministerial Guidelines**). The Ministerial Guidelines concern the assessment of the suitability of a premises for gaming which contain, or will contain, a children's play area to ensure that the venue operator provides a responsible gambling environment. The Ministerial Guidelines provide a list of criteria regarding children's play areas that the Commission should have regard to, and also states that the Commission should have regard to:

*any other aspect of the design and location of a children's play area that it deems relevant to ensuring that the approved premises for gaming will provide a responsible gambling environment.*

## **MATERIAL BEFORE THE COMMISSION**

20. The Applicant provided the Commission with the following material in support of its Application:
  - (a) Approval of Premises for Gaming application form dated 20 May 2016;
  - (b) Social and Economic Impact Assessment, prepared by Urbis Pty Ltd (**Urbis**), dated May 2016 (**Urbis Report**);
  - (c) Social and Economic Impact Addendum Report to the Urbis Report, dated 14 November 2016 (**Urbis Report Addendum**);
  - (d) Expert's Report in Respect of Application for 40 Electronic Gaming Machines, prepared by ShineWing Australia Pty Ltd (**ShineWing**), dated 19 May 2016 (**Expenditure Report**);
  - (e) Witness Statement of David Curry, Head of Regulatory and Corporate Affairs at ALH Group Pty Ltd (**ALH Group**), dated 18 May 2016;
  - (f) Witness Statement of Tim Lalor, Operations Manager at ALH Group, dated 19 May 2016;

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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.

<sup>14</sup> [2013] VCAT 101, [98].



- (g) Witness Statement of Natalee Melaney, Venue Manager of the Premises, dated 18 May 2016;
- (h) Witness Statement of David Schwarz, Responsible Gambling Ambassador for ALH Group, dated May 2016;
- (i) Witness Statement of Leigh James Barrett, Director and Principal Consultant of Leigh Barrett and Associates Pty Ltd, dated 11 May 2016;
- (j) Application for Planning Permit to the City of Whittlesea with respect to the Premises prepared by Urbis, dated 27 April 2016 (**Planning Permit Application**);
- (k) A3 Plans - Proposed redevelopment of the Premises;
- (l) Video on behalf of ALH Group in respect to the responsible gambling practices of the ALH Group (including the Applicant);
- (m) ALH Group Responsible Gambling Code of Conduct, dated November 2016; and
- (n) Responsible Gambling Code of Conduct Review Report prepared by Progressive Venue Services, dated 9 November 2016.

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

- (a) Economic and Social Impact Submission Form – City of Whittlesea;
- (b) Social and Economic Impact Assessment (SEIA) prepared by Diana Bell dated 5 July 2016 (**Council SEIA**);
- (c) Addendum to Council SEIA dated 9 September 2016 (**Council SEIA Addendum**);
- (d) SEIA of Commercial Hotel prepared by SGS Economics and Planning Pty Ltd (**SGS**), dated October 2016 (**SGS Report**);
- (e) Various objections received by the Council regarding the Application and the Planning Permit Application;
- (f) Extract of Council Report from the Minutes of the Ordinary Council Meeting on 19 July 2016 regarding the Application;
- (g) Copy of the Council's *Gambling Strategy and Action Plan 2014 to 2024*;
- (h) List of problem gambling service providers within the City of Whittlesea; and
- (i) Video titled "No pokies in South Morang" in respect to community perspectives on the Application.

22. The following material, prepared by Commission officers, was provided to the Applicant and the

Council and was considered by the Commission:

- (a) a report titled *Economic and Social Impact Report*, originally dated November 2016, and revised on 15 November 2016;
- (b) a report titled *Pre-Hearing Size, Layout and Facilities Report*, dated 29 July 2016; and
- (c) a report titled *Pre-Hearing Inspection and Compliance Report*, dated 27 October 2016.

23. In addition, the Commission received correspondence in opposition to the Application from thirty-six individuals and a number of community organisations providing services to the Whittlesea community, including:

- (a) Women's Health in the North, dated 1 August 2016;
- (b) Plenty Valley Community Health, dated 10 August 2016;
- (c) Whittlesea Community Connections, dated 11 August 2016;
- (d) Kildonan Uniting Care, dated 2 September 2016;
- (e) Brotherhood of St Laurence, dated 8 September 2016; and
- (f) The Salvation Army, dated 3 November 2016.

24. The Commission was also provided with written submissions by Counsel on behalf of the Applicant and Counsel on behalf of Council, dated 16 November 2016 and 17 November 2016 respectively.

25. Commissioners Kennedy and O'Donnell separately visited the Premises following the public hearing. Visits were also made to other gaming venues within the City of Whittlesea, namely the Plough Hotel, the Bundoora Hotel and the Epping Plaza Hotel.

## **DECISION AND REASONS FOR DECISION**

### ***Background***

26. The City of Whittlesea<sup>15</sup> is a metropolitan municipality located approximately 22 kilometres north of Melbourne. Major centres include Bundoora, Thomaston, Lalor, Epping and Mill Park. The City of Whittlesea has an estimated adult population of 152,365, with an estimated annual rate of population growth of 3.4% for the period 2017-22 projected by the (then) Victorian Department of Transport, Planning and Local Infrastructure. This is significantly higher than the Victorian average of 1.7%. It is estimated that 28.7% of the population will be over 50 by 2022.

27. The Premises are situated at 820 Plenty Road in South Morang at a prominent location at the

key intersection between Plenty Road, McDonalds Road and Gorge Road. The Premises are located in a mixed use area with commercial and retail facilities in close proximity to the north and west, including a group of shops across Gorge Road consisting of takeaway food, convenience retail and commercial tenants. The areas to the east and south of the Premises are predominantly residential in nature. The Premises currently comprise a bistro open daily for meals, a public bar and TAB room (both capable of hosting social functions), and drive-through BWS bottle shop. There is also a separate large format Dan Murphy's liquor store on site, which is covered by the liquor licence of the Premises.

28. The City of Whittlesea is subject to both a regional cap of 581 EGMs for the southern area of the municipality (incorporating the suburbs of Thomastown, Lalor, Epping, Mill Park and Bundoora) and a municipal limit of 212 EGMs for the remainder of the municipality.<sup>16</sup> The Premises are located within the area of the municipality covered by municipal limit. At the time of this decision, there are 8 gaming venues within the regional cap area of the municipality with approvals to operate a total of 601 EGMs (with 581 EGMs currently operating), with a further 2 gaming venues within the municipal limit area of the municipality with approvals to operate 110 EGMs (with 110 EGMs currently operating). The Application seeks to introduce 40 EGMs at the Premises, with 20 of those EGMs being relocated from the regional cap area to the municipal limit area.
29. The City of Whittlesea has an EGM density of 4.5 EGMs per 1000 adults, which is 13.9% lower than the metropolitan average (5.3) and 19% lower than the State average (5.6). If the Application is approved, the EGM density within Whittlesea would increase to 4.7 EGMs per 1000 adults, an increase of 2.9% on existing density.
30. The City of Whittlesea has an average gaming expenditure of \$679 per adult, which is 18.0% higher than the metropolitan average (\$575) and 22.7% higher than the State average (\$553). Overall gaming expenditure within the City of Whittlesea has increased by 9.6% in real terms over the past five years, which is compared with a decrease of 0.67% in the metropolitan average over the same period.

### ***Catchment area of the Premises***

31. The evidence presented to the Commission regarding the likely catchment area of the Premises

<sup>15</sup> Where reference is made in these reasons to the City of Whittlesea, this is a reference to the local government area.

<sup>16</sup> 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 a given region or municipality. While the number of entitlements operating within a particular region or municipality is capped, the Commission notes that there is nothing to preclude the aggregate number of EGMs for which approved venues may be licensed from exceeding that cap.



differed across the expert witnesses in this matter. The determination of the likely catchment area 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 harms.

32. In the Urbis Report, Mr Quick focussed on a 2.5km radius from the Premises (which is common in metropolitan gaming venues), and also conducted some analysis on a 5km radius from the Premises. This approach was consistent with the results of the bistro patron survey conducted by the Applicant.
33. In the Council SEIA, Ms Bell adopted a catchment area consisting of the whole of the City of Whittlesea on the basis that:
  - (a) the location of the Premises and associated road network made it accessible from all parts of the municipality;
  - (b) as the patron profile would include residents from both the established and growth areas of the municipality and 75% of the Whittlesea population falls within a 7km radius of the Premises, the Local Government Area (**LGA**) statistics are generally reflective of the overall patron demographic;
  - (c) services addressing gambling-related harm are supported by the municipality, rather than any smaller catchment area; and
  - (d) some social data is not available other than at LGA level.
34. In the SGS Report, Mr Szafraniec defined a catchment area based on the average drive times to assess the accessibility of the Premises. Based on this approach, he determined the appropriate catchment area using the SA2s which provide the most accessibility to the Premises (i.e. within a 10 minute drive of the Premises).
35. In the Urbis Report Addendum, Mr Quick stated that Ms Bell's approach was inappropriate as the LGA statistics are misleading due to the uneven distribution of disadvantage in the municipality. While he generally agreed with the outcome of Mr Szafraniec's approach, he referred to the bistro patron survey and submitted that certain SA2s were not appropriate to include in the catchment area due to the current low patronage from those areas. In conclusion, Mr Quick submitted that the most appropriate catchment area for the Premises was that represented by the SA2s of South Morang (which include the suburbs of Doreen and Mernda), Mill Park North and Mill Park South.
36. Having regard to the above material, the Commission agrees with the analysis of Mr Quick in

the Urbis Report Addendum and considers the appropriate catchment area of the Premises consists of the SA2s of South Morang, Mill Park North and Mill Park South.

### ***Reasons for Decision***

37. Pursuant to section 3.3.7, there are three elements that the Commission must be satisfied before it can grant the Application:

#### **AUTHORITY TO MAKE APPLICATION**

38. The first element in relation to which the Commission is required to be satisfied is that the Applicant has authority to make the Application in respect of the Premises.
39. Evidence was provided to the Commission in the Application form in which the Applicant acknowledges that it is the owner of the Premises, as well as the holder of the relevant liquor licence at the Premises.
40. Based on the evidence above, the Commission is satisfied that this first element has been met.

#### **SUITABILITY OF PREMISES FOR THE MANAGEMENT AND OPERATION OF GAMING MACHINES**

41. The second element in relation to which the Commission is required to be satisfied is that the Premises are, or on the completion of building works will be, suitable for the management and operation of gaming machines. In particular, the Commission must consider whether the size, layout and facilities of the Premises are, or will be suitable.<sup>17</sup>
42. The Commission was provided with a Pre-Hearing Size, Layout and Facilities report prepared by staff at the Commission. This report was prepared based on plans provided by the Applicant in relation to the Premises and the gaming machine area (GMA), and which form part of the materials before the Commission in this Application. According to the Pre-Hearing Size, Layout and Facilities report, the redevelopment of the venue and the GMA have been assessed by Commission Licence Management and Audit Inspectors against standards and guidelines in relation to the size, location and layout of the GMA, type and height of perimeter barriers, floor numbering and layout of gaming machines, windows, proximity of the GMA to other facilities within the venue (e.g. children's play areas) and any liquor or statutory authority conditions imposed. Based on the plans submitted, and subject to any planning issues, the report concluded that the size, layout and facilities of the Premises would be suitable for gaming.

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<sup>17</sup> Section 3.3.7(2) of the Act.

43. During the hearing, the Commission also heard evidence from Mr Barrett in relation to the suitability of the Premises for the management and operation of EGMs. Mr Barrett considered that the draft plans for the gaming room indicated the Premises will be suitable for gaming as:
- (a) the gaming room would be discrete from other parts of the venue and EGMs would not be visible from outside the venue or the bistro;
  - (b) there is good separation from the existing children's play area and the gaming room; and
  - (c) the relatively low density of EGMs proposed for the GMA means there is good visibility of the EGMs and entrances by staff at the cashiers desk.
44. Based on the plans provided by the Applicant, an issue was raised during the hearing as to whether the gaming room would be visible to persons entering the Premises from the main bistro entrance. It was clarified by Mr Quick<sup>18</sup> that the amended plans for the Premises indicated a screen was to be in place to restrict the visibility into the gaming room while entering the Premises using that entrance.
45. Based on the evidence above, the Commission is satisfied that this second element has been met.

#### 'NO NET DETRIMENT' TEST

46. The third element in relation to which the Commission is required to be satisfied is that the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located. Set out below (and summarised in tabular form at Appendix One) is the Commission's 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

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

#### Gaming expenditure not associated with problem gambling

48. As the economic category includes consumption, then to the extent that gaming expenditure is not associated with problem gambling, it has been recognised (by, for example, the Productivity

Commission in its 1999 report) that such expenditure can be treated as an economic positive.<sup>19</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>20</sup>

49. The Commission was provided with a range of evidence from Mr Stillwell of ShineWing in relation to the anticipated expenditure arising from the introduction of 40 EGMs at the Premises. In summary, Mr Stilwell's evidence was that:

(a) overall, it was anticipated that estimated gross gaming expenditure at the Premises would be between \$5,645,090 and \$6,239,310 per annum. In the first twelve months of trade, the estimated gross gaming expenditure would be between \$4,798,327 and \$5,303,414; and

(b) of the estimated gross gaming expenditure, it was estimated that 60% – between approximately \$3,387,054 and \$3,743,586 (between \$2,878,996 and \$3,182,048 in the first 12 months) – would be transferred expenditure (from a number of existing gaming venues both within and outside the City of Whittlesea), with the remaining approximately \$2,258,036 and \$2,495,724 (between \$1,919,331 and \$2,121,365 in the first 12 months) being new expenditure.

50. In the Expenditure Report, Mr Stillwell outlined the venues from which the 60% of total expenditure expected to be transferred to the Premises would be derived. The five venues which would be most affected (based on the percentage of total venue expenditure to be transferred) by the Application are as follows:

| Premises name    | Portion of transferred expenditure | Transferred gaming expenditure estimate | Percentage of total venue expenditure |
|------------------|------------------------------------|---|---------------------------------------|
| Plough Hotel     | 20%                                | \$1,188,440                             | 6.49%                                 |
| Bridge Inn Hotel | 10%                                | \$594,220                               | 10.02%                                |
| Epping Hotel     | 7.5%                               | \$445,665                               | 5.95%                                 |

<sup>18</sup> Transcript, Day 2, page192, lines 26 to 46.

<sup>19</sup> See *Romsey #2* at [351] per Bell J.

<sup>20</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.

|                    |      |           |       |
|--------------------|------|-----------|-------|
| Epping Plaza Hotel | 7.5% | \$445,665 | 2.11% |
| Bundoora Hotel     | 5%   | \$297,110 | 1.64% |

51. Mr Stillwell also noted that there is also likely to be an element of lost (i.e. non-transferred) gaming expenditure at other venues operated by the Applicant within Whittlesea (i.e. the Plough Hotel, the Bundoora Hotel and the Excelsior Hotel) due to the proposed relocation of EGMs from those venues. Despite this, he concluded that any such lost expenditure would be immaterial to the ongoing operation of those venues.
52. While Council did not agree with the anticipated expenditure and transfer estimates provided by Mr Stillwell, it did not lead any contrary expert evidence proposing an alternative estimate for the Commission's consideration. However, during the hearing, Mr Curry indicated that financial modelling had been conducted by the Applicant in relation to the impact that this Application would have on the operation of its other venues within Whittlesea. This financial modelling was not provided to the Commission as part of this Application, nor was it provided by the Applicant to Mr Stillwell for the purpose of preparing his expenditure report.<sup>21</sup> Under cross-examination, Mr Stillwell conceded that consideration of that modelling would have been relevant to his assessment, however noted that the impact of lost expenditure at those venues following the relocation of EGMs would only decrease the total new expenditure to be experienced in Whittlesea as a result of this Application.<sup>22</sup>
53. In closing submissions, the Council submitted that the non-production of this modelling by the Applicant was an informed decision by the Applicant to withhold the information relating to critical aspects of the Applicant's case. As such, Council submitted that an inference could be drawn by the Commission that the results of that modelling would not assist the Applicant's position in this Application.
54. The Commission notes with some concern that the Applicant did not provide the relevant modelling to either its expert witness or the Commission for consideration. The Commission considers that such modelling was of relevance (which was acknowledged by Mr Stillwell) and would have assisted Mr Stillwell and the Commission in considering the accuracy of the predicted transferred expenditure figures. In those circumstances, the Commission accepts the Council's submission and considers it appropriate to draw a negative inference as a result of the non-production of the modelling, with the effect that the anticipated transferred expenditure rate

<sup>21</sup> Transcript, Day 2, page 163, lines 6 to 10.

<sup>22</sup> Transcript, Day 2, page 163, lines 12 to 44.



(at least with respect to those venues the subject of the modelling) would be less than that predicted by Mr Stillwell in the Expenditure Report.

55. Based on the figures outlined above, Mr Stillwell found that at least 25% and no more than 30% of the estimated 60% transferred expenditure would be derived from venues operated by the Applicant. As such, an extreme view would be that those venues would actually experience zero transferred expenditure, reducing the total transferred expenditure rate from 60% to 30%. However, the Commission does not consider this to be a reasonable inference to draw, and considers that there would be some impact on those venues by way of transferred expenditure to the Premises following its commencement of EGM operations. Taking into account all the circumstances, the Commission has determined to reduce the cumulative transferred expenditure from venues operated by the Applicant by a total of 10% across the three venues.
56. As a result, the Commission has determined to apply a transfer rate of 50% (reduced from Mr Stillwell's estimate of 60%), such that between approximately \$2,822,545 and \$3,119,655 (between \$2,399,164 and \$2,651,707 in the first 12 months) would be transferred expenditure, with the remaining approximately \$2,822,545 and \$3,119,655 (between \$2,399,164 and \$2,651,707 in the first 12 months) being new expenditure.
57. In assessing the extent of this benefit, the Commission has had regard to the evidence outlined in paragraphs 105 to 115 below with respect to the incidence of problem gambling. The Commission finds that the portion of new expenditure not attributable to problem gambling is an economic benefit. Various factors suggest that the extent of problem gambling at the Premises is likely to be low to moderate, including that the venue is a small one, with a relatively low number of EGMs, and reduced operating hours. Generally, it is located in an area of lower relative socio-economic disadvantage (albeit with some vulnerability to financial stress) than other areas of the municipality, and one that is anticipated to experience ongoing population growth. While there are areas of high relative socio-economic disadvantage within the likely catchment area of the Premises, residents in those communities already have access to EGMs that are more proximate than those which would be located at the Premises if the Application was granted. Further, the Commission has taken into account the relocation of 20 EGMs from other venues within Whittlesea, which are located in areas of higher relative socio-economic disadvantage and vulnerability compared with the Premises. Finally, the anticipated extent of the new expenditure at the Premises is expected to be moderate due to the 50% transfer rate. As such, a marginal weight is given to this benefit.

Expenditure on capital works

58. A potentially key economic benefit associated with this Application is that arising from the expenditure on the proposed redevelopment of the Premises.
59. According to Mr Lalor, the Applicant is proposing to redevelop the Premises at an estimated cost of approximately \$2.3 million. The redevelopment of the Premises will include:
- (a) an upgrade to the public bar;
  - (b) development of a rooftop beer garden;
  - (c) conversion of the drive-through bottle shop into a dedicated function room with ancillary facilities; and
  - (d) creation of a gaming room to accommodate 40 EGMs.
60. In the Urbis Report, Mr Quick submitted that the proposed redevelopment would improve the Applicant's ability to cater for entertainment events and provide better facilities for social gatherings. Mr Quick also stated that he expected that "*a significant proportion of trades people on the project will reside in the municipality*".<sup>23</sup>
61. The Commission was also provided with a range of supporting plans of the proposed redevelopment. However, the Commission was not provided with any detailed costings for the redevelopment (other than the overall cost estimate of \$2.3 million) or any evidence identifying the proposed developer or workforce to be used for the redevelopment.
62. The Council SEIA and SGS Report only address the economic impact of the capital works in a minor way, with a majority of Council's submissions relating to issues in the context of recreational and social opportunities (see further below). To the extent it does address this economic impact, the Council SEIA states at page 39 that "*there is no evidence that the [redevelopment] proposal would improve community infrastructure, therefore the impact would be neutral*".
63. Mr Lalor gave evidence that the proposed redevelopment is dependent on the success of this Application. In his written statement, Mr Lalor stated that "*without the addition of EGMs to the Hotel there is not a sufficient business case [for the redevelopment] and the limited budget for capital works will be allocated to other venues throughout the country*". Under cross-examination, Mr Lalor accepted that he had not seen any business case for capital expenditure

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<sup>23</sup> Urbis Report, page 44.

at the Premises and his comments were based solely on his experience in the gaming and hospitality industry.

64. During the hearing, Mr Curry gave evidence that a business case had been developed by the Applicant and considered by the Applicant's board in relation to the proposed redevelopment at the Premises and its commercial viability. This business case was not provided to the Commission as part of this Application, nor did Mr Lalor have regard to it when forming his opinion that the redevelopment would not occur but for the approval of this Application.<sup>24</sup> Under cross-examination, Mr Curry stated that the Applicant does not "*present strategic individual venue profit and loss and overall capital expenditure*" as part of gaming applications, and had "*presented what's appropriate for the hearing*".<sup>25</sup>
65. In closing submissions, the Council submitted that the non-production of this business case by the Applicant was an informed decision by the Applicant to withhold the information relating to critical aspects of the Applicant's case. As such, Council submitted that an inference could be drawn by the Commission that the results of the business case would not assist the Applicant's position in this Application.
66. In contrast to the financial modelling relating to transferred expenditure, the Commission is not prepared to draw the inference requested by Council. The Commission accepts the evidence of Mr Curry that it was the decision of the Applicant that the redevelopment would not occur without the approval of this Application. It also accepts the evidence of Mr Lalor, based on his experience in the gaming and hospitality industries, that the redevelopment of the Premises would not proceed without the approval of this Application.
67. Further, the Commission is mindful of VCAT's decision in *Monash CC v L'Unico Pty Ltd*,<sup>26</sup> where it held (albeit in relation to an EGM increase 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<sup>27</sup>) 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 Commission considers that the Council's request would be akin to engaging in a

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<sup>24</sup> Transcript, Day 1, page 70, lines 34 to 44; page 71, lines 12 to 33.

<sup>25</sup> Transcript, Day 1, page 41, lines 11 to 13.

<sup>26</sup> [2013] VCAT 1545.

<sup>27</sup> 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.

'project feasibility' or 'existing financial capacity' assessment, and as such it would not be appropriate for the Commission to draw the inference as requested.

68. As a consequence, the Commission finds that the expenditure of capital works is a positive economic benefit and accepts the Applicant's evidence of the estimated value of the capital works to be approximately \$2.3 million. The Commission recognises that this expenditure is dependent upon the Application being granted, in that if this is not the case, the Applicant will not proceed with the proposed redevelopment of the Premises. In any event, the Commission 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 redevelopment.
69. However, despite Mr Quick's assertion that a significant proportion of trades people for the redevelopment will be residents of Whittlesea, the Commission was not provided with any evidence to substantiate this position and therefore cannot be certain to what extent this expenditure will actually benefit the municipality in which the Premises are based.
70. Overall, the Commission considers that the extent of the proposed expenditure on capital works is of a sizeable nature but there is some uncertainty as to the extent to which the expenditure will be retained in the relevant municipality in which the Premises are located, and as such a low weight is given to this benefit.
71. In making this assessment, the Commission notes it is important that the benefits associated with the redevelopment are not double counted, having regard to the social impact that may result from the improved facilities and services. This aspect has been considered separately, and is detailed below at paragraphs 130 to 133.

#### Employment creation

72. The economic benefit of employment creation arising from this Application can be described as both short term and longer term:
  - (a) short term employment benefits that arise during the redevelopment of the Premises (related to but separate to the economic benefit associated with the expenditure on capital works); and
  - (b) longer term employment benefits arising from the introduction of EGMs and increased patronage of existing facilities at the Premises.
73. In relation to short term employment benefits, the extent of the works have been described generally in paragraphs 59 to 61 above. As noted above, it is not clear to what extent this work

will be undertaken by individuals who live in the relevant municipality. In the Urbis Report, Mr Quick stated that he expected “*a significant proportion of trades people on the project will reside in the municipality*”.<sup>28</sup> The Council SEIA made no reference to jobs created during the redevelopment phase.

74. Based on the evidence presented, the Commission concludes that it should not place any weight on this economic benefit. To the extent that it arises in relation to this Application, the Commission considers that the value of this benefit has been captured in the benefit associated with the expenditure on capital works considered in paragraphs 58 to 71 above.
75. Separate from the short term economic benefits associated with the capital works is the potential benefit associated with longer term employment arising from the Application.
76. In relation to this benefit, Mr Lalor gave evidence that the Premises currently employs 32 staff, the majority of which are employed on a casual basis. He stated that in addition to the requirement to staff the new gaming room, the Applicant estimated this Application would result in a 60% increase in the Premises’ food and beverage sales, requiring further additional employment at the Premises. In total, Mr Lalor stated that the Applicant anticipated “*employing approximately additional 20 staff equivalent to 9 full time positions*”.<sup>29</sup>
77. Ms Melaney gave evidence that the nine additional full-time equivalent (**FTE**) positions would comprise of five FTE in the gaming room and four FTE for the roof top beer garden, function centre and anticipated increase in patronage.
78. Mr Quick stated in the Urbis Report that “*the addition of gaming, the extension of other facilities in the hotel and flow on effects of greater business have been estimated by [the Applicant] to require around 20 additional staff (a mix of full-time, part-time and casual) or the equivalent of 9 full-time equivalent staff*”.
79. In the SGS Report, Mr Szafraniec referred to a report from the South Australian Centre for Economic Studies in 2005 (**SACES Report**) which concluded that job intensity (i.e. number of jobs created per \$1 million in expenditure) associated with EGM use in Australia is lower than equivalent intensity in other hospitality industries. Mr Szafraniec submitted that “*if expenditure is diverted from high job-intensity activities to low job-intensity activities, ultimately the net impact on employment of EGM expenditure may be negative*”.<sup>30</sup> Mr Szafraniec applied this analysis to the anticipated EGM expenditure at the Premises and concluded that “*with increased EGM*

<sup>28</sup> Urbis Report, page 44.

<sup>29</sup> Statement of Mr Lalor, paragraph 22.

<sup>30</sup> SGS Report, page 13.

*expenditure expected to largely result from decreased expenditure in other sectors with larger employment multipliers, declining expenditure would be expected to generate a loss of employment that outweighs the employment gains generated at the hotel'.<sup>31</sup>*

80. In the Council SEIA, Ms Bell referred to the 2010 report by the Productivity Commission which found that “gambling industries do not create net employment benefits, because they divert employment from one part of the economy to another”. Ms Bell also referred to the SACES Report and submitted that any new employees at the Premises would most likely come from other venues or parts of the hospitality industry and therefore there would be no net increase in employment in the municipality.
81. In the Urbis Report Addendum, Mr Quick criticised the analysis conducted by Mr Szafraniec and classified it as “*theoretical only and has no basis in reality*”. He stated that the employment multiplier approach was only appropriate at a state-wide level and would not generate meaningful analysis at the venue level. Mr Quick did not agree that employment in other venues would decline proportionately with any decrease in gaming revenue, as each venue impacted by this Application would only see minor reductions in gaming revenue and minimum staffing requirements would be required to be maintained. Mr Quick also noted that Mr Szafraniec’s analysis only took into account the gaming-related jobs and did not appreciate the additional hospitality jobs to be created at the Premises as part of the Application.
82. In summary, Mr Quick submitted that:
- (a) there will be an increase of approximately 20 jobs (or nine FTE) within the Premises;
  - (b) the loss of jobs in competitive gaming venues or other sectors within the local area will be immaterial; and
  - (c) there will be net employment gains in the municipality as a result of the Application.
83. Under cross-examination, Mr Quick accepted that there might be some transfer of employment from other gaming venues in the local area, however disagreed with the Council’s position (as outlined above) that such transfer of employment would result in a net loss of employment in Whittlesea.
84. The Commission accepts the evidence given on behalf of the Applicant that if the Application is granted, this will result in the creation of the equivalent of five new full time positions at the Premises in respect of its gaming operations and an additional four full time positions in respect

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<sup>31</sup> SGS Report, page 31 & 39.

of its increased hospitality operations. While it considers that some employment may be transferred from within the municipality (i.e. from competitive gaming and hospitality venues), the Commission is not satisfied that this would be sufficient to offset the creation of the nine FTE positions at the Premises so as to result in a net loss of employment within Whittlesea. In such circumstances, the Commission considers the additional employment arising from the Application as positive and, taking in account the anticipated numbers of employees and the potential for some transfer of local employment, gives this benefit marginal to low weight.

#### Supply contracts

85. As noted in paragraph 76 above, the Applicant considers that the approval of the Application will result in additional demand at the Premises and estimates that a 60% increase in food and beverage sales will occur, which is separate to the anticipated gaming revenue to be generated through operation of EGMs. In the Application, the Applicant estimates the value of increases in the supply contracts for the first 12 months as between \$800,000 and \$900,000.
86. The Council submitted that the Applicant provided no evidence to demonstrate that any increase in supply contracts would actually benefit the local community, however conceded that it would be reasonable to anticipate some increase in demand from patrons attending the gaming room, function area and beer garden. The Council also submitted that there would be a negative impact on other hospitality businesses in the area as a result of transferring business to the Premises.
87. The Commission considers that there is some level of uncertainty as to the extent of the anticipated increase in food and beverage sales, and to what proportion of any such increased expenditure will be retained in the municipality in which the Premises is located. With regard to Council's position on the impact of transferred hospitality business, the Commission notes that this is considered as a separate impact of the Application (see paragraphs 116 to 120 below), and as such has not adjusted this benefit in this regard.
88. As such, the Commission considers that the increase in supply contracts at the Premises will result in a minor economic benefit, and gives it only marginal weight.

#### Complementary expenditure

89. Related to the impact of the Application on supply contracts is the complementary expenditure that may arise from improvements in facilities, which results in more clientele to the Premises and hence increased economic activity within the local area.

90. According to Mr Lalor and noted above, it is stated that the proposed redevelopment will encourage an increased local patronage to the non-gaming activities and result in an estimated 60% increase in food and beverage sales at the Premises. As a consequence, there will be complementary expenditure which is a positive economic benefit.
91. The Council SEIA indicated that research has found no evidence that gaming venues (other than casinos) improve patronage at nearby businesses.<sup>32</sup>
92. As noted in paragraph 87, there is some level of uncertainty as to the extent of the anticipated increase in food and beverage sales, and to what extent this would generate increased economic activity at the Premises and within the local area. For these reasons, the Commission finds that any benefit associated with complementary expenditure would be negligible and as such, does not place any weight on this impact as the basis for its decision in relation to the net detriment test.

#### Community contributions

93. In determining the net economic and social impact of applications of this nature, both the Commission<sup>33</sup> and VCAT<sup>34</sup> have regularly treated community contributions as a positive benefit.
94. According to Mr Curry, the Applicant has donated over \$60,000 to charitable causes within the City of Whittlesea over the past three years, and since 2015 has maintained a sponsorship program with local organisations.<sup>35</sup> Ms Melaney also gave evidence that the Premises has donated approximately \$11,000 to local community organisations (which is understood to be in addition to the \$60,000 referred to by Mr Curry), and provides “in-kind” contributions in the form of free function room hire and discounted food and beverages for club events.<sup>36</sup>
95. It is proposed that, in addition to the current contributions provided by the Premises, the Applicant will, if the Application is approved:
- (a) for a period of 10 years from the date of commencement of operation of EGMs at the Premises, contribute an additional \$100,000 per annum to be allocated as follows:
    - (i) \$10,000 for an annual golf charity day (or similar charitable or fund-raising purpose);
    - (ii) \$40,000 to the Council for problem gaming initiatives; and

<sup>32</sup> Council SEIA, page 40.

<sup>33</sup> See, for example, *Richmond Football Club Ltd at Wantirna Club premises* [2015] VCGLR 31 (24 July 2015).

<sup>34</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.

<sup>35</sup> Statement of Mr Curry, paragraph 48.

<sup>36</sup> Statement of Ms Melaney, paragraphs 34 and 36.



- (iii) \$50,000 to be allocated by a committee, made up of two representatives from the Premises and two representatives from the Council (**Committee**) for the benefit of local community organisations; and
- (b) after the first 10 years of EGM operation, contribute \$25,000 per annum to be allocated by the Committee for as long as EGMs are operating at the Premises.
96. In his written statement, Mr Curry stated that the *“purpose of the additional commitment is to offset the risk of problem gambling”* and *“providing this additional contribution will further help to ensure that EGMs at the [Premises] do not have a detrimental effect on the local community”*.<sup>37</sup>
97. According to the Council SEIA, Ms Bell submitted that it is difficult to assess the impact of a monetary amount when used to offset against a social impact (i.e. problem gambling). Ms Bell gave evidence that the proposed community contributions amounted to only 0.15% of the total gaming revenue expected to be received by the Applicant over the first 10 years of EGM operation at the Premises. She contended that, when determining whether these contributions amount to a benefit to the Whittlesea community, the Commission should compare the amount of proposed annual community contribution with an estimate of the economic cost of the associated harms. Ms Bell concluded that a *“non-conditional, ongoing annual donation to an appropriate agency ... for distribution to the local area, or direct contributions to local volunteer-run sporting groups or organisations would constitute a low community benefit”*.<sup>38</sup>
98. Mr Szafraniec also gave evidence that the economic costs of problem gambling should be taken into account when considering the benefit to the community of monetary contributions. He concluded that the community contributions *“will help offset economic losses to the community as a result of EGMs, though represent only a small proportion of the total money likely to be lost to the community on an annual basis”*.<sup>39</sup>
99. While aware of the need to treat community contributions carefully in the assessment of gaming applications under the Act, the Commission does not consider it of assistance to assess the level of such contributions against the expected gaming revenue at the Premises in determining whether the community contributions provides an economic benefit to the community. The significance of any such contributions is assessed on the effect had on the community, rather than the proportion of revenues or profits realised by a venue operator that they represent.

<sup>37</sup> Statement of Mr Curry, paragraph 51.

<sup>38</sup> Council SEIA Addendum, page 8.

<sup>39</sup> SGS Report, pages 30 and 38.



100. The Commission accepts the proposed community contributions will have a positive economic impact. The Commission is further satisfied that the contributions will only occur if the Application is granted. Having regard to the increased amount of community contributions that will occur, and that these contributions will be made to community groups operating in South Morang and across the municipality (in accordance with conditions of any approval of this Application), the Commission considers these contributions to be a positive benefit to which it accords a low weight.

*Increased gaming competition in the City of Whittlesea*

101. Increasing competition in gaming in the City of Whittlesea is a factor in light of the statutory purposes of the Act and the consumer benefits that derive from competition.

102. At the hearing, Mr Quick gave evidence that there were “*other competitive gaming venues, namely the Bridge Inn to the north and the Plough Hotel to the south in Mill Park, but there is a greater concentration of gaming venues to the south and south-west and west*”.<sup>40</sup> In this regard, the Commission refers to and has reliance to the evidence set out in paragraphs 49 to 56 in relation to the anticipated transfer of gaming expenditure within the City of Whittlesea.

103. On the basis of an estimated adult population in the City of Whittlesea of 151,573 for 2016, the Commission considers that this Application would (if approved):

- (a) increase the number of approved venues within the municipality by one;
- (b) increase the overall number of EGMs within the municipality by 20 from 691 to 711, including:
  - (i) a decrease in the number of EGMs within the regional cap of 581 entitlements from 581 to 561; and
  - (ii) an increase in the number of EGMs within the municipal limit of 212 entitlements from 110 to 150;
- (c) increase the EGM density of the municipality in which the Premises are situated from 4.56 EGMs per 1,000 people to 4.69 EGMs per 1,000 people (compared with the metropolitan average of 5.32 EGMs per 1,000 people and State average of 5.65 EGMs per 1,000 people); and

<sup>40</sup> Transcript, Day 2, page 178, lines 18 to 20.



- (d) result in new gaming expenditure in the municipality in the amount of between approximately \$2,822,545 and \$3,119,655 per annum, and between approximately \$2,399,164 and \$2,651,707 in the first 12 months.

104. As such, the Commission finds that granting approval of the Application will increase gaming competition in the City of Whittlesea by providing an additional venue at which patrons may choose to play EGMs. However, having regard to the number of EGMs intended to operate at the Premises, the current number of EGMs and the number and location of other gaming venues in the City of Whittlesea (and more particularly in the catchment area of the Premises), the Commission considers this to be a small economic benefit and gives it marginal weight.

*Gambling expenditure associated with problem gambling*

105. To the extent that a portion of new expenditure is attributable to problem gambling, this represents an economic disbenefit.<sup>41</sup> In assessing the extent of this disbenefit, the Commission recognises that it does not include transferred expenditure because such expenditure cannot exacerbate problem gambling.<sup>42</sup> In assessing this impact (and other impacts involving problem gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gambling undertaken by those who may be defined as ‘problem gamblers’, as well as those who may be otherwise regarded as ‘low-risk’ or ‘moderate-risk’ gamblers.

106. In assessing the extent of this disbenefit, the Commission has regard to the expenditure evidence set out in paragraphs 49 to 57.

107. The extent to which it can be considered that new expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with this Application, will be influenced by the socio-economic status and vulnerability of the community in the area surrounding the Premises, as communities characterised by socio-economic disadvantage are more vulnerable to problem gambling and the negative impacts of gambling.

<sup>41</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 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.

<sup>42</sup> 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.

108. According to the Urbis Report and Urbis Report Addendum prepared by Mr Quick and based on the catchment area discussed at paragraphs 31 to 36 above, features of the socio-economic characteristics of the surrounding area are that:

- (a) while the City of Whittlesea is marginally more disadvantaged than other municipalities on average (with a SEIFA<sup>43</sup> Index of Relative Socio-economic Disadvantage score of 989 and ranked 38<sup>th</sup> of 80 LGAs in Victoria), the SA2s of South Morang, Mill Park North and Mill Park South had SEIFA scores of 1063, 1030 and 1004 respectively. This equates to a relatively low level of socio-economic disadvantage within Victoria, and a significantly lower level of disadvantage than most other SA2s within the City of Whittlesea. Overall, this demonstrates that disadvantage is unevenly distributed outside the Premises' catchment area in the south and south-west of the municipality;
- (b) based on the Propensity to Gamble Index, the residents within the catchment area demonstrate a wide range of gambling propensity, but a comparatively lower propensity to gamble than the rest of the municipality (particularly with respect to the south-west area of the municipality);
- (c) with specific reference to the residents within both 2.5km and 5km radii of the Premises, the population exhibits:
  - (i) above average household and per capita incomes as compared with the municipality as a whole, but per capita incomes are approximately 10% lower than metropolitan average;
  - (ii) a higher proportion of the workforce in white collar employment as compared with the municipality, but below the metropolitan average;
  - (iii) a higher proportion of residents aged over 65 (acknowledged as being less susceptible to problem gambling); and
  - (iv) a significantly higher level of mortgage stress than the metropolitan average (7.4% within 2.5km and 6.0% within 5km, compared with 3.4% for the metropolitan average), due to the absolute volume of residents in the early stages of paying a mortgage in the growth areas of the municipality; and

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<sup>43</sup> 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.



- (d) on average, local residents exhibit a lower level of socio-economic disadvantage as compared with residents within the primary catchment areas for the Applicant's other venues within the municipality, from where 20 EGMs are proposed to be relocated to the Premises as part of the Application.

109. According to the Council SEIA (which primarily conducted its analysis at the LGA level), Ms Bell noted that:

- (a) Whittlesea exhibits:
  - (i) a younger age profile than for the Melbourne average, with the largest population group of young parents and homebuilders;
  - (ii) a higher level of diversity than Greater Melbourne, however has a considerably lower level of acceptance of diverse cultures (ranked in the bottom five of metropolitan municipalities);
  - (iii) a higher unemployment rate and lower median household income, but with a higher median mortgage repayment;
  - (iv) in terms of social capital, social and support networks similar to Melbourne averages, but indicators of the perception of having access to community services and resources, opportunities for social engagement, social trust and community/civic engagement are below the metropolitan averages;
- (b) in terms of SEIFA, around one quarter of Whittlesea residents (24.1%) lived in SA2s that are in the first decile of socio-economic disadvantage (however accepted that these residents did not fall within the presumed catchment area of the Premises) and a further 20% lived in SA2s that are in the fourth decile of socio-economic disadvantage (and the Commission notes that these residents also do not fall within the catchment area of the Premises identified in paragraph 36 above);
- (c) with reference to the Vulnerability Analysis of Mortgage, Petrol and Inflation Risks and Expenditure Index (**VAMPIRE Index**), several parts of the populated areas of Whittlesea identified as financial vulnerable fell within the catchment area of the Premises;
- (d) the Application will increase the incidence of problem gambling within the catchment area by increasing accessibility within the local area and decreasing the non-gambling options available to vulnerable persons in the community, as it will remove the last EGM-free venue within the local area;



- (e) despite a low EGM density, EGM expenditure rates within Whittlesea are above average indicating a high usage associated with problem gambling within the community;
- (f) the Premises is highly accessible geographically and socially and, due to future residential development proximate to the Premises, will decreasingly be characterised as a 'destination venue'; and
- (g) the installation of EGMs was likely to increase problem gambling vulnerability amongst existing and new staff members.

110. In the SGS Report, Mr Szafraniec found that:

- (a) while the population of Whittlesea is relatively disadvantaged, the population of the catchment area was less disadvantaged, with much of Whittlesea's disadvantage clustered to the south of the catchment area in suburbs such as Lalor and Thomastown;
- (b) the transfer of 20 EGMs from venues to the south of the Premises would reduce the exposure of residents in the southern region of Whittlesea to EGMs;
- (c) the installation of EGMs at the Premises would not substantially improve access for residents of Whittlesea presently unable to access EGMs for leisure purposes, but may draw in impulse gamblers using the neighbourhood centre and other nearby facilities; and
- (d) the catchment population (particularly in the newly developed areas of South Morang and to the north) experiences relatively high rates of mortgage stress and scores poorly on the VAMPIRE Index, and therefore are relatively vulnerable to losses associated with problem gambling.

111. According to the Urbis Report Addendum and at the public hearing, Mr Quick stated that areas identified by the VAMPIRE Index as high risk do not necessarily correlate with areas of greater risk of problem gambling or financial stress. As a result of the measures used to calculate the VAMPIRE Index, certain areas where incomes are high, making housing and car costs relatively more affordable, are nonetheless considered "highly vulnerable" to shifts in interest rates and petrol prices. Conversely, some relatively disadvantaged areas (such as Lalor and Thomastown) are recorded as having low levels of vulnerability.<sup>44</sup> As a consequence of these outcomes, Mr Quick concluded that the results of the VAMPIRE Index should be given little weight by the Commission when determining the level of disadvantage and vulnerability within the catchment area of the Premises.

<sup>44</sup> Urbis Report Addendum, page 15.

112. In considering the extent to which any new expenditure may give rise to problem gambling, the manner in which gaming is to be conducted at the Premises is also a relevant factor. The Applicant is an experienced operator, with the Applicant's approach to the responsible service of gaming being supported by the evidence of Mr Curry, Mr Lalor, Mr Schwarz and Mr Barrett. Mr Lalor and Ms Melaney detailed how these practices would be implemented on a day-to-day basis, while Mr Curry and Mr Barrett provided more general evidence regarding the approach taken by the Applicant to the responsible service of gambling, and its compliance with relevant industry practices. Evidence was also provided with respect to the Applicant's engagement and training with Gambler's Help and Mr Schwarz at other venues operated by the Applicant within Whittlesea.
113. Mr Quick concluded that problem gambling was a detrimental factor that should be allocated medium weight. In the Urbis Report, he stated that "*while the impact of problem gambling is significant on those affected and their families, I believe the problem gambling change will be minimal in the municipality*".<sup>45</sup>
114. In contrast, the Council SEIA Addendum (at pages 11-12) indicated that Whittlesea exhibits a number of risk factors associated with problem gambling (such as accessibility, higher expenditure, area-level disadvantage, lack of alternative leisure options and lower levels of social capital) which would be exacerbated by this Application. As such, the increased incidence of problem gambling would have a detrimental impact that should be allocated a high weight by the Commission.
115. The Commission finds that this Application will result in a new venue being established with 40 EGMs, and that this will be associated with new expenditure of between approximately \$5,645,090 and \$6,239,310 per annum, and between approximately \$4,798,327 and \$5,303,414 in the first 12 months. It accepts that a proportion of this expenditure will be associated with problem gambling. Further, the Commission finds that while the catchment area of the Premises exhibits lower levels of socio-economic disadvantage as compared with the municipality as a whole, the results of the VAMPIRE Index (in particular from the above average levels of mortgage stress) indicate that the residents in the catchment area have a level of financial vulnerability which would make them more vulnerable to gambling-related harms. However, the Commission acknowledges that there is some benefit to the proposed transfer of EGMs from areas of moderate socio-economic disadvantage and financial vulnerability to the Premises. Taking into account the above findings, the Commission is satisfied that the potential for an increase in problem gambling as a result of this Application is moderate. The Commission

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<sup>45</sup> Urbis Report, page 45.

is also satisfied that the Applicant is an experienced gaming operator with robust responsible service of gambling practices. As such, while the Commission finds that there is an economic disbenefit associated with problem gambling as a result of this Application, it places a low to moderate weight on this factor. Issues associated with the negative social impacts associated with problem gambling are considered further in paragraphs 138 to 140 below.

Potential diversion of trade from retail facilities

116. Mr Quick sets out in the Urbis Report that the diversion of trade from retail facilities due to an increase in gaming expenditure is a potential economic disbenefit flowing from the grant of this Application. He considers that the maximum impact which retailers in the municipality could incur is at or below the value of the new gaming expenditure (determined by the Commission to be between approximately \$2,399,164 and \$2,651,707 in the first 12 months of operation), however considers that the actual impact will only be a fraction of this amount. Further, Mr Quick places low weight on this factor as the impact on any one retailer is unlikely to be perceptible.
117. In the Council SEIA, Ms Bell agrees with Mr Quick's assessment that there would be a detrimental impact on local businesses arising from this Application on the basis of research which has found a decrease in business revenues due to a substitution of expenditure within a community.
118. In the SGS Report, Mr Szafraniec referred to the SACES report and the lower expenditure multipliers associated with the gaming industry as opposed to other industry sectors. As such, he concluded that "*expenditure associated with EGMs that replaces consumption expenditure elsewhere in the economy is likely to generate lower amounts of activity elsewhere in the economy*".
119. Mr Szafraniec also stated that a significant amount of the new expenditure would leak out of the local economy, in that it would be redirected from local-based owners of retail facilities to the Applicant (based in South Yarra) and the State Government.
120. The Commission accepts that the maximum impact that could be imposed on local retailers would be the value of new gaming expenditure arising from this Application. The Commission also accepts that a significant proportion of the new expenditure redirected from local businesses would be lost to the municipality given the distribution of that revenue to primarily the State Government and, to a lesser extent, the venue operator (a non-local operator). Despite this, the Commission agrees with the Applicant's submissions that any revenue lost by retail facilities in the local area would be dispersed to such an extent that it is unlikely to

significantly impact any one retailer. As such, the Commission finds that there is an economic disbenefit associated with the diversion of trade from retail facilities within Whittlesea as a result of this Application, and so places a marginal weight on this factor.

*Diversion of trade from other gaming venues*

121. Mr Stillwell gave evidence that the introduction of EGMs at the Premises would cause a diversion of trade from other gaming venues within the municipality.
122. Mr Quick stated that this impact should be given low weight as the transfer of gaming expenditure between venues is expected in a competitive market, and stated that much of the transferred expenditure would be coming from other venues operated by the Applicant (and to that extent was not a disbenefit).
123. The Commission refers to and relies on its findings at paragraphs 49 to 56 regarding the likely allocation of anticipated diversion of trade from other venues. As such, the Commission finds that approximately 20% out of the 50% of anticipated transferred expenditure would be derived from other venues operated by the Applicant. Therefore, the Commission considers that there remains some impact on other venue operators (in particular, the operator of the Bridge Inn Hotel) that the diversion of trade will have a minor detrimental economic impact. Having regard to these factors, the Commission assigns marginal weight to this impact.

*Increased demand for community support services*

124. Related to the social impacts of gambling-related harms associated with this Application (discussed below), the economic cost of providing community support services to address such harms is considered an economic disbenefit of this Application.
125. The Commission considers that any increase in gambling-related harms is likely to increase demand on existing community support services available in the Whittlesea municipality. In relation to the extent that this Application will increase gambling-related harms in the municipality, the Commission refers to and relies on its findings outlined in paragraphs 138 to 142 regarding harms arising from problem gambling.
126. A number of submissions were received by the Commission from community support organisations servicing the likely catchment area of the Premises, outlined at paragraph 23 above. In summary, these submissions suggest that the current demand for services indicate a high existing need for support, with any increase in demand requiring additional resources to adequately extend support to cover the new demand.

127. While the Commission accepts that there will be an economic cost in responding to any increase in gambling-related harms, there was no direct evidence that current services are not in a position to handle any anticipated increase in demand resulting from this Application. In light of the Commission's findings relating to the extent of likely increase in gambling-related harms, the Commission considers that the financial cost in responding to increased demand for community support services is a negative economic impact, upon which it places low weight.

#### Conclusion on economic impacts

128. After considering the economic benefits of the proposal and balanced against the detriments, the Commission considers that, on balance, the proposal is likely to have a neutral to small positive economic impact.

#### Social Impacts

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

#### Improved facilities adding to appeal of the Premises

130. Ancillary to the capital works expenditure that will occur if this Application is granted, the redevelopment will result in improved facilities being available to be patronised by the community. Access to such improved facilities is an outcome which the Commission<sup>46</sup> and VCAT<sup>47</sup> have regularly determined is a positive social impact associated with applications of this nature.

131. The nature of these improved facilities has been described in detail in paragraphs 59 to 61. According to Mr Lalor, the proposed redevelopment will result the Premises being the "only venue in the LGA to offer a roof top beer garden and the only licensed venue to have dedicated function facilities".<sup>48</sup> The Council SEIA stated that there are some modest benefits of improved facilities available at the Premises, noting that the function room and beer garden represented expansion and improved facilities rather than the introduction of new facilities (other than the addition of the gaming room). The Council SEIA also stated that these improvements are offset by the reduction in size of the existing function space (reduced maximum capacity from 500 to approximately 300) and queried the impact of impending legislative change to smoking laws on the availability of the beer garden as an open-air food offering.

<sup>46</sup> See, for example, *Glenroy RSL Sub-branch Inc at Glenroy RSL premises* [2015] VCGLR 40 (22 October 2015).

<sup>47</sup> See, for example, *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

<sup>48</sup> Statement of Mr Lalor, paragraph 21.



132. Further, the Council SEIA also details Council's and the community's concern regarding the lack of access to alternative venues and activities which do not incorporate EGMs if the Application was granted. Ms Bell gave evidence that the community survey demonstrated a strong preference for the Premises to remain an EGM-free venue as a unique offering in the local area. In his Urbis Report Addendum, Mr Quick gave evidence and provided a table which detailed a number of licensed restaurants in the municipality that were non-gaming venues.
133. The Commission refers to its findings in paragraph 68 above that the redevelopment of the Premises will only proceed if this Application is approved, and it is therefore appropriate to consider the social benefits arising from the community's access to and use of the improved facilities as benefits of this Application. As such, the Commission finds that the introduction of EGMs at the Premises will enable the Applicant to renovate and improve facilities at the Premises and, in relation to the gaming room, enable a greater range of services. The Commission regards access to such improved facilities and greater range of services as a positive social impact, upon which it places a low weight.

*Increased gaming opportunities for those who enjoy gaming*

134. Related to the economic benefit of increased competition is the social benefit that arises from there being increased gaming opportunities for those who enjoy gaming.
135. Having regard to the evidence and submissions made with respect to increased gaming competition in the City of Whittlesea and more generally that contained in paragraph 56 in relation to the calculation of expenditure figures, the Commission finds that granting approval of the Application will better serve the needs of gaming patrons through providing an additional venue at which they may choose to play EGMs. However, given the current number of EGMs and venues in the City of Whittlesea, the Commission considers this to be a negligible social benefit and hence one on which it places marginal weight. This is consistent with the Council SEIA, which states that the recreational and social benefits of the EGMs themselves will only be enjoyed by a small sector of the community.

*Social benefit derived from increased community contributions*

136. Related to the financial impact associated with increased community contributions, such contributions can also have a positive social impact by improving the social fabric of the community in which they are made. In assessing the weight to be placed on such a benefit, it is important that the Commission does not conflate this benefit with the economic benefit associated with such contributions.

137. Having regard to the evidence and submissions made with respect to these community contributions that are set out in paragraphs 93 to 100, the Commission considers the community contributions (distributed in accordance with conditions of any approval of this Application) and the impact on local community organisations to be a social benefit which is given low weight.

*Possibility of increased incidence and impact of problem gambling on community*

138. 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.

139. The Commission refers to and relies upon the evidence set out in paragraphs 105 to 115 with respect to the economic impact of problem gambling on the community.

140. In relation to gambling-related harms, Ms Bell and Mr Szafraniec referred to and relied on a recent study by the Victorian Responsible Gambling Foundation (**VRGF**) which applied a public health approach to measure the impact of gambling on quality of life.<sup>49</sup> This study involved calculating a burden of gambling-related harm in comparison with other common health conditions by reference to a taxonomy of harms and Victorian prevalence statistics for each of the problem gambling severity index (PGSI) risk categories. The report concluded that:

- (a) the overall burden of harm experienced by Victorians equates to approximately two-thirds the harm caused by major depressive disorders and alcohol misuse and dependency;
- (b) the burden of harm is primarily due to damage to relationships, emotional/psychological distress, health and financial impacts; and
- (c) a majority of the harm from gambling is attributable to 'low-risk' gamblers (50.2%), as compared with 'moderate-risk' gamblers (34.5%) and 'problem gamblers' (15.2%).

141. The Commission acknowledges this study and notes that, although the burden of harm approach has been used extensively to inform health policy, its application in the gambling context is new. The Commission also notes the functional definition of gambling-related harm used as part of the study is broad and may, to some extent, be inconsistent with the accepted legitimacy of EGM gambling as a lawful recreational activity and the objectives of the Act (set out in paragraph 5 above). As a consequence, the Commission considers that "burden of harm" research in the gambling context is in its infancy and as this body of research develops it could

well be of assistance to the Commission. Despite this and in any event, the Commission accepts (as outlined in paragraph 105 above) that harms associated with the incidence of problem gambling are wide-ranging and attributable to all PGSI categories of gamblers ('low-risk', 'moderate-risk' and 'problem gamblers') and across the community more broadly.

142. Overall, the Commission finds that this Application will result in a new venue being established with 40 EGMs, and that this is estimated to be associated with new expenditure of approximately \$2,822,545 and \$3,119,655 per annum, and between \$2,399,164 and \$2,651,707 in the first 12 months. It accepts that a proportion of this expenditure will be associated with problem gambling. Further, the Commission finds that the area surrounding the Premises is not particularly disadvantaged but does exhibit a level of financial vulnerability to problem gambling. The Commission is therefore satisfied that the potential for an increase in problem gambling is low to moderate. As such, while finding that the social disbenefit associated with problem gambling as a result of this Application is a low to moderate risk, the Commission accepts that it is a negative social impact upon which it places a low to moderate weight in this Application.

#### Community attitude

143. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,<sup>50</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 as part of the 'no net detriment' test.
144. The evidence before the Commission indicates that the general community attitude towards this Application has been negative. In summary:
- (a) the Council, as the representative body of the relevant community and charged with statutory duties under various pieces of legislation, has made a submission in opposition to the Application and appeared at the public hearing of the Application;<sup>51</sup>
  - (b) a number of community organisations provided submissions to the Commission indicating concerns at the addition of a further gaming venue, its impact on gambling-related harms and an increase in demand for their services;

<sup>49</sup> Browne, M. et al. (2016) *Assessing gambling-related harm in Victoria: a public health perspective*, Victorian Responsible Gambling Foundation, Melbourne.

<sup>50</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>51</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].



- (c) a significant number of individual submissions (in both templated and non-templated form) were received by the Commission raising concern with the likely impacts of the Application (such as the existing number of EGMs in the community, loss of an EGM-free venue, gambling problems faced by the community, and impact on neighbourhood character);
  - (d) the production by the Council of a community video which reflected the concerns raised by the individual submissions outlined above; and
  - (e) a community attitude survey indicating a strong negative attitude towards the Application.
145. In the Council SEIA, Ms Bell gave evidence that she had consulted with a number of community organisations (many of which also provided written submissions to the Commission) which relayed a number of concerns about the introduction of another gaming venue in Whittlesea. These included financial problems, mental health issues, relationship breakdowns and a diversion of non-discretionary funds from essential items to the conduct of gaming.
146. Mr Quick gave evidence regarding a number of limitations of the community survey (many of which were conceded by Ms Bell in the Council SEIA Addendum). These limitations included the small sample size (166 valid responses), respondent demographics not being representative of the South Morang and Whittlesea communities (with an overrepresentation of women and underrepresentation of young adults and older residents), failure to properly set out all the proposed benefits of the Application as a whole, and the lack of an “all-or-nothing” question to test if respondents’ views regarding gaming would change based on the proposed benefits flowing from the Application. In conclusion, Mr Quick stated that the community survey “*reflects a general opposition to gaming machines that is largely consistent across the state, but the nature of the survey and the biased sample that has been collated limits the relevance of it*”.
147. The Commission notes that the Applicant did not provide any evidence of community support for the Application. While the Applicant gave evidence that it was not aware of any current patrons of the Premises that would cease attending in the event that the Application was approved, this does not demonstrate a level of community support which can countermand the volume of evidence led by the Council in relation to the community’s negative attitude in this matter.
148. Overall, the Commission is satisfied that there is a consistent and sustained negative attitude by the community of Whittlesea to this Application, however it notes that the level of community dissatisfaction is not to the same extent as demonstrated in the Romsey case. In all of these circumstances, the Commission considers it appropriate to attribute low to moderate weight to this impact.

*Increase to gambling-related crime and social disturbance*

149. The Commission 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.
150. In relation to gambling-related crime, Ms Bell referred to research finding that “*gambling expenditure on EGMs in Melbourne was significantly and strongly associated with crime, particularly income-generating crime from 1996 to 2006*”.<sup>52</sup> However, she gave evidence that the crime rate in Whittlesea is lower than the Victorian average, and concluded that there was not enough evidence to determine if another EGM venue would increase crime in the City of Whittlesea.<sup>53</sup> The Commission agrees with Ms Bell’s conclusion that there is no evidence that the Application would result in an increase in the crime rate in the local area or within Whittlesea generally.
151. In relation to the issue of family violence, Ms Bell gave evidence that Whittlesea currently exhibits a higher rate of family violence than surrounding municipalities and a significantly higher rate than the Victorian average, and was increasing at a rapid rate (66% over the past 4 years). She stated that there is strong and growing evidence that gambling is associated with family violence. Specifically in relation to gambling on EGMs, Ms Bell referred to recent research indicating a correlation between EGM density at the postcode level and incidents of family violence, finding that postcodes with no EGMs were associated with 20% fewer family incidents per 10,000 (54 compared with 68 incidents) and 30% fewer domestic violence assaults per 10,000 (11 compared with 18 domestic assaults), when compared with postcodes with 75 EGMs per 10,000.<sup>54</sup> However, Ms Bell acknowledged that the association “*does not explain causality and it is interpreted as gambling being both a cause and effect of domestic violence*”.<sup>55</sup>
152. In the SGS Report, Mr Szafraniec referred to research demonstrating a “*strong link between problem gambling and family violence*” and concluded that the “*establishment of a new EGM facility at the Commercial Hotel is likely to lead to increased family violence*”.<sup>56</sup> Under cross-examination, Mr Szafraniec conceded that the recent research was in relation to EGM density only (and not EGM expenditure) and that there was no research or evidence that indicates that

<sup>52</sup> Council SEIA, page 48, citing Wheeler, Round and Wilson (2011) The Relationship Between Crime and Electronic Gaming Expenditure: Evidence from Victoria, Australia. *Journal of Quantitative Criminology*, 27(3), 315-338.

<sup>53</sup> Council SEIA, pages 22 and 50.

<sup>54</sup> Council SEIA Addendum, page 24; citing Markham, Doran and Young (2016) The relationship between electronic gaming machine accessibility and police-recorded domestic violence: A spatio-temporal analysis of 654 postcodes in Victoria, Australia, 2005-2014. *Social Science & Medicine*, vol 162, 106-114.

<sup>55</sup> Council SEIA Addendum, page 24.

the additional of EGMs in an area with existing accessibility to EGMs would increase family violence.<sup>57</sup>

153. The Applicant acknowledged that while the research may indicate a *correlation* between EGM density and family violence, this does not provide evidence of any causal link between EGM density and family violence. The Applicant referred to the preamble to the recent research, which states that:

*The causal relations underlying these associations are unclear. Quasi-experimental research is required to determine if reducing gambling accessibility is likely to reduce the incidence of domestic violence.*

154. Further, the Applicant submitted that the association identified in the research is not reflected in Whittlesea, as although it has high levels of family violence, the EGM density statistics for Whittlesea (4.5 EGMs per 1,000 adults) are below the metropolitan and State averages (5.6 and 5.7 EGMs per 1,000 adults respectively).

155. Mr Quick, in responding to questions by Deputy Chair Kennedy, stated that:

*there is a correlation between areas of higher family violence and areas of greater gaming density, but it is a question of what is the contributing factor to that; that there are other factors that might contribute to that outcome. It's not necessarily that the greater gaming has led to the family violence. There might be an element of that, but it just might be other comorbidities and the fact that the demographic profile of that area is prone to accessing gaming machines and, at the same time, may be more prone to family violence. They're not necessarily saying the gaming is the reason for family violence. There is a correlation there, but it's the extent of that direct correlation that needs to be considered.<sup>58</sup>*

156. The Commission notes the above average rates of family violence in Whittlesea, and the significant increase in family violence incidents in recent years. In terms of this trend, the Commission also notes the above average population growth being experienced in Whittlesea and, in light of its findings in the below paragraph, considers that this population growth is likely to be a contributing factor to the overall increase in family violence incidents recorded in Whittlesea.

157. The Commission acknowledges the general body of research regarding the links between problem gambling and family violence, and accepts that recent research establishes a correlation at the postcode level between EGM density and incidents of police-recorded domestic violence. While it acknowledges this emerging research and supports further work in this area, the Commission is not satisfied that the available evidence establishes a causal link

<sup>56</sup> SGS Report, page 19.

<sup>57</sup> Transcript, Day 2, lines 16 to 23.

between EGMs and family violence such as would support a finding that an impact of this Application would be an increase on existing levels of family violence.

158. Having regard to the general body of research, the Commission finds that there exists a minimal risk of an increase in gambling-related crime and social disturbance (including family violence) if the Application is approved. The Commission considers this impact a social disbenefit of the Application, to which it assigns marginal weight.

Increased exposure of children to gambling activity

159. A further, yet distinct, impact that the Application will have on the community of Whittlesea is in relation to the increased exposure of children to gambling activity. In the Council SEIA, Ms Bell stated that:

- (a) the Application would “*decrease choice by eliminating the last remaining pokie-free pub in the area*”;<sup>59</sup>
- (b) the gaming room would be visible and audible to children entering the Premises from the shared entrance towards the bistro; and
- (c) “*encouraging children into gaming venues means that children will be exposed to gambling from an early age*” which results in a normalisation of gambling for children, leading to future gambling problems.<sup>60</sup>

160. Mr Curry gave evidence that as part of the Applicant adopting an updated Responsible Gambling Code of Conduct, it would be implementing all of the ‘doing it well’ elements and a majority of the ‘taking it to the next level’ elements outlined in the VRGF’s *Venue Best Practice Guide*. Mr Curry gave evidence that one of the ‘taking it to the next level’ elements that the Applicant would not be implementing was the recommendation to “cease promotions likely to encourage underage people into the venue, including ‘kids eat free’ and discounted children’s meal offerings”. In this regard, Mr Curry gave evidence that the Applicant is a responsible provider of gaming and that it was not impossible to both offer gaming and remain a family-friendly venue. Ultimately, he stated that “*I don’t think promoting for children to come to the venue as part of a family ... constitutes any risk*”.<sup>61</sup>

<sup>58</sup> Transcript, Day 2, page 192, lines 1 to 9.

<sup>59</sup> Council SEIA, page 44.

<sup>60</sup> Council SEIA, page 46.

<sup>61</sup> Transcript, Day 1, page 32, lines 9 to 11.



161. Ms Melaney gave evidence that while the entrance door to the gaming room would be visible when entering the Premises, the proposed layout of the entrance would not make any EGMs visible.<sup>62</sup>
162. The Applicant submitted that the bistro and children's play area are physically isolated from the gaming room, and children would not be able to see or hear the gaming room from the children's play area (in accordance with the Ministerial Guidelines). Also, the Applicant contended, in cross-examination of Ms Bell, that the Ministerial Guidelines establish a statutory framework where clubs and hotels with gaming machines can offer a range of dining, recreation and entertainment facilities for the enjoyment of individuals and families, which can coexist with an offering of EGMs.
163. In closing submissions, the Council disagreed with the Applicant's contention and argued that the very fact of the Ministerial Guidelines being made indicated a recognition of the risk of harm that children's exposure to gambling created, rather than portraying an acceptance of the co-existence of gaming and family-friendly offerings within the same venue.<sup>63</sup>
164. In general, the Commission considers that the Ministerial Guidelines recognise the ability of venues with children's play areas to remain suitable for gaming, subject to meeting the strict requirements outlined in those guidelines. However, there is also clearly an identification of the risks associated with the exposure of children to gaming, which can constitute a social disbenefit of an application to introduce EGMs into a venue not currently conducting gaming.
165. The Commission refers to and relies on its findings in paragraphs 41 to 45 above in finding that the Application complies with the Ministerial Guidelines. However, compliance in and of itself will not result in a finding that there is no social impact of the Application relating to the exposure of children to gaming. The Commission accepts that this Application will result in the loss of an EGM-free venue for families to attend with their children. In addition, the Commission finds that the proposed layout of the entrances to the Premises will necessarily require families attending the Premises for the purpose of attending the bistro to pass in close proximity to the entrance to the gaming room, which (despite the layout of the entrance and inclusion of the screen) may result in the exposure of children to sights and/or sounds of EGMs in the gaming room. As such, the Commission considers that the increased risk of exposure of children to gaming is a social disbenefit of this Application, which it assigns a low weight.

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<sup>62</sup> Transcript, Day 1, page 89, lines 27 to 31.

<sup>63</sup> Transcript, Day 3, page 358, lines 17 to 32.

Conclusion on social impacts

166. After considering the social benefits of the proposal and balanced against the detriments, the Commission considers that, on balance, there is likely to be a small to moderate negative social impact of the proposal.

**NET ECONOMIC AND SOCIAL IMPACT**

167. The no net detriment test in section 3.3.7(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.<sup>64</sup>

168. According to Mr Quick, the benefits of this Application of the proposed community contributions, redevelopment of the Premises, employment creation and flow-on economic benefits should be given greater weight due to their direct impact on the community of Whittlesea and certainty of outcome. While accepting that the key disbenefit of the Application was the potential for increased problem gambling, Mr Quick concluded that the likelihood of such increase was minimal due to the key protective factors of the size of the gaming venue, contribution to problem gambling initiatives and limited opening hours, in addition to the relocation of EGMs from highly productive venues in more disadvantaged areas. In summary, Mr Quick concludes that the *“net effect of introducing 40 gaming machines to the Commercial Hotel will not be detrimental to the social and economic well-being of the City of Whittlesea”*.<sup>65</sup>

169. According to the Council SEIA, the Council considers that the Application would have, on balance, *“a net detrimental impact on the health and wellbeing of the municipal district”*.<sup>66</sup> While the Council SEIA did not identify any beneficial impacts of the Application, the SGS Report found that the community was not significantly socio-economically disadvantaged (which reduced the risk of harm associated with problem gambling) and the Applicant was likely to have a positive impact on the provision of entertainment and recreational facilities in the area.<sup>67</sup> However, these benefits were outweighed by the negative impacts associated with the Application, in particular the increase in gambling-related harms resulting from increased incidents of problem gambling and accessibility of EGMs, net employment losses in the municipality and the detrimental impacts on community health and connectedness. The Council

<sup>64</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.

<sup>65</sup> Urbis Report, paragraph 105.

<sup>66</sup> Council SEIA, page 2.

also provided evidence of a degree of community disquiet and opposition to the Application to which the Commission has had regard.

170. After consideration of the material before it, including the evidence provided at the public hearing, and weighted 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 net negative 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.

## CONCLUSION

171. On the material that has been put before it, the Commission has determined that the '*no net detriment*' test has not been satisfied and, pursuant to section 3.3.7(1), the Commission must not grant the Application.

172. The Application is therefore refused.

***The preceding paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy, Deputy Chair, and Ms Deirdre O'Donnell, Commissioner.***

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<sup>67</sup> SGS Report, pages 41 to 42.

## Appendix One

### Summary of social and economic 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 Reference</b> | <b>Comments relevant to weight</b>  |
|-----------------|--|----------------------------|---|
| <b>Benefits</b> | <i>Gaming expenditure not associated with problem gambling</i> | 48 to 57                   | <p>The portion of new expenditure not attributable to problem gambling is an economic benefit.</p> <p>Expenditure expert predicted an anticipated transfer rate of 60%, without being provided with financial modelling conducted by the Applicant in relation to the impact the Application would have on its other gaming venues within Whittlesea.</p> <p>Anticipated transfer rate reduced by the Commission to 50%.</p> <p>The Premises is located in an area of lower relative socio-economic disadvantage (albeit with some vulnerability to financial stress) than other areas of the municipality, which is anticipated to experience ongoing population growth.</p> <p>To the extent of any high relative socio-economic disadvantage within the anticipated catchment area of the Premises, residents in those communities already have access to gaming machines that are more proximate than those which would be located at the Premises.</p> <p>As a result of the anticipated transfer rate of 50%, the extent of new expenditure at the Premises is expected to be moderate.</p> <p>Marginal weight.</p> |



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|  | <i>Expenditure on capital works</i> | 58 to 71 | <p>Upgrade to public bar and creation of dedicated function space, roof top beer garden and gaming room containing 40 EGMs.</p> <p>The extent of the expenditure on capital works is of a sizeable nature but there is some uncertainty as to the extent to which the expenditure will be retained in the relevant municipality in which the Premises are located.</p> <p>Low weight.</p>   |
|  | <i>Employment creation</i>          | 72 to 84 | <p>The Application will result in the creation of 20 jobs (nine new full time equivalent positions) at the Premises, five FTE positions in respect of its gaming operations and four FTE positions in respect of its food and hospitality operations.</p> <p>There is likely to be some transferred employment from nearby gaming and hospitality venues within the municipality, however not sufficient to offset the creation of the nine FTE positions.</p> <p>The additional employment is positive but uncertain.</p> <p>Marginal to low weight.</p> |
|  | <i>Supply contracts</i>             | 85 to 88 | <p>Estimated 60% increase in food and beverage sales at Premises post-redevelopment.</p> <p>Some uncertainty as to the extent of anticipated increase in food and beverage sales and to which any such increased expenditure will be retained in the relevant municipal district in which the Premises are located.</p> <p>Marginal weight.</p>   |



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|  | <p><i>Complementary expenditure</i></p>                              | <p>89 to 92</p>   | <p>Redevelopment will increase the appeal of the Premises so as to attract more local patrons and visitors.</p> <p>Some uncertainty as to the extent of anticipated increase in food and beverage sales and to what extent this would generate increased economic activity within the local area.</p> <p>Any benefit associated with complementary expenditure would be negligible.</p> <p>No weight.</p>                         |
|  | <p><i>Community contributions</i></p>                                | <p>93 to 100</p>  | <p>The proposed community contributions represents an increase of \$100,000 per annum for ten years, and then \$25,000 per annum for the term of the gaming machines operation.</p> <p>These contributions (distributed in accordance with conditions of any approval of this Application) will have a positive economic impact on community groups operating in South Morang and across the municipality.</p> <p>Low weight.</p> |
|  | <p><i>Increased gaming competition in the City of Whittlesea</i></p> | <p>101 to 104</p> | <p>The Application will increase gaming competition in the City of Whittlesea by providing an additional venue at which patrons may choose to play EGMs.</p> <p>Limited benefit in light of number of EGMs to be operated at the Premises, the current number of EGMs and the number and location of other gaming venues in the City of Whittlesea.</p> <p>Marginal weight.</p>   |



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| <b>Disbenefits</b> | <i>Gambling expenditure associated with problem gambling</i> | 105 to 115 | <p>The portion of new expenditure attributable to problem gambling is an economic disbenefit.</p> <p>The catchment area of the Premises exhibits lower levels of socio-economic disadvantage as compared with the municipality as a whole, however the results of the VAMPIRE Index (in particular from the above average levels of mortgage stress) indicate that the residents in the catchment area have a level of financial vulnerability which would make them more vulnerable to gambling-related harms.</p> <p>Some benefit to the proposed transfer of EGMs from areas of moderate socio-economic disadvantage and financial vulnerability to the Premises.</p> <p>The Applicant is an experienced gaming operator with robust responsible service of gambling practices.</p> <p>Low to moderate weight.</p> |
|                    | <i>Potential diversion of trade from retail facilities</i>   | 116 to 120 | <p>Maximum impact equal to predicted new expenditure in municipality of between approximately \$2.4 to \$2.65 million in the first year of trading.</p> <p>Any diversion of trade is likely to be dispersed to such an extent that it is unlikely to significantly impact any one retailer.</p> <p>Marginal weight.</p>   |
|                    | <i>Diversion of trade from other gaming venues</i>           | 121 to 123 | <p>The anticipated transfer rate of 50% is expected to be spread across a number of existing gaming venues both within and outside the Whittlesea municipality.</p> <p>Approximately 20% out of the 50% would be derived from venues operated by the Applicant.</p> <p>Remaining 30% will have some impact on other venue operators.</p> <p>Marginal weight.</p>  |



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|  | <p><i>Increased demand for community support</i></p> | <p>124 to 127</p> | <p>Increase in gambling-related harms is likely to increase demand on existing community support services available in the Whittlesea municipality.</p> <p>Current demand for services indicate a high existing need for support, with any increase in demand requiring additional resources to adequately extend support to cover new demand.</p> <p>No direct evidence that current services are not in a position to handle any anticipated increase in demand resulting from this Application.</p> <p>Low weight.</p> |
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**Social impacts**

|                 | Impact   | Paragraph Reference | Comment relevant to weight   |
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| <b>Benefits</b> | <i>Improved facilities adding to appeal of the Commercial Hotel</i>  | 130 to 133          | <p>The Application includes a proposed redevelopment to improve facilities at the Premises and enable a greater range of services.</p> <p>Other than the addition of the gaming room, the redevelopment provides an improvement to the existing function and hospitality facilities at the Premises, rather than adding new facilities.</p> <p>Low weight.</p> |
|                 | <i>Increased gaming opportunities for those who enjoy gaming</i>     | 134 to 135          | <p>The Application will better serve the needs of gaming patrons through providing an additional venue at which they may choose to play EGMs.</p> <p>Limited benefit in light of number of the current number of EGMs and the number and location of other gaming venues in the City of Whittlesea.</p> <p>Marginal weight.</p>                                |
|                 | <i>Social benefit derived from increased community contributions</i> | 136 to 137          | <p>Level of community contributions (distributed in accordance with conditions of any approval of this Application) and the impact on local community organisations to be a moderate social benefit.</p> <p>Low weight.</p>  |



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| <p><b>Disbenefits</b></p> | <p><i>Possibility of increased incidence and impact of problem gambling on community</i></p> | <p>138 to 142</p> | <p>A proportion of total gaming expenditure at the Premises will be associated with problem gambling contributed by a small proportion of total gaming patrons at the Premises.</p> <p>Adverse impacts include health, jobs, finances, emotional states and relationships.</p> <p>Public health approach to problem gambling, including “burden of harm” research in the gambling context, is in its infancy.</p> <p>The catchment area of the Premises exhibits lower levels of socio-economic disadvantage as compared with the municipality as a whole, however the results of the VAMPIRE Index (in particular from the above average levels of mortgage stress) indicate that the residents in the catchment area have a level of financial vulnerability which would make them more vulnerable to gambling-related harms.</p> <p>Venue-specific factors will reduce risk of problem gambling (gaming room size, RSG policies and procedures).</p> <p>Low to moderate weight.</p> |
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|  | <p><i>Community attitude</i></p> | <p>143 to 148</p> | <p>Number of individuals indicated concern with impacts of the Application (existing number of EGMs in community, loss of EGM-free venue, gambling problems faced by community, impact on neighbourhood character). Reiterated through Council video.</p> <p>Number of community organisations indicated concern at additional of further gaming venue on gambling-related harms and increase in demand for their services.</p> <p>The community survey evidence indicates a strong negative attitude against the Application.</p> <p>Limitations of community survey (small sample size, respondent demographics not representative of South Morang or Whittlesea community, failure to set out all of the benefits of the Application, no “all-or-nothing” question).</p> <p>The Application will result in the loss of another EGM-free venue for local community. Limited evidence that some patrons will cease patronage if EGMs are introduced.</p> <p>Applicant did not provide any evidence of community support for the Application.</p> <p>Overall, consistent and sustained negative attitude by the community of Whittlesea to this Application, however not to the same extent as demonstrated in the Romsey case.</p> <p>Low to moderate weight.</p> |
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|  | <p><i>Increase to gambling-related crime and social disturbance (including family violence)</i></p> | <p>149 to 158</p> | <p>No evidence that Application would result in increase in crime rate in local area or Whittlesea.</p> <p>New research indicating correlation between EGM density and family violence.</p> <p>Lack of evidence of causality of family violence due to EGM density.</p> <p>Whittlesea has high family violence statistics, and significant increase in family violence incidents in recent years. Above average population growth likely to be contributing factor in overall increase in family violence incidents.</p> <p>Minimal risk of an increase on existing levels of social disturbance (including family violence) if Application is approved.</p> <p>Marginal weight.</p> |
|  | <p><i>Increased exposure of children to gambling activity</i></p>                                   | <p>159 to 165</p> | <p>Premises is (and will continue to be) marketed as family-friendly venue.</p> <p>Application is compliant with Ministerial guideline on children's play areas.</p> <p>Application will lead to loss of an EGM-free venue for families to attend with children.</p> <p>Proposed layout of the entrances to the Premises will require families attending the bistro to pass in close proximity to the entrance to the gaming room, which may result in the exposure of children to sights and/or sounds of EGMs in the gaming room.</p> <p>Low weight.</p>   |