



Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by Noble Park Football Social Club for amendment of its venue operator's licence to vary the number of electronic gaming machines at the approved premises located at Moodemere Street, Noble Park from fifty (50) to seventy (70).

Commission:

Ms Helen Versey, Acting Chair
Dr Dina McMillan, Commissioner

Appearances:

Ms Sarah Porritt, Counsel for the Applicant (instructed by Bazzani Scully Priddle)

Mr Ian Munt for the City of Greater Dandenong Council (instructed by Maddocks)

Ms Caitlin McAlister as Counsel Assisting the Commission

Date of Hearing:

13, 14 June 2017

Date of Decision:

21 July 2017

Date of Reasons:

21 July 2017

Decision:

The application is refused

Signed:

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

Helen Versey
Acting Chair



REASONS FOR DECISION

INTRODUCTION

1. This is an application by Noble Park Football Social Club (the **Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at Moodemere Street, Noble Park (the **Premises**), from 50 to 70 (the **Application**).
2. The relevant municipal authority is the City of Greater Dandenong (the **Council**). By letter to the Commission dated 19 May 2017, the Council lodged a submission opposing the Application.
3. The Commission considered the Application at a public inquiry conducted on 13 and 14 June 2017 (the **Hearing**).

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 *Gambling Regulation Act 2003* (the **GR Act**). The GR Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities, and some members of some communities. For this reason the GR Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some, and a potentially harmful activity for others.
5. The objectives of the GR Act are set out in s 1.1, which provides, inter alia:
...
(2) *The main objectives of this Act are—*
 - (a) *to foster responsible gambling in order to—*
 - (i) *minimise harm caused by problem gambling; and*
 - (ii) *accommodate those who gamble without harming themselves or others;*
 - (ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*
 - (b) *to ensure that gaming on gaming machines is conducted honestly;*
 - (c) *to ensure that the management of gaming equipment and monitoring equipment is free from criminal influence and exploitation;*
 - (d) *to ensure that other forms of gambling permitted under this or any other Act are conducted honestly and that their management is free from criminal influence and exploitation;*
 - (e) *to ensure that—*
 - (i) *community and charitable gaming benefits the community or charitable organisation concerned;*
 - (ii) *practices that could undermine public confidence in community and charitable gaming are eliminated;*



- (iii) *bingo centre operators do not act unfairly in providing commercial services to community or charitable organisations;*
- (f) *to promote tourism, employment and economic development generally in the State.*

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

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

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

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

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



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

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

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

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

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

...

- (b) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the regional limit or municipal limit for gaming machines for the region or municipal district in which the approved venue is located will not be exceeded by the making of the amendment; and*
- (c) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the net economic and social impact of the amendment will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located;*

...

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

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

- (a) the likely economic impacts of approval;
- (b) the likely social impacts of approval; and
- (c) the net effect of those impacts on the well-being of the relevant community.²

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

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



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

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

This approach has been adopted in a number of VCAT decisions.⁷ To enhance the clarity of Commission decisions, and to facilitate greater consistency between the Commission and VCAT, the Commission has adopted the same approach.

16. If the Commission is not satisfied that the '*no net detriment*' test is met, that is clearly fatal to the application before it, as given the opening words of section 3.4.20(1) of the GR Act, satisfaction of the test is a mandatory pre-condition to approval. However, although section 3.4.20(1) sets out certain mandatory considerations for the Commission, the provision is not exhaustive. If the Commission is satisfied that the '*no net detriment*' test is met, it still has an ultimate discretion as

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

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

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

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

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



to whether or not to grant the approval.⁸ The Commission must decide whether to make the proposed amendment, with or without any changes from that proposed by the applicant, even where the applicant has satisfied the minimum threshold of the 'no net detriment' test.⁹

17. Finally, it is noted that pursuant to section 3.4.20(1)(a) of the GR Act the Commission must be satisfied that the proposed amendment does not conflict with a Ministerial direction, if any, given under section 3.2.3 of the GR Act. Additionally, pursuant to section 9(4) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)*, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation.
18. There is no relevant direction issued pursuant to section 3.2.3 of the GR Act that relates specifically to the Application. However, on 16 October 2013 a Ministerial guideline was published in the Victorian Government Gazette pursuant to section 5 of the VCGLR Act concerning applications for approvals of venues for EGMs and children's play areas incorporated in the venue. This guideline concerned the assessment of the suitability of premises for gaming. As such, it appears primarily to apply to a premises applying to be a new gaming venue, rather than an increase in the number of EGMs at an existing gaming venue. While this guideline is therefore not directly applicable to the Application, the Commission's view is that it is proper for the Commission to have regard to the underlying policy intent of such a guideline (which in this instance appears to relate to the legislative objective under section 1.1(2)(ab) of the GR Act that minors are neither encouraged to gamble nor allowed to do so) when considering the Application.

MATERIAL BEFORE THE COMMISSION

19. The Applicant provided the Commission with the following material in support of the Application:
 - (a) Application form – Amendment to venue operator's licence – vary gaming machines, dated 17 January 2017;
 - (b) Expenditure Report, prepared by Mr Michael Clyne (**Mr Clyne**) of Progressive Venue Services (**PVS**), dated February 2017 (the **PVS Report**);
 - (c) Witness Statement of Mr Barry Bradshaw, (**Mr Bradshaw**) President of the Applicant, dated February 2017;

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

⁹ GR Act, section 3.4.20(2).



- (d) Witness Statement of Mr Mark Hogan, (**Mr Hogan**) former General Manager of the Applicant, dated February 2017;
 - (e) Witness Statement of Mr Neill Murray, (**Mr Murray**) Chief Operating Officer for Community Clubs Victoria (**CCV**), dated February 2017;
 - (f) Social and Economic Impact Assessment, prepared by Ms Colleen Peterson, (**Ms Peterson**) Director of Ratio, dated March 2017, and an addendum, dated June 2017 (the **Ratio Report**);
 - (g) Witness Statement of Mr Michael O'Toole, (**Mr O'Toole**) Acting General Manager; and
 - (h) the Applicant's suggested conditions to its venue operator's licence (if the Application is granted).
20. In opposition to the Application, the Council provided their Social and Economic Impact Assessment in respect of the Application, dated May 2017 (the **Council Report**).
21. The following material, prepared by Commission officers, was considered by the Commission:
- (a) Report titled *Pre-Hearing Inspection and Compliance Report*, dated May 2017 (the **Inspection Report**); and
 - (b) Report titled *Economic and Social Impact Report*, dated June 2017 (the **VCGLR Report**).
22. In addition, the Commission received correspondence, dated 5 and 13 June 2017, in opposition to the Application from residents of Noble Park and nearby areas.
23. At the Hearing, the following further material was provided to the Commission in relation to the Application:
- (a) existing and proposed plans of the Premises from the Applicant;
 - (b) a map from the Applicant entitled 'City of Greater Dandenong LGA Boundary';
 - (c) a table from the Council entitled 'Local Network EGM Expenditure';
 - (d) a table from the Council showing levels of EGM revenue between competing venues in Greater Dandenong;
 - (e) a guide to social impact assessment from Mr Hayden Brown (**Mr Brown**), the Council's Advocacy Officer, dated 2014;



- (f) findings from the 'Victorian Prevalence Study 2014' as published by the Victorian Responsible Gambling Foundation in 2015;
- (g) paper entitled 'Risk Factors For Problem Gambling: Environmental, Geographic, Social, Cultural, Demographic, Socio-Economic, Family and Household,' published by the Victorian Responsible Gambling Foundation in November 2015;
- (h) Fact sheet 2, 'Assessing gambling-related harm in Victoria – The seven dimensions of gambling harm', Victorian Responsible Gambling Foundation;
- (i) Fact sheet 4, 'Assessing gambling-related harm in Victoria – Distribution of harm', Victorian Responsible Gambling Foundation;
- (j) written submissions for the Applicant, prepared by Ms Sarah Porritt of Counsel; and
- (k) written submission for the Council, prepared by Mr Ian Munt of Counsel.

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

- (a) Mr Murray;
- (b) Mr Bradshaw;
- (c) Mr Clyne;
- (d) Mr O'Toole;
- (e) Ms Peterson; and
- (f) Mr Brown.

25. After the Hearing, the Commission was provided with:

- (a) letter from the Applicant, dated 20 June 2017, enclosing an overview report from Mr Bruce Waddington of Geotech, dated 26 June 2014, entitled 'Using Retail Gravity Theory to Model Gaming Venue Expenditure and Transfer in Victoria: Model Upgrade 2013/14 – An Overview of Background, Methods and Results' (the **Geotech Report**), and amended suggested conditions to its venue operator's licence (if the Application is granted) (**Applicant's Suggested Conditions**);
- (b) email from the Council, dated 27 June 2017, enclosing submissions from Mr Brown and Mr Munt in response to the Geotech Report;



- (c) email from the Council, dated 28 June 2017, enclosing proposed amendments to the Applicant's Suggested Conditions; and
- (d) letter from the Applicant, dated 30 June 2017, in response to the Council's emails of 27 and 28 June 2017, as detailed in paragraphs 25(b) and (c) above.

26. Prior to the Hearing, both Acting Chair Versey and Commissioner McMillan visited the Premises.

DECISION AND REASONS FOR DECISION

Location

27. The Premises are located on the south-western corner of Moodemere Street and Arena Square, Noble Park in the City of Greater Dandenong. Greater Dandenong is a metropolitan local government area (LGA) located approximately 30 kilometres south-east of Melbourne and covers an area of 130 square kilometres. Major centres in Greater Dandenong include Dandenong, Springvale and Noble Park. According to the VCGLR Report, the Greater Dandenong has an estimated adult population of 121,943. The annual rate of population growth projected by the Department of Environment, Land, Water and Planning for the period 2016 to 2021 is 1.7% as compared with the Victorian average of 1.8%.
28. In the VCGLR Report it is noted that Greater Dandenong has an EGM density of 7.9 per 1,000 adults, which is 48.7% higher than the metropolitan LGA average (5.3) and 40% more than the State average (5.6). This ranks Greater Dandenong as the 2nd highest of 31 metropolitan LGAs in terms of EGM density per 1000 adults. Also in the VCGLR Report, in 2015-16 Greater Dandenong had an average gaming expenditure of \$975 per adult (based on projections from 2011 census data for population), which is 69.4% more than the metropolitan LGA average (\$575) and 76.2% higher than the State average (\$553). Applying the estimate of increased gaming expenditure as received from the Applicant, approval of the Application would result in an increase in average gaming expenditure per adult of 0.2%. Gaming expenditure within Greater Dandenong has decreased 13.52% in real terms over the past five years to March 2017, which is a smaller decrease than the metropolitan LGA average decline of 15.95%.

Nature of the Premises

29. The Premises currently consist of:
- (a) a bistro, with capacity for 140 patrons. The operation hours are between 12pm to 2pm and 6pm to 8pm;



- (b) a sports bar with TAB facilities. The closing time is 11pm each day;
- (c) a gaming room with 50 EGMs. The operation hours are between 9am to 5am (Monday to Friday), 9am to 3am (Saturday), and 10am to 11:30pm (Sunday);
- (d) two function rooms – an upstairs function/seminar room for 70-80 persons, and the bowls club rooms for 100-200 persons;
- (e) sporting facilities including a football/cricket oval and change rooms, tennis club with six courts, bowls club with two bowling greens and bowls club building; and
- (f) on-site parking.

Catchment of the Premises

30. The '*no net detriment*' test refers to 'the community of the municipal district in which the approved venue is located'. In determining the impact of an application of this nature on a municipal district, previous Commission and VCAT decisions have had particular regard to the area serviced by the relevant premises, which are generally referred to as the 'catchment areas'.¹⁰ The determination of the likely catchment area in this instance is important in the Commission's consideration of the identity of those residents which will be most affected by the Application in terms of gambling-related benefits and harms.
31. In the Ratio Report, the catchment area was described primarily as a 2.5km radius around the Premises, and secondarily as suburbs typically 2.5km-5km from the Premises. This was based on a gaming room patron survey conducted by the Applicant. The patron survey indicated that 60-70% of the Applicant's gaming patrons reside within 2.5km of the Premises, including 36.62% of those patrons residing in the suburb of Noble Park. An additional 13.24% of the Applicant's gaming patrons were indicated in the patron survey to reside in parts of Dandenong South, Dandenong North and Dingley Village (within approximately 5km of the Premises).
32. In this instance, the Commission considers that the gaming room patron survey provides a reliable indication of the likely gaming patrons for the Premises, with the greatest proportion of those patrons residing in the suburb of Noble Park. Therefore, the Commission considers that the appropriate catchment area of the Premises consists primarily of the suburb of Noble Park, together with its surrounding areas out to a radius of up to 5km.

¹⁰ See for example, *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation & Anor (Occupational and Business Regulation)* [2009] VCAT 2275 (12 November 2009); *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 (7 April 2011).



Issues for determination

33. Pursuant to section 3.4.20 of the GR Act, the Commission cannot grant the Application unless it is satisfied of the following two matters:¹¹

- (a) that the relevant regional or municipal limit for EGMs applicable to Greater Dandenong will not be exceeded by the making of the amendment the subject of the Application; and
- (b) that the net social and economic impact of the increase in EGMs permitted in the Premises will not be detrimental to the well-being of the community of Greater Dandenong (the '*no net detriment*' test).

If having determined that these matters have been satisfied, the Commission is then required to exercise its discretion under section 3.4.20 to determine whether or not the Application should be granted; that is, whether or not the proposed amendment to the venue operator's licence should be made.¹²

A. *Regional limit*

34. Greater Dandenong is subject to a regional limit on the number of EGM entitlements under a determination made by the Commission pursuant to section 3.4A.5(3A) of the GR Act. The location of the Premises is within an area that is subject to a regional limit of 989 EGM entitlements. At the time of the Application, there are 15 gaming venues within the area subject to this regional limit, with approvals to operate a total of 981 EGMs. Of these, 958 EGMs are presently in operation. Approval of the Application would result in the total number of EGMs permitted to be operated in this area increasing to 978.

35. On that basis, the Commission is satisfied that granting the Application would not cause the relevant regional limit for gaming machines for Greater Dandenong to be exceeded, and hence considers this aspect of the statutory test set out in section 3.4.20 of the GR Act to be satisfied.

B. '*No net detriment*' test

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

¹¹ The Commission also considered and was satisfied as to the matters set out in section 3.4.20(1)(a) and (d) of the GR Act.

¹² An amendment may be made subject to any conditions the Commission thinks fit: GR Act, section 3.4.20(3).



impacts.

Economic Impacts

Expenditure on capital works

37. A potential economic benefit associated with the Application is that arising from the expenditure on the proposed refurbishment of the Premises.
38. According to Mr Bradshaw, if the Application is successful, the Applicant proposes to undertake renovations and building works at an estimated cost of \$4.75 million.¹³ The works would consist of:
- (a) relocation of the gaming room;
 - (b) relocation of the children's play area;
 - (c) a café and alfresco terrace;
 - (d) a soft lounge;
 - (e) an enlarged bistro;
 - (f) improvements to the Sports Bar, including a larger service area; and
 - (g) new offices, staff facilities and remodelled kitchen.
39. On the information available, when questioned as to whether the building works and renovations would proceed if the Application was not granted, Mr Bradshaw stated that given it would be difficult to improve the Premises unless major building works were undertaken, no works would proceed unless the Application was granted. This was consistent with the Ratio Report, in which it was noted that the works would not proceed should the Application not be granted.
40. In this instance, while the Commission notes that the proposed works would involve significant expenditure which would generally constitute an economic benefit, it has no evidence before it as to the extent to which the goods and services required for the works would be procured within Greater Dandenong. Therefore, the Commission considers this expenditure is an economic benefit but, in the circumstances, one that should only be given no to marginal weight.

¹³ According to Mr Bradshaw's evidence in the Hearing, a quantity surveyor informed him that the estimated cost is \$4.75 million.



41. The Commission acknowledges that it is important to avoid double counting the benefits associated with the works, having regard both to the estimated employment impacts of the proposed renovations and to the social impact that may result from the improved facilities. These aspects are considered separately, and are detailed below at paragraph 47 to 50 and 78 to 83 respectively.

Community contributions

42. In determining the net economic and social impact of applications of this nature, both the Commission¹⁴ and VCAT¹⁵ have regularly treated community contributions as a positive benefit. However, for such contributions to be regarded as a benefit associated with the Application, it is necessary that they are properly regarded as community contributions and that they will result as a consequence of the Application.
43. At the Hearing, two different forms of expenditure were proposed as community contributions that require consideration by the Commission:
- (a) a proposed cash contribution of \$75,000 per annum for five years to be paid by the Applicant to the Cyrene Centre for a part-time addictions counsellor in Noble Park to provide additional counselling services, as well as the ongoing running and operation of the Centre; and
 - (b) cash and in-kind contributions to a range of community and sporting groups in Greater Dandenong in the sum of not less than \$523,744 per annum for five years.
44. With respect to the first category of proposed community contribution, the Commission notes that since the Hearing, the Applicant became aware of a restructure of the Cyrene Centre, whereby no addiction counselling service would be offered by the Centre post June 2017. Rather, addiction support for residents of Noble Park from the Cyrene Centre would become part of CatholicCare's counselling services in Dandenong which already offers addiction support for residents across the whole of Greater Dandenong. Accordingly, the Applicant suggested distributing the funds to CatholicCare. In the event CatholicCare ceased to provide an addiction counselling service in Greater Dandenong, the Applicant stated that it would be committed to providing funding for addiction counselling by an alternative service provider in Greater Dandenong.
45. Irrespective of the restructure as referred to in paragraph 44 above, the Commission is satisfied that the first category of proposed community contribution would result in funds being distributed to a not-for-profit addiction counselling service in the municipal district, including some service for

¹⁴ See, for example, *Application by Richmond Football Club* [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

¹⁵ 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.



residents who are located within 2.5km of the Premises. Further, the Commission is satisfied that this sizeable contribution will only occur if the Application is granted. The Commission notes, however, that there was no evidence before it from CatholicCare (or the Cyrene Centre) clarifying all suggested arrangements regarding the proposed contribution, including how such arrangements would be monitored, particularly, in respect to the levels of addiction support services available from the Centre to those residents within 2.5km of the Premises as a result of the suggested arrangements. Therefore, while the Commission considers this contribution to be a positive economic benefit, on the information available, it accords it a marginal weight.

46. With respect to the second category of community contribution, while the Applicant has provided estimations of a projected increase of its cash and in-kind contributions over the next 10 years in excess of \$1.6 million, the Commission notes from the Applicant's Suggested Conditions, referred to in paragraph 25 above, that it already distributes the nominated *minimum* sum to community and sporting groups in Greater Dandenong. That is, the specified *minimum* amount reflects the existing community contribution made by the Applicant. The Commission is therefore not satisfied this contribution is in fact dependent upon the granting of the Application. Accordingly, the Commission gives no weight to the second category of contribution for the purposes of the '*no net detriment*' test.

Additional employment

47. Employment benefits associated with the Application may involve short term employment benefits associated with the building works and renovations at the Premises, and longer term benefits following completion of such building works and renovations.
48. In relation to short-term benefits, as discussed at paragraph 40 above, the Applicant provided no evidence in relation to the short term employment benefit associated with the building works and renovations. The Commission therefore gives this impact no weight.
49. In relation to longer term benefits, according to the Ratio Report, if the Application was granted, it would result in direct employment of up to 5.5 full time equivalent (FTE) workers, each with 40 hours per week, at the Premises. The breakdown of such employment is as follows:
- (a) Gaming Room: 2.0 EFT positions;
 - (b) Café: 2.0 EFT positions; and
 - (c) Kitchen/Bistro: 1.5 EFT positions.
50. While the Commission accepts that the grant of the Application would have a long term result of



additional employment at the Premises which is an economic benefit, given the scale of this impact on the municipality at large, the Commission considers this to be a benefit to the community to which it attributes a marginal weight.

Complementary expenditure

51. Complementary expenditure is a potential benefit where it results in increased economic activity in the municipal district in which the premises the subject of an application are located. However, the extent of this benefit will depend upon a range of factors, including the extent to which the expenditure is a consequence of new spending, for example, as a result of additional people coming to the municipal district as tourists as compared to transferred expenditure from other venues within the municipality, and the extent to which that complementary expenditure results in additional spending on local goods and services.
52. Ms Peterson in the Ratio Report stated that she expected complementary expenditure as a result of the Application being granted to be in the sum of \$200,000 in the first year of the additional 20 EGMs being attached. This was based on an estimated increase in the expenditure on meals in the bistro, beverages in the sports bar and estimated expenditure in the café. The Applicant, in closing submissions, also made reference to a greater number of supply contracts for food and beverage from local suppliers if the Application is granted. However, the Commission notes that Ms Peterson gave evidence that she had never relied on supply contracts for the purposes of her assessment of complementary expenditure.
53. On the information available, the Commission considers there is limited evidence on this impact, in particular as to the extent to which it may result in any increase in the number of supply contracts for food and beverage from suppliers in Greater Dandenong. In the circumstances, the Commission considers that a no to marginal weight should be assigned to this economic benefit.

Gaming expenditure not associated with problem gambling

54. To the extent that gaming expenditure is not associated with problem gambling, it has been recognised that such expenditure can be treated as an economic benefit.¹⁶
55. Mr Clyne, in the PVS Report and his oral evidence, gave evidence regarding the likely increase in gaming expenditure should the Application be granted. Specifically, he gave evidence that of the increased gaming expenditure at the Premises, it is estimated (on the basis of the Geotech model) that 88% of this will be transferred expenditure from other existing venues within Greater

¹⁶ See *Romsey No. 2* [2009] VCAT 2275 [351] per Bell J.



Dandenong. He stated:

- (a) the Geotech model estimates how much expenditure the Premises can take from each competing venues. The amount of expenditure that is not transferred from competing venues is deemed to be new expenditure;
- (b) adopting the estimated level of 88% transferred expenditure, new expenditure per week is estimated to be \$5,559 (12%); and
- (c) the level of new expenditure is estimated to be \$289,077 in the first 12 months of the additional 20 EGMs being attached. Given this equates to only 0.2% of total gaming expenditure in the LGA in 2015-2016, this new expenditure is minimal.

- 56. Using Mr Clyne's calculation as detailed in paragraph 55(c) above, Ms Peterson in the Ratio Report stated that the Application is expected to increase expenditure per adult in Greater Dandenong from \$974.53 to \$977.84 in the first 12 months. This is an increase of \$3.32 per adult.
- 57. The Council, in closing submissions, stated that the evidence provided by the Applicant as to level of estimated transferred expenditure needed to be questioned. Specifically, the Council submitted that the figure of 88%, as detailed in paragraph 55(c) above, overstates the likely percentage of EGM revenue which would be transferred from other venues. The Council also made reference to the table, as described in paragraph 23(d) above, to argue that the recent increases in EGM revenue at the Premises had not caused competing venues to suffer aggregate losses in EGM revenue.
- 58. The Council also referred to Mr Brown's submission in response to Mr Clyne's utilisation of the Geotech model for his transfer expenditure estimation of 88%. In summary, Mr Brown stated that Mr Clyne's estimates based on the Geotech model lacked any verification by any independent measurement of *actual* new and transferred expenditure and therefore should not be accorded weight as a source of evidence.
- 59. In considering the likely impact of an additional 20 EGMs at the Premises, the Commission notes that there has been a rise and fall in expenditure on EGMs at these Premises since their introduction in 2011, and further that the rise over the last two financial years of 31.5% (2014/15) and 5.7% (2015/16) represents significant growth given that the total expenditure in the LGA grew by only 6.2% (2014/15) and 1.6% (2015/16). The Commission also notes that the EGM utilisation survey conducted by the Applicant indicates that the Premises are popular with a net machine revenue of \$321.40 compared to the club metropolitan average of \$201.18.



60. While acknowledging the Council's arguments as to the question of weight in respect to the estimated transfer expenditure as set out in paragraphs 57 and 58 above, the Commission notes that it has no alternative estimate before it from the Council. The Commission also notes that Mr Brown accepted the Geotech model as accurately predicting the overall projected rise in expenditure at the Premises while at the same time rejecting it in relation to the estimated transferred expenditure. Therefore, the Commission accepts Mr Clyne's evidence.
61. That said, having necessary regard to the extent of gambling expenditure associated with problem gambling as outlined in paragraph 62 to 72 below, the Commission considers that, on balance, this benefit should only be given a marginal weight.

Gambling expenditure associated with problem gambling

62. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an economic disbenefit.¹⁷ In assessing this impact (and other effects of problem gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gambling undertaken by those who may be defined as 'problem gamblers', as well as those who may be otherwise regarded as 'low-risk' or 'moderate-risk' gamblers.
63. The extent to which new gaming expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with the Application, will be influenced by the socio-economic status and vulnerability of the community of Greater Dandenong, and particularly those living in the immediate area within 2.5km of the Premises. This is because communities characterised by socio-economic disadvantage and greater vulnerability are considered to be more susceptible to the harms arising from problem gambling. Relevantly, the Commission notes the evidence of Ms Peterson, in which she stated in the Hearing that in an area such as Greater Dandenong the relative population is very vulnerable and do not have the same safety net as more affluent household areas. In other words, they have little to no ability to incur gambling losses without harm.
64. According to the Council, various factors suggest that the risk of increased incidence and economic impact of problem gambling at the Premises are significant should this Application be

¹⁷ The Commission recognises that, on review, the key likely disbenefit of 'problem gambling' has, for convenience, been treated under the heading of 'social impacts' in various instances: see *Mount Dandenong Tourist Hotel Pty v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted; see, for example, *Mount Alexander Shire Council* [2013] VCAT 101 at [178] and following per Dwyer DP. For completeness, the Commission considers both the economic and social impacts of problem gambling in assessing this Application.



granted on the basis that:

- (a) according to the Socio-Economic Indexes for Areas (**SEIFA**) scale of disadvantage, Greater Dandenong is the most disadvantaged municipality in Victoria. The equivalised household income is 23.77% lower than that of metropolitan Melbourne;
- (b) the unemployment rate in Greater Dandenong is 5.2% higher than that of metropolitan Victoria, and it suffered a net loss of jobs from September 2015 to September 2016;¹⁸
- (c) the homelessness rate of Greater Dandenong is the second highest of metropolitan statistical subdivisions;
- (d) many residents within Greater Dandenong are welfare recipients. It has the fourth highest pensions per 1,000 adults of LGAs in metropolitan Victoria;
- (e) the EGM expenditure, based on 2011 census data, is considerably higher than the metropolitan LGA average and the State average;
- (f) the crime rate in Greater Dandenong is the third highest of metropolitan LGAs;
- (g) Greater Dandenong has one of the youngest demographic profiles compared to other metropolitan LGAs; and
- (h) in an emergency, Greater Dandenong is the LGA with the least capacity to raise money.

65. For completeness, it is noted that the VCGLR Report indicates that in relation to the area immediately surrounding the Premises (i.e. within 2.5km), approximately 79.4% of Statistical Area Level 1 (SA1s)¹⁹ areas are in the first quintile and 17.6% of SA1s are in the second quintile of the SEIFA index of relative disadvantage (indicating high relative disadvantage). The remaining SA1s in the area immediately surrounding the Premises are in the fourth quintiles (indicating low relative disadvantage).

66. In relation to the concerns raised in the Council Report should the Application be granted (see paragraph 64 above), Ms Peterson made a number of comments in the Ratio Report, which included (in summary):

- (a) given the relatively small increase in EGMs in the Premises, the overall incremental increase in the risk of gambling-related harm would also be relatively small;
- (b) the change in risk to homeless people is likely to be negligible. This is largely due to the

¹⁸ The VCGLR Report noted that the unemployment rate in Greater Dandenong is 11.1%, which is above the metropolitan Victorian unemployment rate of 5.9%.

¹⁹ SA1s have been designed by the ABS as the smallest unit for the release of Census data, and generally have a population of 200 to 800 persons, with an average of 400 persons.



overall availability of EGMs in Greater Dandenong, and the density of the EGMs and the number of venues being above average. Further, homeless people are less likely to attend the Premises than a hotel because of sign-in requirements (will need to provide a home address); and

- (c) based on a separate report, the employment status of problem gamblers is not significantly different to the State adult population. That said, while unemployment levels may make communities more financially vulnerable, it does not necessarily indicate a greater vulnerability of a community to problem gambling.

67. At the Hearing, the Council, in its closing submissions stated that Mr Brown's evidence overall supports the following findings (in summary):

- (a) lower socio-economic status is a risk factor for problem gambling;
- (b) accessibility of gambling is a significant factor for problem gambling; and
- (c) greater expenditure at gaming venues is associated with an increased risk of problem gambling in the local area.

68. Taking into account all of the material before it, the Commission finds that the Application will result in estimated new expenditure being generated of at least \$289,077 in the first 12 months of the additional 20 EGMs being attached and possibly higher (see 'Gambling expenditure not associated with problem gambling in paragraphs 54 to 61 above). It accepts that a proportion of this expenditure will be associated with problem gambling. Further, the Commission finds that the catchment area of the Premises exhibits high levels of socio-economic disadvantage and generally higher vulnerability to the risks of problem gambling.

69. In considering the extent to which new expenditure may give rise to an increased risk of problem gambling, the manner in which gaming is to be conducted at the Premises is also a relevant consideration. Specifically, in relation to the Premises' Responsible Service of Gaming (**RSG**) practices, the Commission notes that the Applicant has proposed to implement a number of measures in relation to RSG. The Applicant submits that these measures are based on the Venue Best Practice Guide produced by the Victorian Responsible Gambling Foundation. Such measures as proposed by the Applicant primarily include:

- (a) shielding the gaming room from direct view;
- (b) relocating the children's play area further away from the gaming room;



- (c) employment of further staff and, relevantly, two full time equivalents in the gaming room; and
- (d) by way of the first category of proposed contribution, as discussed in paragraph 43(b) above, attendance on occasions at the Premises by an addictions support counsellor.

70. Accordingly, the Applicant submits that the Commission should conclude the Premises will be 'safer' after such measures are implemented.
71. While the Commission accepts the facilities at the Premises would be, at least, improved, it considers the impact of such foregoing measures would be limited. Specifically, the Commission considers the measures would have a limited effect in changing the predominant gaming characteristics of the Premises (see discussion at paragraphs 81 to 83 below). Further, the Commission considers there is a lack of information before the Commission to consider that the addition of staff, as referred to in paragraph 69(c) above, would do more than address a potential increase in demand for staff services (relevantly, the gaming room surveillance) caused by the additional 20 EGMs and a redeveloped venue.²⁰
72. Overall, the Commission considers with respect to the Application that the potential expenditure associated with problem gambling is a negative economic impact upon which it should place a considerable weight. Issues relating to the negative social impacts associated with problem gambling are considered further in paragraphs 91 to 97 below.

Conclusion on Economic Impacts

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

Social Impacts

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

Increased gaming opportunities for those who enjoy gaming

75. This is a positive impact if the Application will better serve the needs of gaming patrons through providing additional opportunities and choice for those who choose to play EGMs. The Applicant

²⁰ The Commission agrees with the overall submissions made by the Council as discussed in paragraph 81 to 83 and also regarding the aspect of addition of staff.



submits that the proposed addition of 20 EGMs would improve enjoyment and choice in machines of current patrons. The Commission notes that EGM utilisation surveys conducted by the Applicant indicate that the Premises are popular with a net machine revenue of \$321.40 compared to the club metropolitan average of \$201.18, as discussed in paragraph 59 above. Further, the EGM utilisation survey provided by the Applicant showed utilisation rates exceeded 70% during 30 hours over a two-week survey period of 15 October 2016 and 28 October 2016, and up to 90% for six hours over three consecutive days (21 October 2016 to 23 October 2016). Ms Peterson relied on those survey results in finding there was a strong demand for EGMs at the Premises.

76. The Council submitted that the catchment area already had high accessibility of EGMs. Specifically, the Council informed the Commission that the LGA has the second highest EGM density of all metropolitan LGAs. The Council also made reference to the table, as described in paragraph 23(d) above, to argue that the recent increases in EGM revenue at the Premises had not caused competing venues to suffer aggregate losses in EGM revenue.
77. The Commission acknowledges that there is a benefit in increasing machine choice for recreational players and catering for a (non problem gambling) demand. However, given there are already 50 EGMs at the Premises and there are 14 other venues in Greater Dandenong where EGMs operate, with 958 EGMs currently being in operation in the municipality, the Commission considers there is already an ease of access and high levels of consumer choice for anyone choosing to play EGMs. Therefore, the Commission considers this to be a negligible social benefit to the community in Greater Dandenong itself, and hence one on which it places no to marginal weight.

Improved facilities enabling greater range of services

78. Separate from the economic benefit that may be associated with expenditure involved in capital works at a venue, there are also potential social benefits to the community that may arise having regard to the nature of the building works and renovations that are intended to take place.
79. The nature of these building works and renovations has been described at paragraph 38 above, and according to the Applicant, such works and renovations will only proceed if the Application is approved (as discussed at paragraph 39 above).
80. The Applicant informed the Commission that the potential social benefits to the community arising from the building works and renovations consist of:
- (a) a less prominent gaming room from the front entrance of the Premises;



- (b) a relocation of the children's play room further away from the gaming area in accordance with best practice;
- (c) a new café, alfresco terrace and soft lounge to provide a general relaxation space; and
- (d) a greater number of entertainment options being allowed for by the increased bistro size.

81. In response, the Council argued that the gaming room would still be present and accessible from the front reception, even it were to be shielded from direct view. Further, the Council argued that the gaming room could still be heard from other parts of the Premises. The Council submitted that irrespective of the redesign of the Premises by way of shielding the gaming room, this would have a limited effect in changing the predominant gaming characteristics of the Premises. In addition, the Council submitted that the expansion of the service offer at the Premises would be small in comparison to the service offer already present and would, in any event, be limited by the trading hours of the sports bar, bistro, and the café area. Finally, the Council submitted that there is limited, if any, research evidence to support the proposition that any or a combination of the building works and renovations would have a material impact upon the prevalence of problem gambling behaviour at the Premises or the harm that would result from such behaviour.
82. While the Commission acknowledges that the renovations at the Premises will improve the facilities at the Premises, including the gaming room, there is no substantial change to the range of entertainment on offer. The Commission also accepts that the service offer is limited by hours of trading of the non-gaming areas compared to the hours the gaming room is open (see paragraph 29 above).²¹
83. Having taken into account the Applicant's and the Council's evidence and submissions as to the nature of the proposed building works and renovations, the Commission finds that the cumulative effect of the improved facilities on the community is a positive impact to which it attributes a marginal to low weight.

Purchase of entitlements from Doxa

84. Of the 981 EGM entitlements approved in Greater Dandenong, Doxa Social Club Inc (**Doxa**) holds 31 that are not currently attached to any venue. If the Application is approved, the Applicant states that it will purchase 20 EGM entitlements from Doxa Social Club Inc. As part of the proposed purchase deal, the Doxa Youth Foundation (the **Foundation**) will receive \$30,000 from the

²¹ The Commission notes from the Hearing that Ms Peterson stated the hours of operation at the Premises would stay the same, and that the kitchen would close well before the gaming room closes. In particular, the Commission notes that the bistro would operate for 4 hours per day, and that the gaming room would operate for 20 hours per day.



Applicant over three consecutive years for expenditure by Doxa in Greater Dandenong.

85. The Commission accepts that the proposed distribution of monies to the Foundation is a social benefit to the community, and that such a distribution would not occur without the grant of the Application. Notwithstanding that, in determining the weight to assign to this proposed arrangement, the Commission has had regard to the relatively small quantum of monies distributed to the Foundation and notes that no information was provided as to how Doxa would spend the money for the benefit of the community of Greater Dandenong. On that basis, the Commission has assigned no to marginal weight to this benefit.

Social benefit derived from increased community contributions

86. Related to the economic 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.
87. In light of the reasons discussed in respect to community contributions as set out in paragraphs 43 to 46 above, the Commission considers the impact on local community organisations to be a benefit but one which, at best, is given only marginal weight in the Application.

Backfilling

88. As discussed in paragraph 34 above, of the 981 EGMs approved to operate in the municipality, 958 EGMs are currently in operation. Ms Peterson gave evidence of the fact that 23 more machines *could* be attached in the municipality to either Sandown Park Hotel or Waltzing Matilda Hotel without requiring approval. That is, in addition to the 958 EGMs already operating, a further 23 *could* be attached to meet the current approved figure of 981. Further the Applicant stated that if the Application is granted, the approved number of EGMs which *could* be attached by Sandown Park Hotel or Waltzing Matilda Hotel will be unable to exceed 11. That figure is based on the proposed purchase deal between the Applicant and Doxa (as discussed in paragraph 84 above), in which Doxa would transfer 20 of its 31 EGM entitlements to the Applicant that have not been attached to any venue. Put another way, if the Application is granted, the total number of EGMs permitted to be operated in Greater Dandenong would increase to 978, and a balance of 11 EGM entitlements would be left that *could* be attached to any venue (as opposed to 23).
89. In response, the Council submitted that there is no evidence before the Commission, beyond mere speculation, as to whether any venue would seek to utilise some or all of the 20 EGM



entitlements sought by the Applicant were the Application to be refused. In combination, the Council requested the Commission to take into account the fact that the 20 entitlements sought by the Applicant have not been utilised for a considerable period, and there has been no identified prospect, by way of evidence, that they would be utilised elsewhere.

90. Having regard to the information available, the Commission considers the prospect of backfilling speculative and therefore assigns it no weight.

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

91. Wherever accessibility to EGMs is increased, there is a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, family breakdowns and other social costs. Accordingly, the Commission accepts that there is potential for a negative social impact through possible increased problem gambling expenditure.
92. The Commission refers to and relies upon the evidence set out in paragraphs 62 to 72 with respect to the economic impact of problem gambling on the community, which equally apply to the social impact of problem gambling.
93. The Commission accepts (as outlined in paragraph 62 above) that harms associated with the incidence of problem gambling are wide-ranging and attributable to all categories of gamblers (low-risk', 'moderate risk' and 'problem gamblers') and across the community more broadly.
94. In relation to family related violence, the Council Report noted that Greater Dandenong had the highest rate of reported family violence incidents in Victoria in 2015/16. Referring to other reports and studies, the Council submitted that the prevalence of family violence was higher in families with a problem gambler.
95. In response to the Council Report, Ms Peterson gave evidence that if the Application was granted she considered the risk of instances of domestic violence being created by the additional 20 EGMs would be small. As part of her evidence to the Commission, reference was made by Ms Peterson to various measures that the Applicant proposed to implement at the Premises, including:
- (a) a less prominent gaming room from the front entrance of the Premises; and
 - (b) a cash contribution from the Applicant for more addiction support counselling services in the local community.
96. In relation to such measures, the Council, in its closing submissions, raised doubt as to their



reliability based on the matters discussed in paragraphs 81 and 45 respectively.

97. Overall the Applicant and the Council agreed in their evidence that the catchment area of the Premises shows significant signs of a disadvantaged municipal community and thus highly vulnerable to problems related to gambling. Having regard to the general body of research referred to by the Council and the Applicant, the Commission accepts that recent research establishes a correlation at the postcode level between EGM density and incidents of police-recorded domestic violence. While the Commission is not satisfied that the available evidence establishes a causal link between EGMs and family violence such as would support a finding that an impact of granting the Application would be an increase on existing levels of family violence, the Commission does consider that, if the Application is granted, there may be a more acute risk of an increase in gambling related crime and social disturbance (including family violence). The Commission is not satisfied that this risk is acceptably mitigated by the measures as described in paragraph 95 above. This impact gives rise to a social disbenefit of the Application, to which the Commission assigns a moderate to considerable weight.

Community attitude

98. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,²² 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 within, and as part of, the 'no net detriment' test.
99. In determining this impact, the Commission recognises that the Council's role includes representing the community interest, and, in this instance, the Council has objected to the Application, and provided evidence in support of its objection.
100. In addition, the Commission has taken into account submissions from people in the community, as detailed in paragraph 22 above. Those submissions can be summarised as follows:
- (a) Greater Dandenong already has too many EGMs;
 - (b) because of the EGMs, several locals have lost their money;
 - (c) most people in the local area have low incomes;

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



- (d) gambling contributes to poverty, mental and physical harm, homelessness and family breakdowns;
- (e) Greater Dandenong is a disadvantaged area; and
- (f) EGMs ruin any peace and tranquillity.

101. The Commission notes that such submissions addressed the Application and therefore are a relevant consideration. All of the submissions expressed a negative attitude to the Application. In particular, the focus of concern was that additional EGMs at the Premises would likely increase harm caused to local residents who are already experiencing and dealing with prevalent gambling-related harm. That said, the Commission does not consider the potential impact on community well-being, in this instance, to be in the same sense as was discussed in the *Romsey* case. This is because the Application relates to an increase in the number of EGMs, rather than the establishment of a new venue or circumstances where there were no existing gaming venues in the local community. Therefore, the Commission considers it appropriate to attribute a marginal to low weight to this negative social impact of the Application.

Conclusion on social impacts

102. After considering the social benefits of the Application and balanced against the disbenefits, the Commission considers that, on balance, there is likely to be a negative social impact if the Application were granted.

Net economic and social impact

103. The '*no net detriment*' test in section 3.4.20(c) of the GR Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. This test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impact of approval on the well-being of a relevant community will be either neutral or positive.²³

104. After consideration of the material before it, including the evidence provided at and following the Hearing (and weighted as outlined above and summarised in tabular form at Appendix 1 of these Reasons for Decision), the Commission is not satisfied that the social and economic impact to the well-being of the community of the municipal district in which the Premises are located will not be detrimental to the well-being of the community of Greater Dandenong. Accordingly, under

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



section 3.4.20(1)(c) of the GR Act, the Commission must not amend the venue operator's licence.

DECISION

105. After consideration of all the evidence presented in this matter, the Commission cannot be satisfied that there would be no net social and economic detriment to the immediately surrounding area or the wider community of the City of Greater Dandenong. The Application is therefore refused.

The preceding one hundred and five (105) paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey, Acting Chair, and Dr Dina, McMillan, Commissioner.

Appendix One

Summary of economic and social impacts

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

Economic impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	Expenditure on capital works		The Applicant proposes to undertake renovations and building works at an estimated cost of \$4.75 million. The expenditure on capital works is significant, but there is uncertainty as to the extent to which it will be spent on goods and services procured in the relevant municipal district in which the Premises are located. Also, as there are both employment impacts and social impacts associated with the amount which has been assessed, care must be taken to ensure benefits relating to such works are not double counted. No to marginal weight.



	Impact	Paragraph numbers	Comment relevant to weight
	Community contributions		<p>The Applicant proposed two forms of expenditure as community contributions:</p> <ul style="list-style-type: none">(a) a cash contribution of \$75,000 per annum for five years to be paid by the Applicant to CatholicCare to provide addition counselling for residents of Greater Dandenong; and(b) cash and in-kind contributions to a range of community and sporting groups in Greater Dandenong in the sum of not less than \$523,744 per annum for five years. <p>In relation to the first category, the Commission notes that there is no evidence from CatholicCare setting out the suggested arrangements with the Applicant in light of the proposed contribution, including how such arrangements would be monitored.</p> <p>Marginal weight.</p> <p>In relation to the second category, the Applicant already distributes the nominated <i>minimum</i> sum to community and sporting groups in Greater Dandenong. This contribution is not dependent on the granting of the Application.</p> <p>No weight.</p>
	Additional employment		<p>In relation to the short term employment benefits associated with renovation activities, there is no evidence before the Commission. Also, have considered this separately under 'Expenditure on capital works' above).</p> <p>No weight.</p> <p>In relation to the longer term benefits following completion of the building works and renovations, while the employment of the equivalent of 5.5 FTE positions is a positive economic impact, the impact is insignificant on the municipality at large.</p> <p>Marginal weight.</p>



	Impact	Paragraph numbers	Comment relevant to weight
Disbenefit	Complementary expenditure		Based on an estimated increase in expenditure on meals in the bistro, beverages in the sports bar and expenditure in the café, the Applicant expects complementary expenditure to be \$200,000 in the first year of the additional 20 EGMs being attached. Limited evidence provided to the Commission on this impact, particularly in relation to the extent to which it may result in any increase in the number of supply contracts for food and beverage from suppliers in Greater Dandenong. No to marginal weight.
	Gaming expenditure not associated with problem gambling		The portion of new expenditure not attributable to problem gambling is an economic benefit. While Mr Clyne's evidence is accepted, the evidence with respect to the gambling expenditure associated with problem gambling has also been considered. Marginal weight.
	Gambling expenditure associated with problem gambling		Residents in the City of Greater Dandenong have a high level of relative disadvantage and financial vulnerability that would make them highly susceptible to gambling-related harms. The SLA in which the Premises are situated exhibits a very high level of disadvantage. The Commission considers there is a risk of increased problem gambling expenditure associated with the Application, which it regards as a negative economic impact. Considerable weight.



Social Impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	Increased gaming opportunities for those who enjoy gaming		There are already 50 EGMs at the Premises and there are 14 other venues in Greater Dandenong where EGMs operate, with 958 EGMs currently being in operation in the municipality. No to marginal weight.
	Improved facilities enabling greater range of services		<p>According to the Applicant, the potential social benefits to the community arising from the building works and renovations consist of (in summary):</p> <ul style="list-style-type: none"> (a) a less prominent gaming room from the front entrance of the Premises; (b) a relocation of the children's play room further away from the gaming area in accordance with best practice; (c) a new café, alfresco terrace and soft lounge to provide a general relaxation space; and (d) a greater number of entertainment options being allowed for by the increased bistro size. <p>The Council argued (in summary):</p> <ul style="list-style-type: none"> (a) the gaming room would still be present and accessible from the front reception, even if it were to be shielded from direct view; (b) the gaming room could still be heard from other parts of the Premises; (c) the expansion of the service offer would be small in comparison to the service offer already present and would, in any event, be limited by the trading hours of the sports bar, bistro, and the café area; and (d) the building works and renovations would have a negligible material impact upon the prevalence of problem gambling behaviour at the Premises or the harm that would result from such behaviour. <p>Overall, the Commission considers that there is no substantial change to the range of entertainment on offer. Also, the service offer would be limited by hours of trading of the non-gaming areas compared to the hours that the gaming room is open. Marginal to low weight.</p>



Purchase of entitlements from Doxa		The proposed distribution of monies to the Foundation is a social benefit to the community and will not occur without the grant of the Application. However, the quantum of the proposed distribution of monies to the Foundation is relatively small and it is unclear, on the available materials, as to how that money will be spent in Greater Dandenong by Doxa. No to marginal weight.
Social benefit derived from increased community contributions		Given the limitations with the information provided to the Commission in respect to community contributions, (see 'Community Contributions' above), the impact on local community organisations is considered to be a social benefit, but marginal. Marginal weight.
Backfilling		In addition to the 958 EGMs currently in operation, 23 more <i>could</i> be attached in the municipality to either Sandown Park Hotel or Waltzing Matilda Hotel without requiring approval. Based on the proposed purchase deal between the Applicant and Doxa (see 'Purchase of entitlements from Doxa' above), the Applicant submitted that if the Application is granted, the approved number of EGMs which <i>could</i> be attached by Sandown Park Hotel or Waltzing Matilda Hotel will be unable to exceed 11. On the information available, the Commissions considers that the prospect of any venue seeking to utilise the 20 EGM entitlements sought by the Applicant were the Application to be refused is merely speculative. No weight.
Impact	Paragraph numbers	Comment relevant to weight
Disbenefits Possibility of an increased incidence and potential impact of problem gambling on the community (including family violence)		The Commission is not satisfied that the available evidence establishes a causal link between EGMs and family violence such as would support a finding that an increase in existing levels of family violence is an impact that would result from granting the Application. Nevertheless, having regard to this body of research, the Commission does consider that, if this Application is approved, there may be a more acute risk of such an increase in gambling-related crime and social disturbance (including family violence) in Greater Dandenong. Moderate to considerable weight.



	Community attitude	<p>The Commission has taken into account:</p> <ul style="list-style-type: none">(a) the Council's intended role in which it represents the community interest; and(b) submissions from people in the community. <p>All of the submissions expressed a negative attitude to the Application. The Commission does not consider the potential impact on community well-being to be in the same sense as was discussed in the <i>Romsey</i> case, but nevertheless has had regard to the submissions by members of the public opposing the Application.</p> <p>Marginal to low weight.</p>
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