



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 Clifton Springs Golf Club Inc. to amend its venue operator's licence to increase the number of electronic gaming machines at the approved premises, the Clifton Springs Golf Club located at 92-94 Clearwater Drive, Clifton Springs from forty (40) to fifty (50).

Commission:

Ms Deirdre O'Donnell, Deputy Chair
Ms Danielle Huntersmith, Commissioner

Appearances:

Ms Sarah Porritt of Counsel for the Applicant (instructed by BSP Lawyers)
Mr Ian Munt of Counsel for the Council
Mr Lee Konstantinidis, Counsel Assisting the Commission

Date of Hearing:

6 and 7 April 2020

Date of Decision:

14 April 2020

Date of Reasons:

14 August 2020

Decision:

The application is granted subject to the conditions at Appendix A.

Signed:

A handwritten signature in black ink, appearing to read 'D O'Donnell'.

Deirdre O'Donnell
Deputy Chair



REASONS FOR DECISION

INTRODUCTION

1. This is an application by the Clifton Springs Golf Club Inc. (the **Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) to amend its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) at the approved premises, the Clifton Springs Golf Club, located at 92-94 Clearwater Drive, Clifton Springs (the **Premises**) from forty (40) to fifty (50) (the **Application**).
2. The relevant municipal authority is the City of Greater Geelong (the **Council**). By correspondence dated 15 January 2020, the Council informed the Commission that it intended to make an economic and social impact submission in relation to the Application, and it did so on 10 February 2020.
3. The Commission considered the Application by way of a public inquiry.¹ To this end, a public hearing took place on 6 and 7 April 2020 (the **Hearing**). The Applicant was represented by Ms Sarah Porritt of Counsel, instructed by BSP Lawyers. The Council was represented by Mr Ian Munt of Counsel.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Gaming on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (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 at section 1.1, which provides:

...

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

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



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

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

8. The relevant provision concerning the Application is in section 3.4.17(1)(b) of the GR Act, which states that variation of the number of EGMs permitted in an approved venue may be amended in accordance with Division 2, Part 4 of Chapter 3 of the GR Act.
9. Sections 3.4.18 to 3.4.19 of the GR Act provide for the manner in which requests for amendments under section 3.4.17(1)(b) are to be made. Relevantly for the Application, section 3.4.18 provides, inter alia, that:

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

...



(c) *in the case of ... an amendment to increase the number of gaming machines permitted in an approved venue, must be accompanied by a submission—*

(i) *on the net economic and social benefit that will accrue to the community of the municipal district in which the approved venue is located as a result of the proposed amendment; and*

(ii) *taking into account the impact of the proposed amendment on surrounding municipal districts—*

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

10. Section 3.4.18(2) provides that if the request is for an amendment to increase the number of gaming machines permitted in an approved venue, the venue operator must give the relevant municipal council a copy of the proposed request before submitting the request to the Commission.²

11. 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.*

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

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

² The Applicant provided the Commission with proof of delivery for 2 December 2019, which the Commission regarded as sufficient evidence for the purposes of s3.4.18(2) of the GR Act.



- (a) *the Commission is satisfied that the amendment of the licence does not conflict with a direction, if any, given under section 3.2.3; and*
 - (b) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the regional limit or municipal limit for gaming machines for the region or municipal district in which the approved venue is located will not be exceeded by the making of the amendment;*
 - (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; and*
 - (d) *if premises are proposed to be added to the Applicant's licence as an approved venue and the Applicant (or an associate of the Applicant) operates an approved venue within 100 metres of the Premises, that the management and operation of the Premises and other approved venues are genuinely independent of each other.*
13. 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.
14. Section 3.4.20(1)(c) provides for what is now commonly described as the '*no net detriment*' test. It requires the Commission to be satisfied that there is no net detriment arising from the approval through positively and objectively establishing that the net economic and social impact will not be detrimental to the well-being of the community.³
15. The GR Act does not specify the matters that the Commission must consider in deciding whether the '*no net detriment*' test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:
- (a) the likely economic impacts of approval;
 - (b) the likely social impacts of approval; and

³ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [52] per Dwyer DP.



(c) the net effect of those impacts on the well-being of the relevant community.⁴

16. 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.⁵ 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.
17. 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.⁶ 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.⁷ The Commission has adopted the same approach as VCAT in setting out a table of likely economic and social benefits both to enhance clarity of Commission decisions and facilitate greater consistency between the Commission and VCAT.⁸
18. If the Commission is not satisfied that the ‘*no net detriment*’ test is met, that is clearly fatal to the application before it, as given the opening words of section 3.4.20(1) of the GR Act, satisfaction of the test is a mandatory pre-condition to approval. However, although section 3.4.20(1) sets out certain mandatory considerations for the Commission, the provision is not exhaustive. If the Commission is satisfied that the ‘*no net detriment*’ test is met, it still has an ultimate discretion as to whether or not to grant the approval.⁹ The Commission must decide whether to make the

⁴ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [42]-[43] per Warren CJ, Maxwell P and Osborn AJA (**‘the Romsey case’**).

⁵ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey No. 2)* [2009] VCAT 2275, [332], [348] per Bell J (**‘Romsey No. 2’**) cited in *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, [57] per Dwyer DP.

⁷ See *Romsey No. 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.

⁸ See e.g., *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [60] per Dwyer DP.

⁹ 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 of the GR Act).



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.¹⁰

19. In considering the exercise of this discretion:
 - (a) The Commission must have regard to the purposes of the GR Act and, in particular, the specific purposes of Chapter 3 of the GR Act dealing with the regulation, supervision and control of gaming machines;¹¹ and
 - (b) it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the GR Act as a whole.¹²
20. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*¹³ that, if all of the mandatory considerations under the GR Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval, other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.
21. Finally, 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.
22. 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 premises applying to be new gaming venues, rather than increases in the number of EGMs at existing gaming venues. 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

¹⁰ GR Act, section 3.4.20(2).

¹¹ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [98] per Dwyer DP.

¹² *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M. As to policy principles identified for consideration, see the *Romsey* case (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

¹³ [2013] VCAT 101, [98].



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

23. Prior to the Hearing, the Applicant provided the Commission with the following material in support of its Application:
- (a) an application form for the amendment to the Applicant's venue operator licence, received by the Commission on 27 November 2019 (the **Application Form**);
 - (b) a social and economic impact statement prepared Ms Colleen Yvonne Peterson, CEO of Ratio Consultants, dated 26 November 2019, together with an addendum dated 24 March 2020 (the **Ratio Report**);
 - (c) an expenditure report prepared by Mr Timothy James Stillwell, partner of ShineWing Australia, dated 26 November 2019 (the **ShineWing Report**);
 - (d) a Responsible Service of Gambling compliance report, authored by Andrew Jeynes, the Responsible Gambling Manager of PVS Australia Pty Ltd, dated November 2019 (the **PVS Report**);
 - (e) evidence that the Applicant published notice of the Application in the Herald Sun newspaper on 5 December 2019;
 - (f) diagrams showing the current EGM layout at the Premises, and the EGM layout if the Application were approved; and
 - (g) a copy of the Applicant's Responsible Service of Gambling policy, dated October 2019.
24. Witness statements from the following persons were also provided by the Applicant in support of the Application:
- (a) Suzanne Kim Shannon, Gaming Manager of the Applicant, dated November 2019;
 - (b) Phillip Graham Smith, President of the Applicant, dated November 2019;
 - (c) Danilo Benjamino Zernich, General Manager of the Applicant, dated November 2019, together with the following annexures:
 - i. a menu of the food offered by the Premises;
 - ii. a draft golf facility strategy relating to the Premises;
 - iii. a copy of planning permit no. PP-1112-2018 with endorsed plans;
 - iv. plans for the refurbishment of the kitchen at the Premises;



- v. plans for the redevelopment of the gaming room at the Premises;
 - vi. two estimates of costs associated with the proposed redevelopment and refurbishment of the Premises;
 - vii. proposed conditions for the amendment of the Applicant's venue operator's licence, if granted; and
 - viii. a spreadsheet estimating the value of supply contracts, complementary expenditure and expenditure relating to additional staff if the Application were granted.
25. Correspondence was received from the following persons and organisations in opposition to the Application:
- (a) a submission from the 'G21 – Geelong Region Alliance', dated 6 February 2020;
 - (b) a submission from the Geelong Interchurch Social Justice Network, dated 16 March 2020; and
 - (c) an undated submission in opposition to the Application from an individual objector who is presumed to be a resident of the local government area (the **LGA**¹⁴).
26. On 10 February 2020, the Council provided an economic and social impact submission with respect to the Application.
27. The Council also provided a Social and Economic Impact Assessment prepared by Dr Kate Kerkin, director of K2 Planning, together with revisions, both dated March 2020 (together, the **K2 Report**).
28. The following material, prepared by Commission staff, was provided to the Applicant and the Council and considered by the Commission:
- (a) a report titled *Economic and Social Impact Report* dated January 2020 which was superseded by an updated version, dated March 2020 (the **VCGLR Report**); and
 - (b) a report titled *Pre-Hearing Inspection and Compliance Report* dated 23 March 2020 (the **Compliance Report**).
29. At the Hearing additional material was provided by the parties:
- (a) closing written submissions from Ms Porritt on behalf of the Applicant;

¹⁴ The LGA is the local government area of the City of Greater Geelong.



- (b) closing written submissions from Mr Munt on behalf of the Council;
- (c) an Australian Early Development Census 'Community Profile 2018' document published by the LGA;
- (d) a report titled 'Problem Gambling and Family Violence in Help-Seeking Population: Co-occurrence, impact and coping' dated 4 November 2016;
- (e) a study titled 'The Victorian Gambling Study: A longitudinal study of gambling and health in Victoria 2008-2012' July 2014; and
- (f) additional written submissions.

PRELIMINARY MATTER – COVID-19

30. The Commission has considered the Application with reference to all of the available evidence before it. The Commission is aware that the COVID-19 pandemic, and associated restrictions implemented by government, are likely to have an impact on the social and economic conditions of Victoria, as well as the community of the LGA. The nature and extent of this impact on the municipality is not yet known. The Commission requested that both parties provide submissions as to whether the Commission is able to determine the Application in light of the COVID-19 pandemic, with specific reference to the matters to be considered and mandatory criteria for approval set out in section 3.3.7(1) of the GR Act.
31. In the Applicant's submissions, it stated that the Commission is required to address whether the Application would have a net detriment on the municipality, which does not require it "to be satisfied as to every specific impact but rather the net impact". The Applicant stated that "the test by its nature requires the Commission to look into the future and to project forward", but that "the Commission is not expected to have completely clear foresight".
32. The Applicant's submissions also referred to the Commission's decision in *Castello Daisey's Hotel Pty Ltd at Clyde North Hotel premises* [2019] VCGLR 36 (6 April 2020), where the Commission's reasons noted "that there is no information or evidence before the Commission that could confirm or reliably predict the impact of the COVID-19 pandemic on the social and economic conditions in the municipality".
33. In summary, the Council's submission was that the Commission should not be satisfied that "the net social and economic impact of approval of the application will not be detrimental to the community" due to the novelty and unexpectedness of the circumstances surrounding the COVID-19 pandemic. In the Council's submission, there is no way of "predicting how the Venue would operate" and "assessing the likely social and economic conditions in which the Venue would



operate... were the application to be approved”.

34. In this instance, and given that the GR Act expressly requires that “the Commission must use its reasonable endeavours to determine an application within the required period” (see section 3.3.8(1A) of the GR Act), the Commission has accordingly used its reasonable endeavours to determine this matter on the basis of the information and evidence before and available to it within the required period, noting that there is no information or evidence before the Commission that could confirm or reliably predict the impact of this matter on the social and economic conditions in the municipality. The Commission also notes that the parties to this Application have a right of review to the Victorian Civil and Administrative Tribunal (VCAT) should they wish for the Commission’s decision to be reviewed under section 3.3.14 of the GR Act.
35. Due to the State of Emergency declared in relation to the COVID-19 pandemic, and the associated directions implemented by government to limit social contact, together with the subsequent closing of the Premises, neither of the Commissioners visited the Premises prior to the Hearing.

DECISION AND REASONS FOR DECISION

Background

36. The Applicant was established in 1970 by a club constitution. The Premises originally consisted of a golf course and community centre which were operated pursuant to a lease granted by property developers. The golf course and clubhouse were sold to the Shire of Bellarine in 1978.
37. When the Council was formed in 1993 following the amalgamation of its predecessors, it became the owner of the golf course. During 1994, five EGMs were introduced into the clubhouse currently owned by the Applicant. In the year of 1997, the Applicant purchased the community centre (now the clubhouse) from the Council and the number of EGMs at the Premises increased to 40.
38. The Applicant provided various cash and ‘in kind’ donations to the local community during the 2018/2019 financial year. The value of cash contributions for this period was \$4,130, with over \$52,000 of ‘in kind’ contributions consisting of vouchers and discounts for room hire, food and beverage offerings and the use of the golf course.

Location

39. The Premises are located on the eastern side of Springs Street in Clifton Springs. The golf course extends from Bay Shore Avenue in the south to the coast line which forms its north-western boundary. The Premises are situated within a Public Park and Recreation Zone, opposite a Commercial Zone and with a Residential Zone to the south of Clifton Street. The Clifton Springs



Bowling Club is located to the west of the Premises and is also within the Public Park and Recreation Zone. While the Applicant leases the land on which its golf course is located from the Council, the Applicant's buildings and venue are situated on land which it owns, and it undertakes the upkeep of these buildings.

40. The City of Greater Geelong is a regional LGA located 75km south-west of Melbourne and covers an area of 1,248 square kilometres. Major centres in the City of Greater Geelong include Geelong, Ocean Grove, Lara and Leopold. According to the VCGLR Report, the City of Greater Geelong has an estimated adult population of 200,544, which ranks it 1st out of the 13 regional municipalities with regard to population size. The annual rate of population growth projected by the Department of Environment, Land, Water and Planning (**DELWP**) in 2019 is 2.3%, which is equal to the Victorian average rate of 2.3%. Greater Geelong's percentage of population over 50 years of age in 2019 (35%) was projected by DELWP in 2019 to be higher than the Victorian average (31.3%).
41. Key social and economic indices relating to the LGA are summarised as follows:
 - (a) the unemployment rate in the LGA as at March 2019 (6.0%) was the highest out of the 13 regional municipalities and the seventh highest in Victoria and above the regional rate (4.8%) and the Victorian rate (4.7%). The area within a 5km radius of the Premises had a similar rate of unemployment (6.1%) to the rate for the LGA;
 - (b) the rate of homelessness in the LGA was relatively low and it ranked 9th of 13 regional LGAs and 34th of all 79 Victorian LGAs, while the rate of homelessness in the Clifton Springs area (0.8) was much lower than the rate for the LGA (4.0) and the Victorian rate (5.1);
 - (c) the Equivalised Household Income (**EHI**) for Clifton Springs was \$802 per week. The EHI for the LGA was \$938.36, which was higher than the average for regional LGAs (\$893.07) but less than the average for all Victorian LGAs (\$1,028.24);
 - (d) the LGA was ranked 12th of 13 regional LGAs for having the highest rate of pensions and allowances, and 41st out of all 79 Victorian LGAs. The Clifton Springs area had a higher rate (293.5 per 1000 adults) than the Victorian rate (193.6 per 1000 adults) and the rate for the LGA (252.9 per 1000 adults);
 - (e) the crime rate in the LGA ranked as having the 11th lowest rate of 13 regional LGAs. Statistics for the year ending 2018 show that the crime rate is 21.8% lower than the regional rate and 7.6% higher than the Victorian rate;
 - (f) housing stress in the LGA was ranked the 1st (highest) of 13 regional LGAs in Victoria, and 27th out of 79 Victorian LGAs. 12.1% of households within 5km of the Premises are in the 1st quintile for housing stress and 24.2% are in the 2nd quintile; and
 - (g) in relation to SEIFA scores, the level of disadvantage in the area within the 5km immediately surrounding the Premises (978) indicates that it is slightly disadvantaged compared to the



LGA (994) and the Victorian average (1,010.45), though slightly less disadvantaged than on average compared to regional LGAs (972.49). However, the SEIFA score for the area within the 5km immediately surrounding the Premises (1,013) shows a relative lack of disadvantage compared to the LGA, the Victorian Average and the average of regional LGAs.

42. The LGA (together with the Borough of Queenscliffe) is subject to a limit on the maximum permissible number of gaming entitlements, in accordance with a Ministerial Order pursuant to sections 3.2.4 and 3.4A.5(3A) of the GR Act. The maximum permissible number of gaming machine entitlements is 1,421.¹⁵ Currently, there are 26 gaming venues within the LGA with approvals to operate a total of 1,437 EGMs, but with 1,292 entitlements currently attached and EGMs operating.
43. The LGA has an EGM density of 6.6 EGMs per 1,000 adults, which is 8.5% less than the regional LGA average (7.2) and 28.6% more than the State average (5.1). This ranks the LGA as the 10th lowest of 13 regional LGAs in terms of EGM density per 1,000 adults.
44. In the 2018/2019 financial year, the LGA had an average gaming expenditure of \$600.44 per adult (based on DELWP data from 2019), which is 1.84% less than the regional LGA average (\$611.67) and 13.75% more than the State average (\$527.88).
45. The ShineWing Report estimated that the new expenditure for the additional 10 EGMs (**the Additional EGMs**) would be up to \$237,614 during the initial 12 months in which they operated were the Application approved. Based upon the total gaming expenditure in the LGA of \$119,070,099.04 for the 2018/19 financial year, gaming expenditure would increase in the LGA by 0.20% per adult as a result of granting the Application.

Nature of Premises

46. The Premises includes:
 - (a) the gaming room with 40 EGMs, a bar and TAB;
 - (b) the 'Springs Bistro' and verandah area (150 seats, 150 standing capacity);
 - (c) a 'Members Room' with bar and veranda (60 seats, 120 standing capacity);
 - (d) an 18-hole golf course; and
 - (e) car parking.
47. The Premises' hours of operation are as follows:

¹⁵ See Ministerial Order under sections 3.2.4 and 3.4A.5(3A) of the GR Act dated 20 September 2017 and taking effect on 3 November 2017 (Victorian Government Gazette No. S 318 Wednesday 20 September 2017).



- (a) golf course & 'pro shop' — 7am to 5pm Monday to Sunday;
- (b) gaming room — 10am to 11.30pm Sunday to Thursday and 10am to 12.30am Friday and Saturday;
- (c) bar service — 10am to 11.30pm Sunday to Thursday and 10am to 12.30am Friday and Saturday;
- (d) bistro, coffee and cake — 10am to 11.30pm Sunday to Thursday and 10am to 12.30am Friday and Saturday; and
- (e) bistro meals — 12pm to 2pm Monday to Sunday and 6pm to 8pm Monday to Sunday.

Catchment area of the Premises

48. 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 is generally referred to as the 'catchment area'.¹⁶ The determination of the catchment area is significant to the Commission's identification of the residents of the LGA who will likely be affected by granting the Application, both in terms of gambling-related benefits and harms.
49. The defined immediate surrounding area for applications in this LGA is typically a 2.5km radius of an applicant's premises. While the Ratio Report considered that the primary catchment was the area within a 5km radius of the Premises, the K2 Report disagreed with this view and considered the area within a 2.5km radius of the Premises to be the primary catchment area.
50. The Applicant determined the patron profile for the Premises by conducting a suburb survey of the patronage of the gaming room during a five-week period between 22 March 2019 and 25 April 2019 (inclusive), including the holiday periods between these dates. Surveys were undertaken in the gaming room for every hour in which the room was operational.
51. Based upon the survey results, the Ratio Report stated that:
- (a) 43.7% of patrons resided in the suburb Clifton Springs;
 - (b) 75.7% of patrons resided in the primary catchment area (5km), consisting of the suburbs of Clifton Springs, Drysdale and Curlewis;
 - (c) 11.11% of patrons resided in nearby suburbs of Leopold and Portarlington; and
 - (d) between 0% and 2.6% of patrons surveyed resided in areas outside the LGA.
52. In this instance, the Commission considers that the gaming room patron survey provides a reliable

¹⁶ See for example, *Romsey No. 2* [2009] VCAT 2275; *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 (7 April 2011).



indication of the likely gaming patrons for the Premises, with almost half (43.7%) of those patrons residing in Clifton Springs. Having regard to the material and evidence put forward by the Applicant and the Council, and noting that the VCGLR Report considers that the 2.5km radius surrounding the Premises would not accurately reflect the immediate surrounding area, the Commission considers that the appropriate catchment area is the area within a 5km radius of the Premises. In determining this, the Commission has considered that the sea is northwest of the Premises and takes up a portion of the usual catchment area, as well as the fact that there are no competing venues within 5km of the Premises, indicating that residents to the LGA are likely to be willing to travel further than 2.5km to attend the Premises.

EGM Density & Expenditure

53. There are no competing gaming venues within 5km of the Premises and two competing gaming venues within 10 kilometres of the Premises. Noting the results of the patron survey referred to in paragraph 51, a large percentage of surveyed gaming patrons resided in Clifton Springs and the neighbouring area of Drysdale. The ShineWing Report referred to this and estimated that a notional transfer rate within the City of Greater Geelong would be 30%. In other words, it was submitted that approximately \$71,284.20 of the new expenditure (\$237,614 per annum) was expected to be transferred expenditure from other venues in the LGA.
54. Data from the DELWP in 2019 estimates the adult population of 202,327 in the LGA. Noting this estimate, the approval of the Application would:
 - (a) increase EGM density in the LGA from 6.62 to 6.67 per 1,000 adults;
 - (b) result in an increase to the average gaming expenditure per adult of \$1.00 or 0.18% in the LGA;
 - (c) increase the total number of licensed EGMs with attached entitlements in the LGA by 10, from 1,327; and
 - (d) on the estimate provided by the ShineWing Report, result in additional EGM expenditure of between \$194,412 and \$237,614, with 30% of expenditure likely to be transferred from other gaming venues in the LGA.
55. Mr Stillwell did not amend estimates provided within the ShineWing Report leading up to the date of the Hearing with respect to potential impacts of the COVID-19 pandemic.

Issues for determination



56. Pursuant to section 3.4.20 of the GR Act, the Commission cannot grant the Application unless it is satisfied of the following four matters:¹⁷
- (a) that the amendment of the venue operator's licence does not conflict with a direction given under section 3.2.3 of the GR Act;
 - (b) that the relevant municipal limit for EGMs applicable to the City of Greater Geelong will not be exceeded by the making of the amendment the subject of the Application;
 - (c) 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 the City of Greater Geelong (the '*no net detriment*' test); and
 - (d) if premises are proposed to be added to the Applicant's licence as an approved venue and the Applicant (or an associate of the Applicant) operates an approved venue within 100 metres of the Premises, that the management and operation of the Premises and other approved venues are genuinely independent of each other.
57. If having determined that these matters have been satisfied, the Commission is then required to exercise its discretion under section 3.4.20 of the GR Act 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.¹⁸

A. Directions given under section 3.2.3

58. 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.
59. There is no relevant direction issued pursuant to section 3.2.3 of the GR Act that relates specifically to this Application. As such, the Commission is satisfied that granting the Application would not conflict with a direction given under section 3.2.3 of the GR Act, and therefore considers that the mandatory pre-condition set out in section 3.4.20(1)(a) of the GR Act is satisfied.

B. Regional cap

60. As noted in paragraph 21 above, the LGA (together with the Borough of Queenscliffe) is subject to a regional cap on the number of EGMs under a Ministerial Order under sections 3.3.4 and 3.4A.5(3A) of the GR Act. The maximum permissible number of gaming machine entitlements in

¹⁷ 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.

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

the area covered by the LGA (together with the Borough of Queenscliffe) is 1,421.¹⁹ At the time of the Application, the number of EGMs licensed to operate within the combined region was 1,437, while there were 1,352 EGMs with attached entitlements in the combined area and 1,292 EGMs in operation.

61. It is the position of the Commission that an amendment of the conditions of a venue operator's licence to increase the number of EGMs permitted at an approved premises is incapable of resulting in a regional cap or municipal limit being exceeded. This is because a venue can be 'licensed' to operate a certain number of EGMs without having corresponding EGM entitlements 'attached' that are required to operate those EGMs.
62. 'Licensed EGMs' are the maximum permissible EGMs within an approved venue (ie. the premises have been considered suitable and approved to install up to this number). 'Attached EGMs' are the number of EGMs (together with a corresponding entitlement) attached and operating at an approved venue.
63. If the total number of Licensed EGMs exceeds the cap, this means that not all venues will be able to attach the full number of EGM entitlements they are licensed to operate at the same time. Were they able to do otherwise, this would result in more than the capped number of EGMs operating within the relevant area.
64. As outlined on page 7 of the VCGLR Report, there are already 1,437 Licensed EGMs across 28 gaming venues within the capped region, but only 1,327 Attached EGMs. As such, while any approval of this Application would result in the number of Licensed EGMs increasing to 1,447, the number of Attached EGMs would be 1,337, which is within the regional cap.
65. Since the introduction of the entitlements regime, the enforcement of capped numbers is managed through applications made under that regime (i.e. where a venue operator applies to the Commission to attach relevant EGM entitlements to an approved venue). At that time, the Commission (via a delegate) determines whether that attachment of EGM entitlements is permissible, taking into account the total current attached EGMs in a particular capped region or municipality and assessed against the relevant cap number.
66. The Commission is satisfied that granting the Application would not cause the relevant regional cap for gaming machines for the LGA (together with the Borough of Queenscliffe) to be exceeded, and therefore considers that the mandatory pre-condition set out in section 3.4.20(1)(b) of the GR Act is satisfied.

¹⁹ See Ministerial Order taking effect on 3 November 2017 (Victorian Government Gazette No. S 318 Wednesday 20 September 2017) signed on 20 September 2017 by the Hon. Ms Marlene Kairouz.

C. 'No net detriment' test

67. If the Application is granted, the Commission must be satisfied 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 B) is the Commission's assessment of the economic and social benefits and disbenefits associated with this Application, including the weighting given to each of these impacts.

Economic Impacts

68. The materials before the Commission and the evidence adduced at the Hearing provided the evidentiary basis for the consideration of economic benefits and disbenefits associated with the Application.

Expenditure on development works

69. The Applicant submits that a potential economic benefit associated with the Application comes from the expenditure on the proposed development works and the associated economic stimulus in the LGA.

70. The Applicant submits that if the Application is granted, improvements to the gaming area of the Premises to an estimated cost of \$77,500 will occur (**the Initial Works**) including:

- (a) Closure of the foyer entry which currently provides direct access to the gaming room from the main (southern) entry point;
- (b) The creation of a manager's office in place of the existing southern entry point to the gaming room;
- (c) The installation of a sliding door (with frosted glazing) and push button access along the eastern entry to the gaming room in lieu of the current opening door;
- (d) Closure of the carpark entry to the gaming room via the rear deck of the premises, adjacent to the gaming room;
- (e) Relocating the sign-in area to be more prominent upon entry into the Approved Premises; and
- (f) Installation of visibility screens within the gaming room.

71. The Applicant submits that the revenue from the Additional EGMs will enable it to undertake renovations to the club at a total cost of \$1,015,000, as described in the witness statement of Mr Zernich (**the Remaining Works**). The Applicant submits that the Remaining Works will not occur unless the Application is approved. The Remaining Works include renovating the outdoor deck



area at an estimated cost of \$560,000 and upgrading the kitchen area, including a replacement of kitchen equipment and an upgrade to the loading bay area, to an estimated cost of \$455,000.

72. The Applicant provided a copy of the planning permit PP-1112-2018 referred to in paragraph 24(c)iii above which permitted the Remaining Works associated with the proposed extension to the clubhouse.
73. The conditions proposed by the Applicant as referred to in paragraph 24(c)viii state that the Initial Works referred to in paragraph 70 would be completed prior to the installation of any of the Additional EGMs, while the Remaining Works described in paragraph 70 would be completed within 24 months following the operation of any of the Additional EGMs.
74. The Ratio Report assessed the \$1,092,500 investment in the Initial Works and Remaining Works (together, **the Works**) to be of 'negligible' benefit to the LGA, while the K2 Report assessed them to be of 'very low' benefit.
75. The Commission notes that evidence was not provided with respect to whether the COVID-19 pandemic is likely to affect the benefit associated with capital expenditure on the Works.
76. The Commission considers that the capital expenditure on the Works is an economic benefit but is careful to ensure that the benefits associated are not double-counted, having regard to the social impact that may result from the Works. This aspect is considered further below at paragraphs 155 to 159. The Commission considers that capital expenditure of \$1,092,500 is not insubstantial in the context of the anticipated new expenditure from the operation of the Additional EGMs. As such, the Commission considers that the benefit associated with capital expenditure should be given marginal to low weight.

Additional employment

77. The economic benefit to employment creation arising from this Application can be described as both short and long term.
78. In the Ratio Report it was indicated that granting the Application would result in the creation of 5.5 additional equivalent full time (**EFT**) positions at the Premises. Of these:
 - (a) 1.5 EFT positions related to the gaming room;
 - (b) 2.5 EFT positions related to the kitchen; and
 - (c) 1.5 EFT positions related to the bistro.
79. At the hearing, Mr Zernich gave evidence that of these additional employees, all were likely to be residents of the LGA, but there was no suggestion that this would be for any reason other than a greater willingness of prospective employees to seek employment locally.
80. The Ratio Report regarded the creation of additional positions of employment associated with the Application as of 'low' social benefit, and stated that these positions were likely to be filled by

residents of the LGA, but did not separately evaluate the weight which should be given to the economic benefit associated with these additional positions.

81. In the K2 Report, Dr Kerkin ascribed a 'very low' benefit to the increase in employment associated with the 5.5 EFT positions.
82. While Dr Kerkin submitted that these opportunities for employment clearly represented a positive outcome, reference was made to there being only 1.5 EFT positions linked to the gaming room, notwithstanding that all positions were conditional upon the grant of the Application. Accordingly, it was unclear whether she assessed the benefit of 1.5 EFT positions or 5.5 EFT positions when deciding to give a 'very low' weight to the positive effects of additional employment.
83. At the hearing, Mr Zernich stated that of the contractors which would be engaged to redevelop the Premises, the Applicant had a preference for local businesses. However, there was no suggestion that the Applicant would award tenders associated with the Works on a basis other than value for money.
84. The Commission notes that evidence was not provided with respect to whether the COVID-19 pandemic is likely to affect the benefit associated with additional employment.
85. Overall, the Commission regards the additional employment associated with the Application as a positive impact. While the Commission considers it likely that all 5.5 EFT positions will be filled by residents of the LGA, there is no guarantee that this will be the case. Similarly, while the Commission accepts that there is likely to be a need for an additional 5.5 EFT positions at the Premises, the Applicant has not proposed that the grant of the Application be conditional upon the creation of these positions. With respect to short-term employment, there is a lack of evidence to indicate that the Works will be undertaken by individuals who live in the LGA which impacts on the weight which the Commission should give to this factor. For these reasons, the Commission considers that additional employment is an economic benefit to the LGA which should be given marginal to low weight.

Community contributions

86. As noted in paragraph 17 above, it does not matter whether impacts are considered on the economic side or the social side, or both, so long as they are included and not double-counted. In this Application, the Commission has adopted the approach it took in *Lynbrook Tavern Pty Ltd at Lynbrook Hotel Premises*²⁰, and has determined to consider the impacts associated with any proposed community contributions as a single impact under the 'Social Impacts' section as set out in paragraphs 148 to 154 below.

²⁰ *Lynbrook Tavern Pty Ltd at Lynbrook Hotel Premises* (Gaming – EGM Increase) [2018] VCGLR 32 (31 July 2018).

Increased gaming competition in the City of Greater Geelong

87. Increasing competition in gaming in the City of Greater Geelong is a factor to be considered by the Commission in light of the statutory purposes of the GR Act²¹ and the consumer benefits that derive from competition.
88. The Ratio Report stated that increased competition in gaming is a relevant positive impact, though this should be given negligible weight given the small number of Additional EGMs and that the nearest competing gaming venues were approximately 10km away. At the Hearing, Ms Peterson explained that it was only during peak hours of operation that the Additional EGMs would have an impact in terms of choice and competition in gaming offered in the area. In her oral and written evidence, Ms Shannon also cited increased choice in EGMs as a driving factor behind the Application.
89. Neither the K2 Report nor the evidence of Dr Kerkin at the Hearing addressed the anticipated effects of increased gaming competition as a result of granting the Application.
90. The Commission regards the possibility of increased gaming contribution in the LGA as a benefit, though given the lack of competing venues in proximity of the Premises, the notional transferred expenditure rate of 30% adopted in the ShineWing Report, the relatively low number of Additional EGMs and the distance between the Premises and competing gaming venues, the Commission ascribes nil to marginal weight to this benefit.
91. The Commission notes that evidence was not provided with respect to whether the COVID-19 pandemic is likely to affect the benefit associated with increased gaming competition.

Supply contracts and complementary expenditure

92. Complementary expenditure is a potential benefit where it results in increased economic activity in the municipal district in which the premises that are the subject of an application are located. However, the extent of this benefit will depend upon a range of factors, including:
 - (a) the extent to which expenditure occurs within the LGA as a result of granting the Application, and which would not have otherwise occurred anywhere within the LGA (i.e. expenditure by tourists who travel from outside the LGA to visit the Premises specifically, as opposed to patrons who decide to visit the Premises instead of competing venues in the LGA); and
 - (b) the extent to which that complementary expenditure results in additional spending on local goods and services.

²¹ See GR Act, s 3.1.1(2).



93. The Ratio Report submitted that the estimated \$891,727 in complementary expenditure arising from the Applicant's ability to attract new business and provide an improved service was a benefit which should be given low weight.
94. Complimentary expenditure was not a factor which was discretely assessed by the K2 Report. As such, it is not possible to determine what weight Dr Kerkin gave to supply contracts and complementary expenditure without ascertaining whether this weighting has double-counted positive or negative factors associated with an approval of the Application.
95. The Applicant estimated that the value of supply contracts associated with the grant of the Application would be in the vicinity of \$552,920 within the initial 12 months if granted. The Applicant indicated that this would include increases to the expenditure associated with the Applicant's current cleaning contracts, gaming provider contracts, utilities and food and beverage supplies associated with the bistro and bar.
96. Neither the Ratio Report nor the K2 Report specifically addressed the impact of the anticipated increase in supply contracts which would result from granting the Application.
97. The Commission considers that the anticipated complementary expenditure would be of benefit to the extent that this is expenditure within the LGA which would not have otherwise occurred. Furthermore, the Commission notes that the benefit associated with complementary expenditure is an economic benefit and is cautious not to double-count this benefit by conflating it with the social benefit associated with providing improved facilities enabling a greater range of services at the Premises, when revenue associated with complementary expenditure is invested in providing an improved offering at the Premises.
98. The Commission notes that evidence was not provided with respect to whether the COVID-19 pandemic is likely to affect the benefit associated with supply contracts and complementary expenditure.
99. The value of supply contracts and complementary expenditure was estimated by the Applicant to be \$552,920 and \$891,727 respectively. The accuracy of this estimate was not disputed by the Council. In her oral evidence, Ms Peterson indicated that food and beverage purchases from suppliers would likely come from local providers due to the draw of hospitality in regions like Clifton Springs to showcase local wineries, cheese makers and bakers. She stated that products such as beer would come from non-local suppliers such as CEV and Tooheys.
100. As such, the Commission accepts the Applicant's estimates and assesses these two factors as having a combined benefit of nil to marginal weight.

Gaming expenditure not associated with problem gambling, and tax relief

101. To the extent that gaming expenditure is not associated with problem gambling, it has been



recognised that such expenditure can be treated as an economic positive.²² As Bell J notes in *Romsey No. 2*, this approach also brings to account the benefit obtained from pure consumption by the lone gambler who does not use EGMs for social reasons.²³

102. As noted in paragraph 44 above, the VCGLR Report outlines that the average net EGM expenditure per adult in the LGA for the 2018/19 financial year was \$600.44 which was 1.84% less than the regional LGA average of \$611.67 and 13.75% more than the State average (\$527.88).
103. As noted in paragraph 45 above, the ShineWing Report predicted that new expenditure as a result of granting the Application would be between \$194,412 and \$237,614. The Council did not lead any contrary evidence with respect to this estimated gaming expenditure, and as such, the Commission is satisfied that the figure of \$237,614 can be adopted in its analysis.
104. In the Ratio Report, Ms Peterson submitted that the \$237,614 would be minor in the context of the local economy. The Ratio Report added that the Applicant would receive tax relief to the value of approximately \$5,300 which would be reinvested in the Applicant's club activities. The Ratio Report considered that while the additional expenditure was of benefit to the LGA, it should be given negligible weight by the Commission as a positive impact.
105. Gaming expenditure not associated with problem gambling was not a factor which the K2 Report made specific reference to in its assessment, however it ascribed a 'negative moderate' weight to 'EGM expenditure' from the Additional EGMs generally. This seemed to suggest that Dr Kerkin regarded all EGM expenditure as a disbenefit to the LGA, which is not consistent with the view of Bell J referred to in paragraph 101 above.
106. While the Applicant would receive a \$5,300 p.a. tax saving as a result of the Application being granted, representing a hypothetical loss to the state, the Ratio Report submitted that this would be reinvested in the Applicant to improve its offering. The Commission considers that the reinvestment of the tax saving in the Applicant's activities offsets the disbenefit to the state. However, the Commission is careful to not double-count the benefit associated with the reinvestment (i.e. in improved services and facilities) with the offsetting of this disbenefit. As such, the Commission considers any tax saving to be a factor to which it assigns no weight.
107. Generally, the Commission considers that the portion of new expenditure not attributable to problem gambling is an economic benefit. As the anticipated new expenditure figures projected in the ShineWing Report were not disputed, the Commission relies upon these projections of expenditure resulting from the Additional EGMs and considers that this benefit should be given

²² See *Romsey No. 2* [2009] VCAT 2275 [351] per Bell J.

²³ *Ibid.* Bell J further notes at [352] that the other approach is to say (as Morris J did in *Branbeau Pty Ltd v Victorian Commission for Gambling and Liquor 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.



nil to marginal weight.

108. The Commission notes that evidence was not provided with respect to whether the COVID-19 pandemic is likely to affect the benefit associated with additional expenditure not related to problem gambling.

Gambling expenditure associated with problem gambling

109. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an economic disbenefit.²⁴ 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.
110. The Ratio Report considered that the improvements to the gaming room and additional staffing would offset the likelihood of problem gambling at the Premises.
111. In assessing the extent of this disbenefit, the Commission has had regard to the expenditure evidence set out in paragraph 45 above. In doing so, the Commission recognises that in considering this aspect of the '*no net detriment*' test it does not include consideration of transferred expenditure because such expenditure cannot be said to exacerbate problem gambling.²⁵

The potential vulnerability of the City of Greater Geelong to gambling-related harms

112. 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 potential vulnerability of the community of the City of Greater Geelong, and particularly those living in the catchment area surrounding 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.²⁶

²⁴ 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.

²⁵ See *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192 at [11] per Code PM and Nelthorpe M; *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J.

²⁶ This approach accords with the VCAT's treatment of this issue in *Molwin Pty Ltd v Mornington Peninsula SC* [2015] VCAT 1982 (23 December 2015), [68].



113. The VCGLR Report outlined that the LGA had a population of 233,429 based on ABS 2016 Census data and that this was expected to increase to 271,250 by 2021 and 301,560 by 2026 according to 2019 data from the Department of Environment, Land, Water and Planning. The VCGLR Report further outlined that population growth of 2.3% in the LGA was projected to be equal to the Victorian average for the 2019 year.
114. As explained in paragraph 41(g) above the SEIFA score illustrating the level of disadvantage in the 5km surrounding the Premises (978) indicates that it is slightly disadvantaged compared to the LGA (994) and the Victorian average (1,010.45), though less disadvantaged than regional LGAs generally (972.49). The SEIFA score for the area immediately surrounding the Premises (1,013) shows a relative lack of disadvantage compared to the LGA, the Victorian average and the average of regional LGAs.
115. In relation to disadvantage in socio-economic terms, the Commission also notes from the VCGLR Report that:
- (a) housing stress in the LGA is ranked the highest by regional LGAs in Victoria;
 - (b) while income levels in the LGA are the highest out of regional LGAs, in the SA1 and immediate surrounding area of the Premises, income levels are generally lower than in the LGA broadly; and
 - (c) the unemployment rate in the LGA was 6.9% as at September 2019, while the rate for regional LGAs was 4.8% and the rate for Victoria was 4.7%. Accordingly, the LGA was ranked as having the highest unemployment rate out of all 13 regional LGAs and the seventh highest rate in Victoria.
116. While the Productivity Commission Report estimates that 40% of gaming revenue is the result of problem gambling, the Ratio Report submitted that the adoption of this figure was not an accurate nor useful guide to predict the harms associated with problem gambling. At present, data with respect to the prevalence of problem gambling does little to assist the Commission's consideration of the vulnerability of the LGA.
117. The Ratio Report submitted that Clifton Springs is not a suburb that experiences significant disadvantage. Having considered the factors set out in paragraphs 112 to 116, the Commission is satisfied that while there are some markers of relative disadvantage in the SA1 area and at the LGA at large, neither are significantly disadvantaged compared to the indices for all Victorian LGAs.
118. In the Ratio Report, Ms Peterson submitted that the following factors indicated that it was unlikely that the risk of problem gambling at the Premises would increase as a result of granting the Application:



- (a) the nature of the Application, characterised as an application for additional machines at an existing venue, with pre-existing accessibility to gaming machines at the venue and at other venues within the LGA, compared to an application for a new gaming premises;
- (b) the Responsible Service of Gaming (**RSG**) practices of the Premises;
- (c) the alternate entertainment options at the Premises including golf and dining facilities;
- (d) that the modest number of Additional EGMs does not fundamentally change the 'attractiveness' of the venue for problem gamblers, given that factors such as 'anonymity' of players will remain unchanged, and given that any increase in risk is partially offset by the increase to staffing of the gaming room;
- (e) the reduction to the gaming room's visibility and accessibility as a result of the Initial Works, operating as a protective feature against problem gambling;
- (f) the venue experiences modest to high demand with large numbers of patrons through the entire venue on a weekly basis, with approximately 1,200 patrons accessing the gaming room on a weekly basis; and
- (g) that the modest to high net machine revenue of \$264.20 relative to the number of peak hours at the venue (5.4 peak hours per week) is likely to be a result of the overall success of the Premises and its lack of competition in the surrounding area.

119. The K2 Report outlined the Council's policy with respect to applications to amend venue operators' licences seeking to increase the number of EGMs at a gaming venue. While the K2 Report did not provide a view on the level of gambling likely to be attributable to problem gambling and whether the risk of increased problem gambling ought to result in a refusal of the Application, it stated that the policy of Council was to oppose applications where the level of disadvantage in the area was greater than the Victorian average.

120. In relation to the SEIFA scores explained in paragraph 114 above, the Commission considers that while there are some markers of disadvantage in the LGA and SA1 area, neither area is significantly disadvantaged in the context of SEIFA scores for Victoria.

RSG practices

121. The RSG Report reviewed the Applicant's RSG delivery, management processes and staff training. The RSG Report also assessed the Applicant's RSG Policy (dated October 2019) which outlined the Applicant's management of issues relating to RSG matters such as staff training, knowledge of RSG practices, customer engagement and its use of Gamblers Help resources.



The RSG Report assessed the Applicant as generally operating at a level of excellence with respect to RSG practices.

122. The oral evidence of Ms Shannon indicated that as the gaming manager of the Premises, she was familiar with the majority of its gaming patrons and that the Applicant had implemented sound RSG practices. She also described how the Applicant would respond to incidents in the gaming room and stated that the Applicant and its staff followed the Community Clubs Victoria Responsible Gambling Code of Conduct 2014.
123. In considering the extent to which any new expenditure arising from the Application 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 Applicant's RSG practices the Ratio Report stated that:
 - (a) the Premises is not a *convenience venue* as it is "well separated from any day to day retailing activities and accordingly, patrons make a conscious decision to attend the venue";
 - (b) the Premises includes a range of non-gaming facilities including a golf course and bistro with outdoor dining area and members' room. As the Premises provides a strong non-gaming offering, this is a protective factor against problem gambling;
 - (c) as a result of the Initial Works, the gaming room of the Premises will become less accessible and visible. This is because direct access to the gaming room of the Premises will be closed from the front entrance and the existing access point from the car park will be closed and converted to an emergency exit;
 - (d) the Works would also more effectively reduce visibility of the gaming room, and propose the installation of a screened door with "push button access" and the obstruction of line of sight into the gaming room from the main corridor;
 - (e) the broader food and beverage offer of the Premises will be visible, as gaming patrons will be required to follow a main corridor which leads directly to the bistro, with side access to the gaming room;
 - (f) the gaming room closes at 11:30pm five days a week, and at 12:30am for the remaining two days. This provides a 9.5-hour break in play at minimum which significantly exceeds the minimum 6-hour break recommended by the Productivity Commission;
 - (g) the bistro serves a limited menu at all times that the gaming room operates after 8pm; and
 - (h) the Applicant adopted a Responsible Service of Gambling Policy which outlines its commitment to responsible gambling, staff roles and responsibilities, harm minimisation measures and staff training.



124. The Commission considers that the RSG Report assesses the Applicant's RSG practices favourably with reference to the matters discussed in paragraph 123 and notes that the Initial Works will introduce and consolidate existing protective factors of the gaming room with respect to problem gambling at the Premises.

Other factors

125. The Compliance Report indicated that there was "a pattern of compliance in since the venue was first inspected" by VCGLR Inspectors in 2012. The Compliance Report also stated that an inspection was unable to be conducted for the specific purpose of the Application due to the shutdown of non-essential businesses in response to the COVID-19 pandemic.

126. The Commission notes that the Application seeks a modest number of additional EGMs in a pre-existing venue of a small to medium size. The Ratio Report described the Premises as having "modest-high EGM utilisation", and the gaming room operated with more than 70% utilisation for 27 hours over the five-week period in which surveys were taken. The ShineWing Report explained that in the case of venues with comparatively smaller gaming rooms, whilst there may be more than 30% of EGMs available, the condensed nature of the room and reduced range of differentiated products limits access to desired machines and therefore lowers the utilisation rate relevant to assessing foregone expenditure.

127. Having considered the EGM utilisation rate and the number of the Additional EGMs sought in the context of the small to medium size of the gaming room, the Commission is satisfied that granting the Application would primarily serve to increase choice of EGM, rather than provide opportunities for problem gambling in an area where these opportunities are otherwise unavailable.

The Commission's view

128. The Ratio Report submitted in relation to the economic disbenefit associated with problem gambling that "There is a disbenefit, albeit uncertain in size, in higher costs to health and service providers and lower spending on local goods and services", and that this was of disbenefit to the LGA but should be given negligible weight.

129. In contrast, the K2 Report placed a high weight on the potential disbenefit associated with problem gambling, although its assessment appeared to primarily compare the Council's policy against the Application rather than assess the Application against the 'no net detriment' test. While the K2 Report assessed some factors relevant to the legislative test before the Commission, it does not appear that this potential disbenefit was evaluated separately from the other 'impact categories' set out by the report. The Commission therefore cannot be confident that the



assessment of this potential disbenefit as of high weight is one that only takes into account this particular impact of the Application.

130. The Commission accepts that there are some indicators of disadvantage in the LGA. In particular, as summarised in paragraph 41, it notes that levels of unemployment and housing stress in the LGA are the highest of all regional LGAs. While the Commission gives serious consideration to this statistic, the following data recorded by the VCGLR and referred to by the Ratio Report indicate that the high level of unemployment may be to some extent attributable to demographic and lifestyle factors of its inhabitants (i.e. a desire to retire on the coast) rather than an inability to find and retain paid employment:

- (c) the highest EHI of all regional LGAs, and 34th highest of all Victorian LGAs (VCGLR Report);
- (d) a relatively high rate of pensions and allowances (VCGLR Report);
- (e) median house prices which are significantly higher than the regional Victorian average (Ratio Report);
- (f) significantly higher levels of home ownership with no mortgage (owned outright) and higher levels of home ownership with a mortgage in the Premises' catchment area than in Victoria generally (Ratio Report); and
- (g) a relatively high number of retirees and senior retirees in the SA1 compared to the LGA (K2 Report).

131. Given the above, the Commission is satisfied that while the indicia referred to above may correlate with vulnerability to gambling related harms, when interpreted within the geographic and demographic context of the area in which the Premises are located, the patrons of the Premises are not likely to be especially vulnerable to gambling-related harms.

132. The Commission also considers that additional new gaming expenditure, of between \$194,412 and \$237,614, in the 12 months following the operation of the Additional EGMs to the LGA is low, and that this suggests that the proportion which could be related to problem gambling at the Premises is also low.

133. The Commission agrees that the factors listed in paragraph 117 above indicate that the gaming room at the Premises does not present a high risk with respect to problem gambling. The Commission considers that the evidence of Ms Shannon referred to in paragraph 122 suggests that the Premises has adopted and implemented sound RSG practices. Further, the Commission refers to the features of the Premises outlined in paragraph 123 including the Initial Works to the



gaming room, the limited hours of operation of the gaming room and the broader offering of the Premises as protective features against problem gambling.

134. Ultimately, while the Commission considers that any possible incidence of problem gambling is an economic disbenefit, in this case this disbenefit should be given nil to marginal weight.
135. The Commission notes that evidence was not provided to address whether the COVID-19 pandemic is likely to affect the disbenefit associated with problem gambling.

Diversion of trade from other gaming venues

136. The ShineWing Report adopted a notional 30% transferred expenditure rate in its analysis which was referred to by the Ratio Report which ascribed 'negligible' weight to the disbenefit associated with the possible diversion of trade from gaming venues in the LGA which would result from granting the Application.
137. Submissions were not made by or on behalf of Council addressing how granting the Application would affect competing gaming venues in the LGA.
138. The Commission notes that there are no competing venues within 5km of the Premises and that the nearest two are approximately 10km away. Considering this, the Commission's view is that the effect of granting the Application upon competing gaming venues is a disbenefit which should be given no weight.

Diversion of trade from non-gaming businesses

139. The Ratio Report gave possible disbenefit of reduced spending in non-gaming businesses in the LGA 'negligible' weight. The Council Report did not consider the impact of granting the application on local businesses with respect to the diversion of trade.
140. The Commission considers that while the improvements to the non-gaming aspects of the Premises represent a benefit to the LGA which is separately considered in paragraph 155 below, the improvement to its offering and attractiveness of the Premises associated with the completion of the Works may result in less expenditure in non-gaming venues within the LGA. While difficult to quantify the extent of this possible detriment on the evidence before it, it is noted that the Premises' overall improved offering as a result of granting the Application, including the provision of competitively-priced meals, has the potential to divert income from competing restaurants. Therefore, the Commission considers this to be a disbenefit which should be given marginal weight.
141. The Commission notes that evidence was not provided with respect to whether the COVID-19 pandemic is likely to affect this detriment.



Conclusion on economic impacts

142. After considering the economic benefits of the Application and balanced against the disbenefits, the Commission considers that, on balance, the Application is likely to have a marginally beneficial economic impact if granted.

Social Impacts

143. The materials before the Commission and the evidence adduced at the Hearing outline the following social benefits and disbenefits associated with the Application.

Increased gaming opportunities for those who enjoy gaming

144. Increased gaming opportunities are considered to be a positive impact if the Application will better serve the needs of gaming patrons by providing additional opportunities and choice for those who choose to play EGMs.

145. The Ratio Report assessed this possible benefit as being of low weight due to the pre-existing access to machines both at the Premises and the LGA. The Ratio Report stated that the purpose of the Application was primarily to increase the Premises' patrons' choice of EGM.

146. The Council did not provide a view on what weight the Commission ought to give this factor.

147. The Commission generally accepts the view expressed within the Ratio Report and Ms Shannon's evidence. For reasons discussed in paragraph 125 and 127 above, the Commission considers that the Application would primarily serve to increase choice of EGM and access to preferred types of EGM rather than increase accessibility to EGMs generally. As such, the Commission considers that there is some benefit in providing patrons with more choice of EGM but notes the relatively modest number of additional EGMs proposed by the Application and accordingly attributes nil to marginal weight to this benefit.

Social benefit derived from increased community contributions

148. As noted in paragraph 86 above, the Commission has decided on this occasion to consider the economic and social benefits of increased community contributions together.

149. The Applicant submitted that if the Application were granted, it would contribute \$10,000 annually to not-for-profit community and sporting organisations providing services and facilities to residents in the LGA, in addition to maintaining its current level of cash contributions. In accordance with this submission, the Applicant proposed that granting the Application be conditional upon the Applicant making additional cash contributions of \$10,000 per annum (indexed by CPI), in addition



to requiring it to make contributions of \$4,127.27 per annum, being an amount representing its current level of contributions.

150. The Ratio Report stated that the additional contributions of \$10,000 would be donated to community organisations including local state schools, the Men's Shed, the Historical Society and Cottage by the Sea.
151. The K2 Report agreed that the community contributions would be of benefit to the LGA, but qualified this by stating that they should be given 'very low weight' by the Commission. The K2 Report did not provide its own reasons for proposing this weighting aside from referring to the 'negligible' weighting given to this factor in the Ratio Report.
152. The Commission considers that while the Applicant choosing to maintain its current level of cash contributions should not be regarded as a benefit associated with granting the Application, it is clearly of some benefit to the LGA if the Applicant is required to continue making contributions as a result of granting an application in circumstances where it would otherwise not be required to do so.
153. The Commission also notes that the Applicant provides 'in kind' contributions to the community as discussed in paragraph 38 above, and states that these are to the value of over \$52,000. As the Applicant has not proposed to increase or maintain these non-financial contributions, the Commission considers that this cannot be said to represent a benefit associated with granting the Application.
154. Having considered the matters in paragraphs 148 to 152 above, the Commission considers that while the additional contributions and commitment to maintaining current contributions are both of benefit to the LGA, the monetary value of the contributions proposed is quite low when considered in the context of the estimated new expenditure associated with the Application. As such, this is a benefit on which the Commission places nil to marginal weight.

Improved facilities enabling greater range of services

155. Separate from the economic benefit that may be associated with expenditure involved in capital works at the Premises, there are also potential social benefits to the community that may arise having regard to the nature of the development works that are intended to take place.
156. As outlined in paragraph 71 it is expected that \$560,000 will be spent on renovating the outdoor deck area and \$455,000 will be spent on upgrading the kitchen area, including a replacement of kitchen equipment and an upgrade to the loading bay area.
157. The K2 Report assessed any benefit associated with improvements to the venue as being of 'very low' benefit to the LGA. The K2 Report appeared to justify this weighting by referring to the 'negligible' weight ascribed by the Ratio Report to the factor of 'investment in club renovations'.



However, the factor of 'investment in club renovations' in the Ratio Report referred to the total capital expenditure of \$1,092,500 with respect to the Works, which is separate from the low weight which the Ratio Report gave to the improved facilities which would result from granting the Application. Therefore, it was not clear whether the K2 Report suggested that the Commission give any particular weight to the benefit of improved facilities at the Premises.

158. The Commission notes that the social benefit associated with the Works will likely be deferred for 24 months or longer, and the effect of this deferral is a reduction of the social benefits associated with their completion, though difficult to quantify.
159. The Ratio Report gave low weight to the possible benefit associated with the improved layout, additional facilities and improved service which would be offered by the Applicant were the Application approved. The Commission accepts that this social benefit should be given marginal to low weight, noting that the Works entail improvements to the offering of the Premises which patrons are currently able to enjoy, rather than creating new facilities with a qualitatively different offering.

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

160. 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.
161. The Commission refers to and relies upon the evidence set out in paragraphs 112 to 130 with respect to the economic impact of problem gambling on the community, which equally applies to the social impact of problem gambling.
162. In assessing the likely social impacts of problem gambling on the community of the LGA, the Ratio Report considered that the improvements to the gaming room and additional staffing would offset the possible detriment associated with problem gambling. The Ratio Report considered that the social detriment associated with the possible increased incidence in problem gambling should be given low weight.
163. The Commission notes that the Applicant operates as a club rather than a privately owned and incorporated entity. Accordingly, the Commission considers that the Applicant is motivated by more than simply maximising profit through EGM revenue. Considering this in light of the Premises' RSG practices discussed in paragraphs 121 to 122, the Commission considers that the gaming venue at the Premises is not of high risk.
164. Further to this, the RSG Report and RSG policy referred to in paragraphs 121 and 124 together with the proposed improvements to the layout of the venue and additional staffing which will



further enhance RSG practices bear upon the weight which the Commission should give to the possible social detriment associated with problem gambling at the Premises. While the Commission is attentive towards the possible social impacts of problem gambling, it considers that the Application does not present a high level of risk and that the possibility of increased incidence and potential impact of problem gambling on the community should be given marginal to low weight.

165. The Commission notes that evidence was not provided with respect to whether the COVID-19 pandemic is likely to affect the disbenefit associated with the potential negative impact of problem gambling.

Community attitude

166. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,²⁷ 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 the particular social impact within, and as part of, the 'no net detriment' test.

167. The evidence before the Commission with respect to community attitude towards the Application includes:

- (a) evidence from the Council which made submissions in opposition to the Application as the representative body of the relevant community, and appeared at the Hearing represented by Counsel; and
- (b) correspondence referred to in paragraph 25 from the G21 Geelong Region Alliance, Geelong Interchurch Social Justice Network and an individual objector which expressed opposition to the Application; and
- (c) the submission referred to in paragraph 25(c).

168. The K2 Report outlined the policy of the Council in determining whether to oppose EGM applications. Some of the key factors considered by the Council in determining whether to do so are:

- (a) the presence of indicators of relative socio-economic disadvantage in the area surrounding the premises;
- (b) the presence or absence of social networks;

²⁷ 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.



- (c) the presence or absence of a wider offering with a primary purpose or focus other than gaming;
- (d) limited hours of operation;
- (e) whether a premises is a *convenience* or *destination* venue;
- (f) EGM density in the area; and
- (g) RSG practices of gaming premises.

169. The submission from G21 Geelong Region Alliance provided some analysis relevant to the LGA and the Application, including statistics with respect to SEIFA scores and its analysis of disadvantage levels in the catchment area LGA, which the Commission has also considered in paragraph 41 above.
170. The submission from the Geelong Interchurch Social Justice Network expressed what appeared to be blanket opposition to EGMs. Statements were made that “Responsible Gambling is an Oxymoron”, “poker machines cause such harm in our community that every application for an EGM license to the Commission should be rejected” and “The main objection is that the EGM industry constitutes an existential hazard to the Club’s members”. The Commission notes that its task in determining the Application is not to assess whether EGM use is generally desirable, but to determine each application in accordance with the legislative framework set out by Parliament, with reference to the benefits and disbenefits unique to each application.
171. In the case of *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation & Anor*,²⁸ VCAT considered the significance of community opposition to an application for the approval of a new gaming premises. The Commission considers that in the Romsey case, the community opposition concerned the introduction of gaming machines into the only hotel in Romsey. This can be distinguished from the Application which seeks a modest *top-up* of EGMs. The Commission does not consider that the character of the Premises or the surrounding area would be qualitatively changed from a non-gaming area into a gaming area as a result of granting the Application.
172. Considering that the Application is for the approval of additional EGMs at a pre-existing venue and noting the limited community opposition to the Application, the Commission determines that community opposition to the Application is a disbenefit which should be given no to marginal weight.
173. The Commission notes that evidence was not provided with respect to whether the COVID-19 pandemic is likely to affect the disbenefit associated with the potential negative impact of community attitude.

²⁸ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation & Anor* (Occupational and Business Regulation) [2009] VCAT 2275 (12 November 2009).

Conclusion on social impacts

174. After considering the social benefits of the Application and balanced against the disbenefits, the Commission considers that there is likely to be a neutral social impact if the Application is granted.

Net economic and social impact

175. The '*no net detriment*' test in section 3.4.20(1)(c) of the GR Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. This test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impact of approval on the well-being of a relevant community will be either neutral or positive.²⁹

176. After consideration of the material before it, including the evidence provided at the Hearing (and weighted as outlined above and summarised in tabular form at 'Appendix B' below), the Commission is satisfied that the social and economic impact on 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 the LGA. Accordingly, the pre-condition set out in section 3.4.20(1)(c) of the GR Act is satisfied, and the Commission determines to amend the venue operator's licence.

D. Independence from other gaming venues

177. Section 3.4.20(1)(d) of the GR Act requires the Commission to be satisfied that, if the Premises are proposed to be added to the Applicant's licence as an approved venue and the Applicant (or an associate of the Applicant) operated an approved venue within 100 metres of the Premises, the management and operation of the Premises and other approved venues are genuinely independent of each other.

178. The Commission notes that the Application is not proposing to add the Premises to the Applicant's venue operator's licence (as it already exists on the licence), nor does the Applicant (or an associate) operate an approved venue within 100 metres of the Premises.

179. On this basis, the Commission considers that the mandatory pre-condition set out in section 3.4.20(1)(d) is not applicable to this Application.

CONCLUSION

180. On the material before it, the Commission has determined that the '*no net detriment*' test has

²⁹ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 at [52] per Dwyer DP.



been satisfied³⁰ and that granting the Application will not result in exceeding the regional cap set pursuant to section 3.4A.5 of the GR Act. Pursuant to section 3.4.20(1) of the GR Act, the Commission is satisfied that it should exercise its discretion to approve the Application and make the proposed amendment to the venue operator's licence to vary the number of EGMs permitted on the Premises from 40 to 50, subject to the Conditions at Appendix A below.

The preceding 180 paragraphs and the following Appendix are a true copy of the Reasons for Decision of Ms Deirdre O'Donnell, Deputy Chair, and Ms Danielle Huntersmith, Commissioner.

³⁰ See paragraphs above.



Appendix A

Conditions of the Decision of the Commission dated 14 April 2020 to vary the number of electronic gaming machines (**EGMs**) permitted in the Approved Premises, the Clifton Springs Golf Club, located at 92-94 Clearwater Drive, Clifton Springs, from 40 to 50.

Conditions imposed under section 3.4.20(3) of the *Gambling Regulation Act 2003*.

1. The Works:

- (a)** In accordance with section 3.4.20(3C) of the Gambling Regulation Act 2003 (GR Act), the amendment the subject of this Decision does not take effect until the Works defined in clause 1(b) are completed to the satisfaction of the Victorian Commission for Gambling and Liquor Regulation (the Commission).
- (b)** For the purpose of clause 1(a), “the Works” comprise the works to the Approved Premises shown on the plans prepared by Scott Building Design (Proposed Pokie Room Layout) dated 7 October 2019 and which include:
 - i.** Closure of the foyer entry which currently provides direct access to the gaming room from the main (southern) entry point;
 - ii.** The creation of a manager’s office in place of the existing southern entry point to the gaming room;
 - iii.** The installation of a sliding door (with frosted glazing) and push button access along the eastern entry to the gaming room in lieu of the current opening door;
 - iv.** Closure of the carpark entry to the gaming room via the rear deck of the premises, adjacent to the gaming room;
 - v.** Relocating the sign-in area to be more prominent upon entry into the Approved Premises; and
 - vi.** Installation of visibility screens within the gaming room.
- (c)** In accordance with section 3.4.20(3) of the GR Act, the Remaining Works defined in clause 1(d) must be substantially completed in accordance with clause 1(d) to the satisfaction of the Commission by the date that is 24 months after the commencement of the operation of any of the additional ten (10) electronic gaming machines (the Additional EGMs) at the Approved Premises.
- (d)** For the purpose of clauses 1(c) – 1(g) the “Remaining Works” are the works to the Approved Premises referred to in paragraphs 4.1.3, 4.1.4, 4.1.7 and 4.1.8 of the Social and Economic Impact Assessment prepared by Ratio Consultants dated November 2019, which relate to the expansion of the outdoor deck areas and kitchen refurbishment.
- (e)** If the Remaining Works are not completed by the date that is 24 months after the



commencement of the operation of any of the Additional EGMs at the Club, the operation of the Additional EGMs must cease immediately until the Commission is satisfied that the Remaining Works have been substantially completed.

- (f)** The Commission may, on the request of the Venue Operator, agree to extend the time for completion of the Remaining Works. The request must be made no later than the date that is 21 months after the commencement of the operation of any of the Additional EGMs. Without limiting the matters that may be taken into consideration by the Commission in determining any extension of time, any request for an extension of time must include an explanation as to why the Remaining Works have not been completed.
- (g)** If the Commission agrees to extend the time for completion of the Remaining Works in accordance with clause 1(f), the Commission may require that any of the Additional EGMs cease operation during the period of any extension of time granted by the Commission.

2. Community Contributions

- (a)** The Venue Operator will make cash contributions to community groups referred to in clause 2(b), in addition to the Existing Contributions defined in clause 2(c), in the sum of \$10,000.00 (increased each year by the increase in CPI) (the Additional Contributions) for each year during which any of the Additional EGMs operate at the Approved Premises for as long as any of the Additional EGMs are in operation at the Approved Premises.
- (b)** The Additional Contributions will be allocated each year to not-for-profit community groups and sporting organisations providing services and facilities to residents in the City of Greater Geelong.
- (c)** The Venue Operator will continue to pay existing cash contributions to not-for-profit community and sporting groups in the City of Greater Geelong in an amount not less than \$4,127.27 per annum (the Existing Contributions), in addition to the Additional Contributions, for as long as any of the Additional EGMs are in operation at the Approved Premises.
- (d)** If any part of the Existing Contributions or Additional Contributions remain unallocated at the end of each annual reporting period, the Venue Operator must cease the operation of all Additional EGMs at the Approved Premises for as long as any part of the Existing Contributions or Additional Contributions remain unallocated.



Appendix B

Summary of economic and social impacts

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

Economic impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	Expenditure on development works	69 to 76	Renovations and refurbishments at total cost of \$1,015,000 are substantial compared to the projected new expenditure from the Additional EGMs, though completion may be deferred for 24 months following grant of the Application. Positive impact, marginal to low weight.
	Additional employment	77 to 85	There is a lack of evidence regarding the short term employment benefit associated with the proposed development works at the Premises. The creation of 5.5 EFT long-term employment positions in the LGA is of benefit, particularly given the high levels of unemployment in the catchment area. Positive impact, marginal to low weight.
	Community contributions	86	In relation to the community contributions, see ' <i>social benefit derived from increased community contributions</i> ' below.



	Impact	Paragraph numbers	Comment relevant to weight
	Increased gaming competition in the City of Greater Geelong	87 to 91	The Commission regards the possibility of increased gaming contribution in the LGA as a benefit, though given the lack of competing venues in proximity to the Premises, the notional transferred expenditure rate of 30% adopted in the ShineWing Report, the relatively low number of Additional EGMs and the distance between the Premises and competing gaming venues, the Commission ascribes nil to marginal weight to this benefit.
	Supply contracts and complementary expenditure	92 to 100	The Commission considers that the anticipated complementary expenditure would be of benefit to the extent that this is expenditure within the LGA which would not have otherwise occurred. The value of supply contracts is uncertain, so the Commission cannot put significant weight on this factor. However, the complementary expenditure of approximately \$552,920 is a benefit on which the Commission places nil to marginal weight.
	Gaming expenditure not associated with problem gambling	101 to 108	<p>The portion of new expenditure not attributable to problem gambling is an economic benefit.</p> <p>The Commission accepts the figures projected in the ShineWing Report and determines that new expenditure is likely to be between \$194,412 and \$237,614.</p> <p>While there is likely to be an economic benefit, this should be given nil to marginal weight given the modest number of new EGMs and projected expenditure.</p>
	Tax relief	107	While the Applicant would receive a \$5,300 p.a. tax saving as a result of the Application being granted, representing a hypothetical loss to the state, this will ultimately be reinvested in the Applicant to improve its offering. As such, the Commission gives this impact no weight and is careful not to double-count the benefit associated with the reinvestment of this tax saving.



	Impact	Paragraph numbers	Comment relevant to weight
Disbenefits	Gambling expenditure associated with problem gambling	109 to 135	<p>SEIFA indices indicate some aspects of disadvantage, though these are sufficiently balanced by the positive indicia such that the catchment area is less predisposed to gambling related harms than on average.</p> <p>The RSG policy and practice of the venue will further mitigate some risk with respect to problem gambling. The nature of the Applicant as a club rather than a company in which shares are privately held or publicly traded gives the Commission confidence that RSG practices will continue to be a priority of the Applicant.</p> <p>While this is clearly a disbenefit, it should only be given nil to marginal weight.</p>
	Diversion of trade from other gaming venues	136 to 138	<p>The Commission notes that there are no competing venues within 5km of the Premises and that the nearest two are approximately 10km away. Considering this, the Commission's view is that the effect of granting the Application upon competing gaming venues is a disbenefit which should be given no weight.</p>
	Diversion of trade from non-gaming businesses	139 to 141	<p>The increased offering and attractiveness of the Premises associated with the completion of the Works may result in less expenditure in non-gaming venues within the LGA.</p> <p>While difficult to quantify the extent of this possible detriment on the evidence before it, the Commission considers this to be a disbenefit which should be given marginal weight.</p>



Social impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	Increased gaming opportunities for those who enjoy gaming	144 to 147	While there is some positive value in providing patrons with more choice of EGM, given the scale of the Application and the limited enjoyment represented by 'increased choice' of EGM, this is a benefit which should be given nil to marginal weight.
	Social benefit derived from increased community contributions	148 to 154	While the additional contributions and commitment to maintaining current contributions are both of benefit to the LGA, the monetary value of the contributions is low in the context of the Applicant's expenditure and income. As such, this is a benefit on which the Commission places nil to marginal weight.
	Improved facilities enabling greater range of services	155 to 159	The Commission's view is that this social benefit should be given marginal to low weight, noting that the Works entail improvements to the Premises' current offerings which patrons are already able to enjoy, rather than resulting in qualitatively different offerings. Positive impact, marginal to low weight.



	Impact	Paragraph numbers	Comment relevant to weight
Disbenefits	Possibility of an increased incidence and potential impact of problem gambling on the community	160 to 165	<p>Noting the demographic features of the catchment area, the nature of the Premises and the nature of the Application, the Commission's view is that while any increased incidence of problem gambling represents a potential harm to the community of the LGA, the Application is not 'high risk' with respect to the possible social detriment associated with problem gambling.</p> <p>Negative impact, marginal to low weight.</p>
	Community attitude	166 to 173	<p>Of the limited evidence of community attitude presented in opposition to the Application, this was generally expressed in terms of outright opposition to EGM use, rather than commenting upon negative features of either the Applicant, the Premises or the Application.</p> <p>Negative impact, no to marginal weight.</p>