



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 Darebin RSL Sub-Branch Inc to amend its venue operator's licence to vary the number of electronic gaming machines permitted in the approved premises, the Darebin RSL, located at 402 Bell Street, Preston, from sixty-five (65) to eighty (80).

Commission:

Mr Ross Kennedy, Chair
Dr Dina McMillan, Commissioner

Appearances:

Ms Louise Hicks, Counsel for the Applicant (instructed by Williams Winter Solicitors)
Mr John Rantino and Ms Kate Lyle, Maddocks Solicitors, representing the Darebin City Council
Ms Michelle Miller and Ms Amy Rudolph, Counsel Assisting the Commission

Dates of Hearing:

13 April 2018, 20 April 2018 and 27 April 2018.

Date of Decision:

4 May 2018

Date of Reasons:

1 June 2018

Decision:

The Application is granted subject to the conditions set out in Appendix A.

Signed:

A handwritten signature in black ink, appearing to read 'Ross Kennedy'.

Ross Kennedy
Chair



REASONS FOR DECISION

INTRODUCTION

1. On 21 December 2017, the Darebin RSL Sub-Branch Inc (**the Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) to amend its venue operator's licence to vary the number of gaming machines permitted at the approved premises, the Darebin RSL, located at 402 Bell Street, Preston (**the Premises**), from sixty-five (65) to eighty (80) (**the Application**).
2. The relevant municipal authority is the Darebin City Council (**the Council**). By correspondence to the Commission dated 8 February 2018, the Council stated that it intended to make a written submission (together with supporting documents) to oppose the Application and it did so on 6 March 2018.
3. The Commission considered the Application by way of a public inquiry conducted on over three days, on 13, 20 and 27 of April 2018 (**the Hearing**).¹ The Applicant was represented by Ms Louise Hicks of Counsel, instructed by Williams Winter Solicitors. Council was represented by John Rantino and Kate Lyle of Maddocks Solicitors.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Gambling on gaming machines is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (**GR Act**). The GR Act recognises that, notwithstanding individual rights of self-determination, gaming on gaming machines causes harm to some communities and some members of some communities. For this reason, the GR Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some, and a potentially harmful activity for others.
5. The objectives of the GR Act are set out at section 1.1, which provides:
...
(2) *The main objectives of this Act are—*
 - (a) *to foster responsible gambling in order to-*
 - (i) *minimise harm caused by problem gambling; and*
 - (ii) *accommodate those who gamble without harming themselves or others;*

¹ The Commission is required to conduct a public inquiry in relation to the Application pursuant to s 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 Part 3 Division 2 (Inquiries) and Part 2 Division 3 (Performance and exercise of the Commission's functions, powers and duties) of the VCGLR Act.



- (ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*
- (b) *to ensure that gaming on gaming machines is conducted honestly;*
- (c) *to ensure that the management of gaming equipment and monitoring equipment is free from criminal influence and exploitation;*
- (d) *to ensure that other forms of gambling permitted under this or any other Act are conducted honestly and that their management is free from criminal influence and exploitation;*
- (e) *to ensure that-*
 - (i) *community and charitable gaming benefits the community or charitable organisation concerned;*
 - (ii) *practices that could undermine public confidence in community and charitable gaming are eliminated;*
 - (iii) *bingo centre operators do not act unfairly in providing commercial services to community or charitable organisations;*
- (f) *to promote tourism, employment and economic development generally in the State.*

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

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



- (b) *promote a competitive gaming industry with the aim of providing financial and social benefits to the Victorian community.*

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

8. 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.

9. 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

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

- (1) *Subject to this section, after receiving a copy of a request for an amendment referred to in section 3.4.18(2), a municipal council may make a submission to the Commission—*

- (a) *addressing the economic and social impact of the proposed amendment on the well-being of the community of the municipal district in which the approved venue is located; and*

- (b) *taking into account the impact of the proposed amendment on surrounding municipal districts.*

...

² The Applicant provided the Commission with a proof of delivery email dated 20 December 2017, which the Commission regarded as sufficient evidence for the purposes of s 3.4.18(2) of the GR Act.



11. Section 3.4.20 sets out matters that are required to be considered by the Commission with respect to such a proposed amendment. Relevantly for 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—*
- ...
- (b) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the regional limit or municipal limit for gaming machines for the region or municipal district in which the approved venue is located will not be exceeded by the making of the amendment; and*
- (c) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the net economic and social impact of the amendment will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located;*
- ...
12. Section 3.4.20(1)(c) (outlined above) 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
13. The GR Act does not specify the matters which the Commission must consider in deciding whether the '*no net detriment*' test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:
- (a) the likely economic impacts of approval;
- (b) the likely social impacts of approval; and
- (c) the net effect of those impacts on the well-being of the relevant community.⁴
14. As such, the '*no net detriment*' test is a composite test requiring consideration of a single net impact in economic and social terms on the well-being of the community.⁵ The test will be satisfied if, after weighing any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.

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

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* [2009] VCAT 2275, [332], [348] per Bell J ('**Romsey No. 2**') cited in *Mount Alexander Shire* [2013] VCAT 101, [58] per Dwyer DP.



15. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.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
16. 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
17. If the Commission is not satisfied that the ‘*no net detriment*’ test is met, that is clearly fatal to the application before it, as given the opening words of section 3.4.20(1) of the GR Act, satisfaction of the test is a mandatory pre-condition to approval. 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 application.⁹ The Commission must decide whether to make the proposed amendment, with or without any changes from that proposed by the applicant, even where the applicant has satisfied the minimum threshold of the ‘*no net detriment*’ test.¹⁰
18. In considering the exercise of this discretion:
 - (a) it must be exercised having regard to the purposes of the GR Act and, in particular, the specific purposes of Chapter 3 of the GR Act dealing with the regulation, supervision and control of gaming machines;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

⁶ *Mount Alexander Shire* [2013] VCAT 101, [57] per Dwyer DP.

⁷ See *Romsey No. 2* [2009] VCAT 2275, [352] per Bell J; *Mount Alexander Shire* [2013] VCAT 101, [58] per Dwyer DP.

⁸ *Mount Alexander Shire* [2013] VCAT 101, [60] per Dwyer DP.

⁹ See *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921 (**‘Ocean Grove’**), [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192 (**‘Bakers Arms’**), [126] per Code PM and Nelthorpe M; see also *Mount Alexander Shire* [2013] VCAT 101, [97] and following per Dwyer DP (with respect to section 3.3.7 GR Act).

¹⁰ GR Act, section 3.4.20(2).

¹¹ *Mount Alexander Shire* [2013] VCAT 101, [98] per Dwyer DP.

¹² *Ocean Grove* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire* [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms* [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.



19. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*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.
20. Finally, pursuant to section 3.4.20(1)(a) of the GR Act, the Commission must be satisfied that the proposed amendment does not conflict with a Ministerial direction, if any, given under section 3.2.3 of the GR Act. Additionally, pursuant to section 9(4) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)*, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation.
21. The Ministerial Guidelines dated 14 October 2013, “Assessment of children’s play areas within gaming premises” (the Guidelines), are relevant to this Application as the Applicant currently has a children’s play area within the approved premises and has indicated that it proposes to have a “children’s lounge” in the Application.¹⁴ The Commission has had regard to the Guidelines in making its decision.

MATERIAL BEFORE THE COMMISSION

22. The Applicant provided the Commission with the following material in support of the Application:
 - (a) application form – Amendment to venue operator’s licence – vary gaming machines, dated 21 December 2017 (**the Application Form**);
 - (b) The Darebin RSL Social and Economic Impact Statement, prepared by Mr Nick Anderson (**Mr Anderson**), Managing Director of NBA Group, dated November 2017 (**the NBA Report**). Mr Anderson appeared as a witness at the Hearing, adopted the NBA Report as his evidence and provided oral evidence to the Commission;
 - (c) expenditure reports prepared by Mr Michael Clyne (**Mr Clyne**) of Progressive Venue Services dated November 2017 (**November 2017 PVS Report**) and an addendum to the PVS Report dated March 2018 (**March 2018 PVS Report**). Mr Clyne appeared as a witness

¹³ [2013] VCAT 101, [98].

¹⁴ For the sake of completeness, the Commission has considered the Decision-Making Guidelines entitled ‘Approval of Premises as Suitable for Gaming’ dated 13 February 2017 (*Victorian Government Gazette*, S30, 14 February 2017), which relate to locating gaming machines in a building with permanent residential accommodation, and the Decision-Making Guidelines entitled ‘Assessment of children’s play areas in gaming premises’ dated 14 October 2013 (*Victorian Government Gazette*, S361, 16 October 2013).



at the Hearing, adopted the PVS Reports as his evidence with one amendment and provided oral evidence to the Commission;

(d) witness statement of Mr Leigh Barrett (**Mr Barrett**), Managing Director of Leigh Barrett and Associates, dated 29 March 2018, with three annexures:

- (i) Mr Barrett's Curriculum Vitae;
- (ii) Darebin RSL Sub-branch Responsible Gambling Policies and Procedure Manual, December 2017; and
- (iii) Compliance Audit Findings for the Applicant dated 23 March 2018.

Mr Barrett appeared as a witness at the Hearing, adopted his witness statement as his evidence with one amendment and provided oral evidence to the Commission;

(e) witness statement of Mr Robert Cross (**Mr Cross**), President of the Applicant, dated 18 December 2017 with the Objects of the RSL as an annexure. Mr Cross appeared as a witness at the Hearing, adopted his witness statement as his evidence with one amendment and provided oral evidence to the Commission;

(f) witness statement of Mr Mark Russell (**Mr Russell**), General Manager of the Applicant, dated 18 December 2017 with four annexures:

- (i) the Premises' current bistro menu;
- (ii) RSL Responsible Gambling Code of Conduct, March 2009;
- (iii) the AHA (Vic) Self Exclusion Program; and
- (iv) an extract from the Premises' communication log book.

(g) addendum to Mr Russell's witness statement, dated 3 April 2018, with six annexures:

- (i) copy of the Preston Club and Preston RSL Sub-Branch Inc merger agreement;
- (ii) Profit and Loss figures for the former sporting centre, 2013-2015;
- (iii) Worksafe entry report, improvement notices and prohibition notice in relation to the former sporting centre, dated 9 June 2015;
- (iv) correspondence from the Applicant to its sporting members dated 24 June 2015;
- (v) copy of Reservoir Leisure Centre membership offer to the Applicant's sporting members;
- (vi) excerpts from the Applicant's Responsible Service of Gambling Register.

Mr Russell appeared as a witness at the Hearing, adopted his witness statement and the addendum as his evidence and provided oral evidence to the Commission; and

(h) witness statement of Ms Jaclyn Arnott, Finance Manager of the Applicant, dated 18 December 2017, with the attachment entitled 'Darebin RSL Sub Branch Preston Venue



Budget for 2018'. Ms Arnott appeared as a witness at the Hearing, adopted her witness statement as her evidence and provided oral evidence to the Commission.

23. On 6 March 2018, the Commission received the Council's submission in respect of the Application. The Council's submission included:
- (a) a Social and Economic Impact Assessment that was endorsed by the Council at its meeting on 12 February 2018 (**the Council Report**);
 - (b) letters from surrounding municipal authorities: the City of Moreland, the City of Yarra, the City of Banyule and the City of Whittlesea, essentially all in support of the Council's decision to oppose the Application; and
 - (c) 2018 Darebin RSL Gaming Application Community Survey report.
- Although the Council was represented at the Hearing, the author of the Council Report did not attend the Hearing which meant they were not called to give evidence and were not available to answer questions from the Applicant and the Commission. This necessarily affected the weight the Commission could give the Council Report.
24. On 6 April 2018, the Commission received from the Council an expert witness statement prepared by Ms Bonnie Rosen (**Ms Rosen**) of Symplan dated 5 April 2018 (**Symplan Report**). On 17 April 2018, the Council provided an addendum to the Symplan Report dated 16 April 2018. Ms Rosen appeared as a witness at the Hearing, adopted her report and addendum as her evidence and provided oral evidence to the Commission.
25. The following material, prepared by Commission officers, was provided to the Applicant and the Council and considered by the Commission:
- (a) a report titled *Pre-Hearing Inspection and Compliance Report*, for the Premises, dated 6 March 2018 (**the Pre-Hearing Report**); and
 - (b) a report titled *Economic and Social Impact Report, Gaming Machine Increase*, dated April 2017 (**the VCGLR Report**);¹⁵
26. Prior to the Hearing, Commissioners Kennedy and McMillan separately visited the Premises.
27. At the Hearing, the following further material was provided to the Commission in relation to the Application by the Applicant:
- (a) Revised floor plan with amendments proposed by Mr Barrett; and
 - (b) Revised Darebin RSL Responsible Gaming Policies and Procedures Manual.

¹⁵ An initial version of the VCGLR Report was provided to the parties on 20 March 2018, and there were two subsequent updates before the final version was sent to the parties on 12 April 2018.

28. On 26 April 2018, prior to the final hearing day, both parties provided final written submissions.

DECISION AND REASONS FOR DECISION

Background

29. The City of Darebin is a metropolitan local government area (**LGA**)¹⁶ located approximately 11 kilometres north of Melbourne CBD and covering an area of 54 square kilometres. According to the VCGLR Report, the City of Darebin had an adult population of 127,229 in 2016 which ranks it 11th out of the 31 metropolitan municipalities.
30. A regional cap on the maximum permissible number of gaming entitlements made under a Ministerial Order pursuant to sections 3.2.4 and 3.4A.5(3A) of the GR Act applies to the City of Darebin. The maximum permissible number of gaming machine entitlements in the area covered by the City of Darebin is 769.¹⁷ Currently there are 12 gaming venues operating within Darebin with 754 attached gaming machine entitlements.¹⁸
31. The City of Darebin has a gaming machine density of 5.9 gaming machines per 1,000 adults, which is 14.5 per cent higher than the metropolitan LGA average of 5.2 and 7.7 per cent higher than the State average of 5.5 gaming machines per 1,000 adults. This ranks the City of Darebin as 13th highest of 31 metropolitan LGAs in terms of gaming machine density per 1,000 adults. The gaming machine density is based on the 2016 adult population figures.
32. The VCGLR Report indicates that in 2016–17 the City of Darebin had an average gaming expenditure of \$638 per adult,¹⁹ which is 13.6 per cent higher than the metropolitan LGA average of \$561 and 17.7 per cent higher than the State average of \$542 per adult.
33. The Commission considers that this Application would (if approved):
- (a) increase the total number of gaming machines licensed to operate within the City of Darebin by 15, from 754 to 769 (an approximate 2 per cent increase);
 - (b) increase the gaming machine density in the City of Darebin from 5.9 to 6.0 per 1,000 adults compared with the metropolitan average of 5.2 and State average of 5.5 gaming machines per 1,000 adults; and
 - (c) based on the Applicant's expenditure estimate, would result in new gaming expenditure in the municipality of approximately \$224,790 in the first year of operation which equates to

¹⁶ Where reference is made to the City of Darebin, this is a reference to the LGA.

¹⁷ See the 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*).

¹⁸ Attached entitlements are gaming machine entitlements attached to an approved venue by the venue operator owning the entitlements, and indicates the number of gaming machines actually operating.

¹⁹ Department of Environment, Land, Water and Planning, *Victoria in Future 2016*.

approximately 0.3 per cent of total gaming expenditure in the City of Darebin in 2016–2017.

Nature of the Premises

34. The Premises is located in the City of Darebin at 402 Bell Street, Preston in a predominantly residential area. The Premises currently comprises:²⁰
- (a) a 120-seat bistro with external terrace area, open daily for lunch and dinner;
 - (b) children's play-room with PlayStation 2 consoles and nearby café seating area;
 - (c) a members' lounge with TAB and external terrace area, open daily from 12 noon, seven days per week;
 - (d) snooker tables and dart boards in a dedicated snooker area;
 - (e) a 100-person capacity function room with stage;
 - (f) a gaming room with 65 gaming machines and an external terrace area.
35. The Applicant holds a club venue operator's licence within the meaning of the GR Act in relation to the Premises. This means that the venue must be established for a community purpose.²¹
36. The Applicant was formed in 2005 from the merger of the Preston RSL Sub-Branch and the Preston Club. The Applicant subsequently amalgamated with the Northcote RSL in 2008 and with Fairfield-Alphington RSL Sub-Branch in 2012.
37. The Applicant has a membership base of around 4,640 members, made up of 236 service members, 553 affiliate members, 9 associate members, 1,094 community members, 2,747 social members and one life member.²²
38. The Applicant also noted that it would be extending the gaming room's hours of operation from its current operating hours to 9:00am to 2:00am, 7 days a week. In the Council's view, the additional hours could exacerbate the harm that the additional gaming machines, the subject of this Application, might cause. The Commission notes that the Applicant can currently open its gaming room in accordance with the trading hours of the Applicant's club liquor licence, with a mandatory four-hour closure period.²³ As such, while it is within the Applicant's discretion to extend the hours of operation in the gaming room, in its consideration of this Application, the Commission has considered the effect of the 15 gaming machines the subject of the Application operating from 9:00am to 2:00am, 7 days a week.

²⁰ Taken from the NBA Report, page 15.

²¹ In the GR Act 'community purpose', when not used in Division 2 of Part 6 of Chapter 3, means, amongst other things, any sporting or recreational purpose: See GR Act, s 1.3. Also, the constituting document of a club must contain provisions prohibiting the distribution of any annual profit or surplus to its members: See GR Act, s 3.4.8(1A).

²² NBA Report, page 18.

²³ See GR Act, s 3.3.9(1).

Catchment of the Premises

39. The '*no net detriment*' test refers to 'the community of the municipal district in which the approved venue is located'.²⁴ 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'.²⁵ The determination of the likely catchment area in this instance is important in the Commission's consideration of the identity of those residents which are likely to be most affected by granting the Application.
40. The NBA Report considered the primary trade area to be within a 2.5-kilometre radius around the Premises, which is referred to as the 'immediate surrounding area' in the VCGLR Report. The suburbs in the immediate surrounding area are Preston, Thornbury and the lower part of Reservoir. The secondary trade area is considered to be the area between 2.5-kilometres and 5-kilometres from the venue. According to the NBA Report, although the Applicant's members come from as far away as Tasmania and Queensland, membership details indicate that approximately 44 per cent of members live within the suburbs in the immediate surrounding area. The Applicant also surveyed its bistro patrons in August 2016 and August 2017 ('**Patron Survey**'). The Patron Survey indicated that approximately 43 per cent of bistro patrons at the Premises reside within the suburbs in the immediate surrounding area. As such, having regard to the Applicant's evidence, the Commission accepts that the primary catchment area of the Premises consists of the suburbs within a 2.5-kilometre radius around the Premises.

Issues for determination

41. Pursuant to section 3.4.20 of the GR Act, the Commission cannot grant the Application unless it is satisfied of the following two matters:²⁶
- A. that the relevant regional or municipal limit for gaming machines applicable to the City of Darebin will not be exceeded by the making of the amendment the subject of the Application; and
 - B. that the net social and economic impact of the increase in gaming machines permitted in the Premises will not be detrimental to the well-being of the community of the City of Darebin (the '*no net detriment*' test).

If, having determined that these matters have been satisfied, the Commission is then required to exercise its discretion under section 3.4.20 of the GR Act to determine whether or not the

²⁴ See GR Act, s 3.4.18(c).

²⁵ See, for example, *Romsey No. 2* [2009] VCAT 2275 (12 November 2009); *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 (7 April 2011).

²⁶ 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.



Application should be granted; that is, whether or not the proposed amendment to the venue operator's licence should be made.²⁷

A. *Municipal and Regional limits*

42. As noted in paragraph 30 above, the City of Darebin is subject to a limit on the number of gaming machine entitlements under a Ministerial Order pursuant to sections 3.2.4 and 3.4A.5(3A) of the GR Act. At the time of the Application, the limit was 769 and the current number of attached entitlements within the region is 754. Approval of this Application would increase the number of gaming machine approvals within the City of Darebin to the cap of 769, which is within the applicable regional limit.
43. On that basis, the Commission is satisfied that granting the Application would not cause the relevant municipal limit for gaming machines for the City of Darebin to be exceeded, and hence considers this aspect of the statutory test set out in section 3.4.20 of the GR Act to be satisfied.

B. *'No net detriment' test*

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

Economic Impacts

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

Expenditure on capital works

46. A potential economic benefit associated with the Application is the economic stimulus arising from the expenditure on the proposed renovations of the Premises.
47. According to the NBA Report, the proposed renovations will be completed in six stages. The total proposed expenditure on capital works is estimated at \$9.64 million. According to Mr Russell, the works and expenditure for each stage involves:
- (a) Stage 1 – revised entry foyer, new administrative offices and a revised gaming room layout, estimated at \$2.9 million;
 - (b) Stage 2 – Internal rearrangement within the Premises including a new bar, lounge and café

²⁷An amendment may be made subject to any conditions the Commission thinks fit: GR Act, section 3.4.20(3).



areas and washroom facilities, estimated at \$3.24 million;

- (c) Stage 3 – renovation of the former recreational centre to include a gymnasium, an administrative area including a welfare office, storage, meeting rooms and staff facilities, estimated at \$1 million;
- (d) Stage 4 – refurbishment of the existing members' lounge and snooker room to provide a comfortable modern sports lounge (open to members and non-members), snooker room and outdoor terrace, estimated at \$749,000;
- (e) Stage 5 – bistro upgrades including a new bar, private dining area, alfresco dining along Bell Street, a children's lounge and storage area, estimated at \$1.235 million;
- (f) Stage 6 – upgrades to the existing function room, including new furniture and fittings and an upgrade to the washroom facilities, estimated at \$520,000.

The Commission refers to subparagraphs 47 (a)-(f) above as '**the Proposed Works**'.

48. At the Hearing, the Applicant confirmed that they would not be in a position to undertake the all of the Proposed Works without the anticipated revenue from the additional gaming machines the subject of this Application. The Applicant has committed to completing Stage 1 and commencing Stage 2 before the additional gaming machines become operational. The Applicant further committed to complete all six stages within five years from the grant of the planning permit, which is yet to be granted.
49. Mr Russell gave evidence at the Hearing that, although the Applicant already had sufficient funds to complete Stage 1 and commence Stage 2, they would not be able to fund the remaining renovations without the revenue from the additional gaming machines. Evidence from Ms Arnott on the 2018 budget and the financial position of the Applicant supported Mr Russell's statement.
50. The Commission notes that the Proposed Works would involve construction expenditure which would generally be considered an economic benefit. Council submitted that the Applicant's evidence did not indicate that the economic stimulus generated by the Proposed Works would benefit the City of Darebin, nor was there indication that tradespeople and materials would be sourced from the LGA. Mr Anderson gave evidence that it could not be guaranteed that the goods and services would be procured from within the City of Darebin, however, evidence was given by both Mr Russell and Mr Anderson that the contractor, Rubicon Construct and Design, would be likely to use local goods and services where possible. Mr Russell gave evidence that most of the Applicant's suppliers are locally based, allowing for faster deliveries and for quick rectification of mis-deliveries.
51. The Commission accepts that most of the Proposed Works are contingent on the grant of the Application and that the portion of the sizeable expenditure spent in the LGA will be an economic

benefit for the City of Darebin. However, as there is still a question around how much of the expenditure will stay in the LGA, the Commission considers it should only give this benefit a marginal to low weight.

52. The Commission acknowledges that it is important to avoid double counting the benefits associated with capital works, having regard both to the estimated employment impacts of the Proposed Works and the social impact that may result from the improved facilities. These aspects are considered separately, and are detailed below at paragraphs 58 to 62 and 96 to 102 respectively.

Community contributions

53. A potential economic benefit associated with the Application is the community contributions promised by the Applicant. However, for such contributions to be regarded as a benefit associated with the Application, it is necessary that they are properly regarded as community contributions and that they will result as a consequence of the Application.
54. The nature of the Applicant as an RSL Sub-Branch is that of a not-for-profit, community-based organisation with all the inherent objects of an RSL. The Applicant has submitted that it currently subsidises or provides free of charge services, such as function room hire and meal vouchers, to a range of community organisations and that the approval of the Application will ensure that it can continue to make these contributions. According to the NBA Report, in 2016–17, the total quantifiable community contributions (cash, in kind, value of volunteer hours or subsidies) was \$663,961.52.
55. The Commission notes that evidence was presented indicating that several RSLs in the area have not been financially viable and were amalgamated into the Applicant, including the Fairfield-Alphington RSL and the Northcote RSL. Mr Russell stated, in the addendum to his witness statement, that the RSLs' inability to invest in their facilities and infrastructure was a significant cause of their failure. The Commission considers that there is potential that without the Proposed Works the Premises' ability to stay open may be compromised, necessarily affecting its ability to continue to provide its current community contributions. As outlined at paragraphs 48 and 49 above, most of the Proposed Works are dependent on revenue from the additional gaming machines.
56. In relation to the community contributions resulting as a consequence of this Application, in addition to the existing contributions made by the Applicant to the community, the Applicant has committed to an annual \$15,000 cash community contribution for the term of the operation of the additional gaming machines. This contribution would be increased by the Consumer Price Index (CPI) each year.



57. The existing contributions have a positive, although small, economic impact on the Darebin community. Most of the contributions are not dependent on the grant of the Application for the additional gaming machines, however, the additional \$15,000 annual cash donation is dependent on revenue from the additional gaming machines. The Commission accords the economic benefit associated with this impact marginal weight.

Additional Employment

58. The economic benefits associated with an application to increase the number of gaming machines at a venue may include short term employment benefits associated with the Proposed Works. The Commission considers this aspect has already been assessed in relation to the economic benefit associated with the expenditure on Proposed Works. Accordingly, the Commission gives no weight to this aspect.
59. Separate to the short term economic benefits associated with the Proposed Works is the potential benefit associated with longer term employment at the Premises arising from the Application. According to the NBA Report and Mr Russell's witness statement, the improved facilities will result in direct employment of 7.5 full-time equivalent (**FTE**) staff. Mr Russell gave evidence that additional employment would be needed as follows:
- (a) Stage 1 will create 2 FTE employees, one in the gaming room and one receptionist;
 - (b) Stage 2 will create another 2.5 FTE employees to cover the café/lounge and extended hours in the bar;
 - (c) completion of stage 5 will create the need for 2 additional FTE employees in the bistro;
 - (d) an additional 0.5 FTE employee in the form of a welfare officer and 0.5 FTE employee in the form of a community bus driver will be created, although timing of these positions is not clear; and
 - (e) during the hearing, in addition to the 7.5 FTE employees, Mr Russell also committed to having a security officer trained in Responsible Service of Gambling (**RSG**) positioned at the entrance of the Premises, working during the periods between the time the receptionist finishes and the Premises closes.
60. The Commission accepts the evidence given at the Hearing by Mr Russell and Mr Anderson that if the Application is granted, this will result in the creation of at least 7.5 new FTE employees at the Premises. However, considering that most of the additional gaming expenditure will be transferred from other venues in the City of Darebin, as noted at paragraph 64 below, some of the additional employment may be transferred from other venues within the LGA.
61. The VCGLR Report notes that the unemployment rate in City of Darebin is 6.9 per cent. This is higher than the unemployment rate for metropolitan Victoria which is 6.1 per cent. Unemployment



in the City of Darebin increased by from 6.0 per cent to 6.9 per cent in the 12-month period of December 2016 to December 2017.²⁸

62. The Commission finds that the likely economic impact on employment arising from this Application, would be the employment of between 7.5 and 8.5 FTE employees at the Premises. In consideration of the relatively high unemployment rate in the City of Darebin compared to the metropolitan average (see paragraph 61 above), the size of the employment increase and the potential for transferred employment from within the LGA, the Commission considers this is a benefit to the community to which it attributes marginal weight.

Gaming expenditure not associated with problem gambling

63. 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.²⁹ 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 machines for social reasons.³⁰
64. Mr Clyne, in the PVS Reports and at the Hearing, gave evidence regarding the likely increase in gaming expenditure at the Premises should the Application be granted, in the first 12 months of operation of the additional gaming machines. On the basis of the Geotech model, Mr Clyne estimated that approximately 90 per cent of the increased expenditure would be transferred expenditure from a number of existing gaming venues within the City of Darebin. He noted:
- (a) the Geotech model estimates how much gaming expenditure the Premises could take from each competing venue. The amount of expenditure that is not transferred from competing venues is deemed to be new expenditure;
 - (b) based on an additional 15 gaming machines, in a mature market, the increase in annual gaming expenditure at the venue is estimated to be \$2,144,946;
 - (c) adopting the estimated level of 90 per cent transferred expenditure, the new gaming expenditure of 10 per cent is estimated to be \$4,323 per week, or \$224,790 per annum; and
 - (d) this new gaming expenditure equates to approximately 0.3 per cent of total gaming expenditure in the City of Darebin in 2016-2017.
65. The November 2017 PVS Report states that the Premises has experienced growth in gaming expenditure over the past five years, in contrast to the City of Darebin, which has had a reduction

²⁸ Department of Employment, *Small Area Labour Markets Australia, December 2017, smoothed data.*

²⁹ See *Romsey No. 2* at [351] per Bell J.

³⁰ See *Romsey No. 2* at [351]. Bell J notes further at [352] that the other approach is to say, as did Morris J in *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [79] that gaming extends 'substantial economic and social benefits' to gaming machine users, which treats consumption as a benefit without saying whether it is economic or social. While Bell J states both approaches are correct, for the purposes of this Application this benefit is treated as an economic benefit.

in expenditure. The report states the following factors provided by Mr Russell for the growth in expenditure at the Premises:

- (a) ongoing investment in new gaming machines;
- (b) an increased level of Premises' promotions;
- (c) the Applicant's emphasis on maintaining a high standard and knowing its customers resulted in the Premises' becoming many customers' venue of choice.

66. In the November 2017 PVS Report, Mr Clyne noted that he believed that it would be difficult for the Premises to achieve the Geotech model of the then-prediction of 86 per cent of transferred expenditure, particularly as the highest transfer rates were predicted from hotels in Premises' trade area.³¹ This was because influencing customers to transfer from hotels to clubs is considered more difficult than from club to club.³² That said, during cross-examination by the Council, Mr Clyne reiterated that should the predicted percentage of transferred expenditure be lower than the now-estimated 90 per cent, then the level of total expenditure would also be lower.³³
67. The Commission accepts Mr Clyne's evidence as to the likely increase in gaming expenditure should the Application be granted, and his views on transferred expenditure. The Commission notes that, the City of Darebin, as with the majority of metropolitan LGAs, has experienced population growth over the past few years. The Commission also notes that gaming machine density for the City of Darebin (see paragraph 31) would necessarily decrease over time taking in account further increases in population, even with the additional gaming machines.
68. In assessing the extent of this benefit, the Commission has had regard to the evidence outlined in paragraphs 75 to 91 below with respect to the potential for problem gambling harm resulting from any grant of this Application. In short, the Commission accepts that, while some portion of the new expenditure resulting from this Application will be attributable to problem gambling, the portion of new expenditure not attributable to problem gambling is an economic benefit.
69. However, the Commission considers, given the above factors, including the modest predicted new expenditure and its effect on the total expenditure for the LGA, that his benefit should not be given any weight.

³¹ The Geotech model includes an analysis of the area surrounding the Premises, including the primary, secondary and tertiary trade area. The Commission notes the trade area analysed broadly aligns with the primary catchment area described above in paragraph 40.

³² November 2017 PVS Report, [51], p.12.

³³ Transcript of the Hearing, 13 April 2018, p-63-4.



Increased gaming competition in the City of Darebin

70. Increasing competition in gaming in the City of Darebin is a factor to be considered by the Commission in light of the statutory purposes of the GR Act³⁴ and the consumer benefits that derive from competition.
71. Mr Russell stated in his witness statement that the Applicant's future vision and the rationale for improving its facilities is to remain relevant in an area with changing demographics, including young professionals, and to cater for population growth.
72. The Commission notes that granting the Application could be considered to increase gaming competition in the City of Darebin by providing additional gaming machines at the Premises and making it more appealing to gaming patrons. As outlined in paragraph 55 above, granting the Application further bolsters the Applicant's financial viability and would assist it to remain competitive.
73. The Proposed Works have the potential improve the venue's attractiveness to both gaming and non-gaming patrons and would increase competition between the Premises and other premises within the catchment area. In this regard, the Commission refers to and relies on the evidence set out in paragraphs 64 to 66 above in relation to the anticipated transfer of gaming expenditure within the City of Darebin. The Commission notes that the majority of the venues in the catchment area are hotels and considers that increasing competition to favour a Premises where a club licence applies, such as the Applicant, could potentially promote a competitive gaming industry to provide social and financial benefits to the Victorian community.³⁵
74. The Commission considers that the proposal has the potential to draw patrons away from other venues, which may in turn result in those other venues improving their offer to patrons. The Commission attributes marginal weight to the economic benefit of increased competition.

Gaming expenditure associated with problem gambling

75. To the extent that a portion of the new gaming expenditure is attributable to problem gambling, this represents an economic disbenefit.³⁶ In assessing this impact (and other effects of problem gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gaming undertaken by those who may

³⁴ See GR Act, s 3.1.1(2).

³⁵ See GR Act, s 3.1.1(2).

³⁶ The Commission recognises that 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* [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.

be defined as 'problem gamblers', as well as those who may be otherwise regarded as 'low-risk' or 'moderate-risk' gamblers.

76. In assessing the extent of this disbenefit, the Commission has regard to the expenditure evidence set out in paragraphs 64 to 66 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.³⁷
77. The extent to which new gaming expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with the Application, will be influenced by the socio-economic status and vulnerability of the community of the catchment area.³⁸
78. As recorded in the VCGLR Reports, according to the 2016 SEIFA³⁹ index of relative socio-economic disadvantage (**IRSD**), the City of Darebin is marginally more disadvantaged than other municipalities on average. The City of Darebin is ranked 8th out of 31 metropolitan LGA, with 1 being the most disadvantaged. Previously, for the 2011 SEIFA IRSD, the City of Darebin was ranked 6th out of 31 metropolitan LGAs. In relation to the SEIFA IRSD of the immediate surrounding area, the VCGLR Report notes that 13.8 per cent of SA1s are in the first quintile, which are therefore relatively disadvantaged. At the Hearing, Mr Anderson emphasised the improvement of the City of Darebin between the 2011 and 2016 SEIFA periods.⁴⁰
79. In relation to the SEIFA IRSAD⁴¹ for the catchment area surrounding the Premises, looking at SA2s⁴² in the 2011 Census period, Mr Anderson noted in relation to the primary catchment area that Preston is in the 5th decile, and Thornbury and Coburg in the 6th decile, with a small proportion of Reservoir in the 3rd decile or below. This meant that an estimated 80 per cent of the primary catchment area was in the 5th decile or above.⁴³ Mr Anderson noted at the hearing that Preston, due to population growth, was now East Preston and West Preston in the 2016 Census, and West Preston had jumped to the 7th decile.⁴⁴ Mr Anderson characterised the catchment area as having

³⁷ See *Bakers Arms* [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.

³⁸ This common-sense 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].

³⁹ Socio-Economic Indexes for Areas (**SEIFA**) is a product developed by the ABS that ranks areas in Australia according to relative socio-economic advantage or disadvantage. The SEIFA index of relative socio-economic disadvantage is created by combining numerous measures of disadvantage, for example, low educational attainment, high unemployment, the level of population in unskilled occupations, and the percentage of people with stated annual equivalised income between \$1 and \$20,799.

⁴⁰ Transcript of the Hearing, 13 April 2018, p-3-4.

⁴¹ Mr Anderson chose to analyse the Index of Relatively Advantage and Disadvantage (**IRSAD**) rather than the IRSD.

⁴² Statistical Area Level 2. The SA2s are the second smallest unit of the 2011 and 2016 Census data, are based on gazette State suburbs and localities, and usually have a population from 3,000 to 25,000, with an average of 10,000.

⁴³ NBA Report, [104], p.40.

⁴⁴ Transcript of the Hearing, 13 April 2018, p-5.

pockets of advantage and disadvantage (primarily contained around industrial areas).⁴⁵ Ms Rosen, a witness for the Council, broadly agreed that the primary and secondary catchment areas incorporate mixed levels of socio-economic disadvantage.

80. Ms Rosen noted that in her view, there were multiple indicators that made the catchment area vulnerable to gambling-related harms, which included the percentage of people renting social housing and the percentage of lone person households. Mr Anderson was however adamant that due to factors, including the Premises' status as an RSL, its robust RSG practices, and the number of gaming venues in the Premises' catchment area, the Premises is less attractive to problem gamblers than other venues.⁴⁶
81. As noted in the VCGLR Report, the crime rate in the City of Darebin in 2016-17 was 12,849 criminal offences per 100,000 adults. This is 20.6 per cent higher than the Metropolitan (10,657) crime rate and 16.5 per cent higher than the Victorian (11,029) crime rate.⁴⁷ The City of Darebin ranks 7th out of 31 metropolitan LGAs in terms of number of crimes per 100,000 adults in 2016–17, with 1 being the highest crime rate.
82. Also, as noted in the VCGLR Report, the unemployment rate in City of Darebin is relatively high compared to the metropolitan average (see paragraph 61 above).
83. The Commission accepts the Council's submission that accessibility increases the potential for convenience gambling. Conflicting evidence was submitted to the Commission in relation to accessibility of the Premises. The Council contented that the Premises are highly accessible and visible to the Darebin community, especially as it is on an 'ant trail', being located a major arterial road and within 400 metres of a strip shopping centre and a railway station. For the Applicant, Mr Anderson and Mr Barrett gave evidence that the venue is not on an ant trail and Mr Anderson submitted that patrons would make a conscious decision to attend the Premises. Mr Russell also advised the Commission at the Hearing that the Premises does not have significant foot traffic and that most customers drive to get to the Premises. Considering all the evidence submitted, the Commission is satisfied that the location of the Premises does not greatly increase the risk of convenience gambling.
84. In considering the extent to which new gaming expenditure may give rise to an increased risk of problem gambling and gambling-related harms, the manner in which gaming is conducted at the Premises is also a relevant consideration. In relation to the Applicant's current RSG practices, the Commission notes that the Applicant has implemented a number of positive measures which

⁴⁵ Ibid, p-9.

⁴⁶ Ibid, p-19-20.

⁴⁷ See the VCGLR Report, where these figures are based on statistics from Victoria Police, and data from the ABS and Victoria in Future.

demonstrate that it would continue to effectively manage RSG at the Premises and mitigate some of the risks associated with gambling-related harms were the Application to be granted. The Applicant's current RSG measures include:

- (a) adopting and enforcing the RSL Responsible Gambling Code of Conduct;
- (b) all staff in the gaming room hold RSG certificates in accordance with minimum regulatory requirements;
- (c) all committee members have completed (or are in the process of completing) RSG training;
- (d) rostering on staff who are familiar with patrons, which is made easier due to the Applicant being a club with membership and sign in rules;
- (e) floor walkers (responsible gambling officers) in the gaming room to engage with patrons;
- (f) a dedicated responsible gambling officer, rostered on when the venue is open;
- (g) a logbook for staff to communicate comments or enquiries to each other between shifts;
- (h) adopting and strictly adhering to the AHA (Vic) Self Exclusion Program;
- (i) regular external audits by Leigh Barrett and Associates to ensure compliance with the GR Act and the *Gambling Regulations 2015*;
- (j) adopting the amendments to the Applicant's RSG Policies and Procedures Manual proposed Leigh Barrett & Associates' dated April 2018; and
- (k) regular training sessions with Gamblers' Help for staff and the Committee.

85. At the Hearing, Mr Barrett outlined the following additional measures designed to reduce the risk of gambling related harm were the Application to be granted:

- (a) positioning floor to ceiling screens to block the view from the entrances to the gaming room;
- (b) relocation of the door to the children's lounge so that it is not opposite the entrance to the gaming room;
- (c) installation of a community hub with general information about activities in the local area and gambling support services;
- (d) installation of a sound-absorbing ceiling;
- (e) removal of entry to the Premises from Bell Street; and
- (f) improvements to the screening of the gaming room from the bistro (which also involves shortening the bar that divides the gaming room and bistro).

86. Mr Barrett advised that Commission at the Hearing that a recent innovation by the Applicant is to maintain a spreadsheet to record the nominated responsible gambling officer's interactions with patrons in the gaming room every half hour. Mr Barrett noted that he has not found another venue where the interaction is so documented thereby making it auditable.

87. Mr Russell gave evidence at the Hearing that the Applicant's intention is to have a staff member, whether a receptionist or an RSG trained security officer, at the entrance to the Premises until closing. The staff members will be in a position to assist with the sign-in process and to better detect self-excluded persons.⁴⁸ Mr Russell also indicated that he was supportive of Mr Barrett's recommended additional measures. Mr Russell stated that the structural improvements, including the screening and shortening of the bar would be incorporated into Stage 1 of the Proposed Works. Further, Mr Russell committed to installing additional CCTV to cover any blind spots in the gaming room.
88. On behalf of the Council, Ms Rosen gave evidence that just reducing the sight of the gaming room would not necessarily reduce the sounds associated with the gaming room and that the location of the community hub adjacent to the bistro side entrance to the gaming room would expose gaming and non-gaming patrons to the sounds of the gaming room. In response, the Applicant has committed to installing acoustic treatments in the gaming room.
89. The Commission accepts evidence that the catchment area exhibits relatively mixed levels of socio-economic disadvantage and that there are indicators that make the community more vulnerable to the risks of gambling-related harm. The Commission, while acknowledging the evidence from Ms Rosen, accepts the evidence of Mr Russell and Mr Barrett that the Applicant's current RSG practices would assist to mitigate the risk of problem gambling and gambling-related harm. The Commission was persuaded that the additional measures proposed could further mitigate some of the potential economic disbenefit from problem gambling that may arise should this Application be granted.
90. Taking into account the material before it, the Commission finds that the granting of the Application will result in estimated new expenditure of \$224,790 per annum when the additional gaming machines are operational. The Commission accepts a proportion of this expenditure will be associated with problem gambling.
91. Overall, the Commission considers with respect to the Application that the potential expenditure associated with problem gambling is a negative economic impact upon which it should place a marginal weight. Issues relating to the negative social impacts associated with problem gambling are considered further in paragraphs 112 to 116 below.

⁴⁸ The Commission notes that a video-recording was submitted by a self-excluded person showing them signing in at an unmanned reception desk and proceeding to the gaming room unchecked.

Diversion of trade from other gaming venues

92. Mr Clyne gave evidence that the introduction of the additional gaming machines at the Premises would divert trade from other gaming venues within the municipality resulting in a transfer rate of approximately 90 per cent.
93. Given the number of venues in the catchment area, and that most of the other venues in the area are hotels and the Applicant is an RSL, the Commission notes that diversion of trade will likely be from a profit focussed venue to a not-for-profit venue. The Commission notes that the transferred expenditure is predicted to be spread across a number of venues in the catchment area and therefore diversion in trade is unlikely to be felt by a single venue. As such, the Commission does not consider this a disbenefit for this particular Application. The Commission does not give any weight to this impact.

Conclusion on Economic Impacts

94. After considering the economic benefits of the Application and balanced against the disbenefits, the Commission considers that, on balance, there is likely to be a small positive economic impact of the Application.

Social Impacts

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

Improved facilities enabling a greater range of services

96. Ancillary to the economic benefit from capital works expenditure that will occur if this Application is granted,⁴⁹ the Proposed Works will result in improved facilities being available to the community. Access to such improved facilities is an outcome which the Commission⁵⁰ and VCAT⁵¹ have regularly determined is a positive social impact associated with applications of this nature. The physical nature of these improved facilities has been described in detail in paragraph 47 above.
97. Stage 1 of the Proposed Works will improve the gaming room, including proposed additional screening measures, and refurbish the entry to the Premises, which the Commission notes does not in itself produce a greater range of services.
98. Stage 2 will create a café/lounge area that will be open whenever the gaming room is open. Mr Russell gave evidence that patrons will be able to order food and beverages from the café at any time during opening hours. Although basic food and beverages may on occasion be available in

⁴⁹ See paragraphs 47 to 52 above.

⁵⁰ See, for example, *Glenroy RSL Sub-branch Inc at Glenroy RSL premises* [2015] VCGLR 40 (22 October 2015).

⁵¹ See, for example, *Bakers Arms* [2014] VCAT 1192.

the gaming room currently, the Commission notes that Stage 2 works provide for the availability of a separate seated area and a range of food and beverages for the gaming room's entire operating period. This is a service that is not currently available.

99. Subsequent stages of the Proposed Works will result in the reopening of the recreational centre, a revamped members' bar that will also be open to non-members and an upgraded function room.
100. The parties had conflicting views on the status of the recreation centre at the Premises. Prior to 2015, there were aquatic and gymnasium facilities and the Applicant offered a sporting membership that enabled access to the recreation centre. The Applicant submitted that they acted responsibly when they closed the facility in 2015 as it was unsafe. Mr Russell submitted several WorkSafe improvement notices and a prohibition notice for a part of the gym area. The Council submitted that the Applicant was under an obligation to maintain the facility pursuant to the 2005 merger agreement between the Preston RSL and the Preston Club. As such, Ms Rosen gave evidence to the Commission that the recreation facility is not an additional benefit or service to members or the community resulting from this Application as it should still be open. The Commission does not accept that the Applicant was under an obligation to provide the facility when there was a risk to member safety or where upgrading the underutilised facility could have put the Applicant's financial viability at risk. The Commission therefore forms the view that the upgrade and re-opening of the recreational facility at the Premises will arise as a result of granting this Application, providing a beneficial service to members of the local community.
101. The total renovation reflected in the Proposed Works will result in new non-gaming services and facilities that are not currently on offer at the Premises.
102. The Commission refers to its findings in paragraph 51 above that the Proposed Works will not proceed if the Application is not granted and it is therefore appropriate to consider the social benefits arising from the community's access to and use of the improved facilities at the Premises as benefits of this Application. The Commission, considering that the renovations are extensive and represent an expansion and improvement of existing facilities as well as introducing new facilities, regards access to such improved and new facilities as a positive social impact. The Commission places a low weight to this social benefit. In allocating this weight, the Commission did not double count the economic benefits resulting from expenditure on capital works detailed at paragraphs 46 to 52 above.

Increased gaming opportunities for those who enjoy gaming

103. The Commission acknowledges that there would be a positive impact if the granting of the Application would better serve the needs of gaming patrons through increasing gaming machine choice for recreational players and catering for non-problem gambling demand. The NBA Report

outlines the results of two gaming room utilisation surveys conducted in 2016 and 2017, which indicates that there are several periods of peak utilisation⁵² per week. The NBA Report states that this indicates a constant level of demand for gaming machines during peak periods of operation. The report further states that Applicant's management team are of the opinion that the additional gaming machines will provide a greater choice and variety of gaming machines during peak periods.

104. The Commission notes that the raw data shows that the utilisation rate only exceeds 70 per cent usage for a small number of hours (five hours) per week in the 2017 survey, and further the City of Darebin currently has 754 EGMs across 12 venues. As such, the 15-machine increase the subject of this Application will provide limited additional opportunities for gaming. The Commission does not place any weight on this aspect.

Social benefit derived from increased community contributions

105. In determining the net economic and social impact of applications of this nature, both the Commission⁵³ and VCAT⁵⁴ have regularly treated community contributions as a positive benefit. However, for such contributions to be regarded as a benefit associated with the Application, it is necessary that they are properly regarded as community contributions, and that they will result as a consequence of the granting of the Application.
106. In relation to the Applicant's current community contributions, according to the NBA Report, the Applicant made \$2.194 million in welfare and charitable contributions to members and the local community for the past four financial years (2013–14 to 2017–18). A large proportion of this is made up of subsidies (including room hire and discounted meals) and volunteer hours. The total cash or in-kind donations for 2016–17 was \$94,252.17 and donations were made to a variety of sporting, educational and community bodies.
107. The Commission notes that several submissions were received from local schools listed as receiving donations. The submissions generally expressed concern regarding the donations, with some stating that they had not received cash from the Applicant. At the hearing, Mr Russell clarified that the Northcote RSL had established a program of scholarships for local students which the Applicant continued when they amalgamated with the Northcote RSL. The scholarships are designed to increase community engagement with the Applicant and to improve awareness of the functions of an RSL from a young age.

⁵² Mr Anderson noted that peak utilisation occurs when 70 per cent of gaming machines (or 45 machines) were in use.

⁵³ See, for example, *Application by Richmond Football Club* [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

⁵⁴ See, for example, *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms* [2014] VCAT 1192.



108. The NBA Report also states that the Applicant has a volunteer base that contributes over 9,000 hours to members and the community each year, including generally assisting members of the community and the Applicant's members.
109. The Applicant has contended that the renovations will enable the venue to stay relevant and financially viable into the future and this would mean that they will be able to continue to provide the community contributions discussed above, including as free room hire and the community bus, that it currently offers.
110. In relation to the community contributions said to arise specifically as a result of the granting the Application, the addition of a paid welfare officer and a second community bus and driver will increase the social benefits that the Applicant is able to offer. The Applicant has also committed to an annual cash donation of \$15,000 (indexed to CPI) for the term of the gaming machines' operation to be allocated each year to not-for-profit community and sporting organisations in the City of Darebin, in accordance with conditions were this Application to be granted. This would have a positive social impact on the community by supporting services provided by community organisations.
111. The Commission accepts the evidence that the granting of the Application will allow the Applicant to remain financially viable and therefore able to continue contributing to the community. Having regard to the increase in the community contributions that will occur, and the breadth of these contributions across the community, the Commission considers these contributions to be a positive social benefit to which it affords a marginal weight.

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

112. Wherever accessibility to gaming machines is increased there is always a risk of an increase in problem gambling and gambling-related harms, which may lead to other costs such as adverse health outcomes, relationship breakdowns, emotional harms and other social costs. Accordingly, the Commission accepts there is potential for negative social impact on the community through possible increased problem gambling expenditure.
113. The Symplan Report notes that that catchment area has a higher level of socio-economic disadvantage compared to many adjoining areas which is relevant to its vulnerability to gambling-related harms. The report also provides a list of socio-economic and health determinant of gambling-related harm derived from various sources.
114. The Applicant has submitted that it takes its responsible gambling obligations seriously and ensures that it is fully compliant with gaming legislation. The Commission heard evidence from Mr Barrett as to the Applicant's RSG practices and accepts that the Applicant is committed to mitigating gambling-related harm.



115. The Commission considers that the City of Darebin is a mature gaming marketplace and the addition of 15 machines is not likely to have a significant impact on gambling related harm. The increase will, however, take the venue from a medium gaming venue to a large gaming venue and this is associated with increased risk of gambling-related harm. This risk is mitigated to some extent by the Applicant's strong RSG practices and management's demonstrated commitment to the welfare of its members.
116. The Commission refers to and relies upon the evidence set out in paragraphs 75 to 91 above with respect to the economic impact of problem gambling on the community, which similarly applies to the social impact of problem gambling. The Commission accepts that the risk of an increased incidence and potential impact of problem gambling on the community in this Application is less than would otherwise be the case for the municipality. In reaching this assessment, the RSG practices detailed above in paragraphs 84 to 88, gave the Commission confidence that any rise in problem gambling harms resulting from this Application are appropriately mitigated. The Commission considers the protective factors in this case result in an assessment of this impact as having marginal weight.

Community attitude

117. As was determined in *the Romsey Case*,⁵⁵ 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 a relevant factor in the consideration of particular social impact of an application as part of the '*no net detriment*' test. In determining this impact, the Commission recognises that the Council's role, as the representative body of the relevant community and charged with statutory duties under various pieces of legislation, includes representing the community attitude.
118. The evidence before the Commission with respect to the community attitude is largely found in the 2018 Darebin RSL Gaming Application Community Survey report. The Council commissioned a survey with 396 residential properties located in a 2.5km radius of the Premises, which that indicated a majority of those surveyed felt that:
- (a) gaming machines are too widely accessible in the local community;
 - (b) gaming machines are a serious problem in the community;
 - (c) the Darebin community does not benefit from there being gaming machines in hotels and other venues in the LGA; and
 - (d) the number of gaming machines should decrease.

⁵⁵ (2008) 19 VR 422, [44] per Warren CJ, Maxwell P and Osborn AJA. See also *Mount Alexander Shire* [2013] VCAT 101, [73] per Dwyer DP.

119. There were also a large number of submissions from approximately 35 individuals (including the principals of two schools), four organisations or schools (Women's Health in the North (**WHIN**), St Raphael's Primary School, North East Healthy Communities and Your Community Health) in the community indicating concern about extra gaming machines. The Commission also received two submissions in support of the Application.
120. Some of the submissions, particularly the WHIN submission, raised a correlation between family violence and gaming machine density. The Commission acknowledges that there is an emerging body of research regarding the links between problem gambling and family violence, and accepts that some research has established a correlation at the postcode level between gaming machine density and incidents of police-recorded domestic violence. While it acknowledges this emerging research, and supports further work in this area, the Commission is not satisfied that the available evidence establishes a causal link between gaming machines and family violence such as would support a finding that an impact of this Application would be an increase in existing levels of family violence.
121. At the Hearing, the Applicant conceded that there is a negative community attitude toward gaming in the community generally. Mr Anderson, while noting that the survey in the Council Report provided a snapshot of community opinion, submitted that there was not a lot of context behind some of the questions. For instance, there was no explanation to participants about the Applicant's work as an RSL or how the Applicant intended to use the additional revenue from the additional machines in part to fund the Proposed Works.
122. The community survey and the objections from community members indicate that members of the surrounding community have concerns about the additional gaming machines in the City of Darebin. The Commission agrees with Mr Anderson that it is not clear what context was provided to participants when surveyed.
123. On the other hand, the Commission considers the Applicant's work, and its ability to continue it, would have a positive impact on the wellbeing of the community.
124. Overall, the Commission considers that there is evidence of a negative attitude to the Application amongst some members of the community. The Commission attributes a low to moderate weight to this impact.

Increased exposure of children to gambling activity

125. The Applicant has committed to installing the proposed protective measures at Stage 1 discussed above in paragraphs 85 to 88, which would potentially decrease the exposure of children to the sights and sounds of gaming activities at the Premises.

126. The potential for increased family patronage and the mere existence of the gaming room, however, may mean that more children are aware of gambling activity even if they cannot see or hear it at the venue.
127. The Commission notes that the current children's play area will be replaced by an enclosed children's lounge. The changes proposed to the screening of the gaming room and the position of the door to the children's lounge, are likely to decrease the level of exposure of children to gambling. As such, the Commission places no weight on this factor.

Conclusion on social impacts

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

Net economic and social impact

129. The '*no net detriment*' test in section 3.4.20(c) of the GR Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. This test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impact of approval on the well-being of a relevant community will be either neutral or positive.⁵⁶
130. 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 of these Reasons for Decision), the Commission is satisfied that the social and economic impact to the well-being of the community of the municipal district in which the Premises is located if the Application is approved will be slightly positive.

Determination of Application

131. On the material that has been put before it, the Commission has determined that the '*no net detriment*' test has been satisfied and that the total number of gaming machines will not exceed the relevant regional limit.
132. The Commission is satisfied that the Applicant recognises the need to act in accordance with its obligations to take measures to prevent problem gambling and gambling-related harms. The Applicant has demonstrated that there are strong RSG practices currently in place, proposes to implement a new measure to reduce the emphasis on gaming at the Premises through the Proposed Works to limit the visibility of the gaming room from the bistro and proposes to make additional community contributions. Accordingly, the Commission approves the Application and

⁵⁶ *Mount Alexander Shire* [2013] VCAT 101 at [52] per Dwyer DP.



makes the proposed amendment to the Venue Operator's licence to vary the number of gaming machines permitted in the Darebin RSL from sixty-five (65) to eighty (80) subject to conditions set out in Appendix A.

The preceding one hundred and thirty-two (132) paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy, Chair, and Dr Dina McMillan, Commissioner

Appendix A – Conditions of the Decision of the Commission, dated 4 May 2018, to vary the number of EGMs permitted in the approved premises, the Darebin RSL, located at 402 Bell Street Preston from 65 to 80:

1. Works

- (a) Prior to the installation of any of the additional fifteen electronic gaming machines (15) (**the Additional EGMs**) at the Premises, the Venue Operator must install the screening and other measures set out in the marked-up plans provided by Mr Leigh Barrett and set out in his evidence to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) on 13 April 2018.
- (b) Stage 1 of the Works (as defined in clause 1(c) below) at the Premises, must be substantially completed to the satisfaction of the Commission by the date that is two (2) years after the relevant planning permit for the Works is issued and before the commencement of the operation of any of the Additional EGMs at the Premises otherwise this approval will lapse.
- (c) For the purposes of this clause, '**Works**' comprise the Works referred to in Appendix 3 of the NBA Group Report dated November 2017, being plans prepared by Rubicon Design & Construct Pty Ltd. The Works are proposed to be completed in 6 Stages as outlined in the plans. The Works may be amended by the Venue Operator to satisfy necessary construction alterations or variations or the requirements of any planning permit issued, but must be similar in scale and scope to the Works contained in the original plans. The Applicant must provide the Commission with amended plans as soon as practicable after they have been finalised.
- (d) Stage 2 of the Works must be commenced prior to the operation of any of the Additional EGMs.
- (e) Stages 2 to 6 of the Works at the Premises must be substantially completed to the satisfaction of the Commission by the date that is five (5) years after the relevant planning permit for the Works is issued, otherwise this approval will lapse.
- (f) The Commission may, at the request of the Venue Operator, agree to extend the time for the completion of the Works referred to in 1(b) and 1(e) above. A request for an extension of time must be received at least 30 days prior to the date on which the Works are due to be completed, and must include an explanation as to why the Works have not been substantially completed.
- (g) If the Commission agrees to extend the time for completion of the Works in accordance with clause 1(f) above, 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) In addition to the existing cash contributions made by the Venue Operator to the community (which over the past four years averaged \$17,731 per annum), the Venue Operator undertakes



to make cash contributions annually in the sum of \$15,000 (increased each year by CPI) (**the Additional Contribution**) for as long as the Additional EGMs are in operation at the Premises.

- (b) The Additional Contribution will be allocated each year to not-for-profit community and sporting organisations in the City of Darebin.
- (c) If the Additional Contribution is not allocated in full each year as required in condition 2(b), the operation of the Additional EGMs must cease immediately for so long as the Additional Contribution (or part thereof) remains outstanding.

Appendix B

Summary of economic and social impacts

Economic impacts

	Impact	Paragraph numbers	Comments relevant to weight
Benefits	Expenditure on capital works	46 to 52	<p>Total expenditure on capital works is estimated at \$9.64 million over 6 stages.</p> <p>The Applicant has committed to completing the capital works within 5 years of the issue of a planning permit.</p> <p>There is some uncertainty that expenditure will be retained in the municipality, however, evidence was given that suppliers are expected to be sourced locally.</p> <p>Marginal to low weight.</p>
	Community contributions	53 to 57	<p>Were the Application to be granted, the Applicant committed to an additional annual \$15,000 community contribution (indexed to CPI) for the term of the EGMs' operation.</p> <p>The Applicant submitted that it made contributions of \$663,961.52 in cash, in-kind or subsidies in 2016–17 for benefit of the community. The Commission accepts evidence from the Applicant that the grant of the Application will ensure that it is able to continue to make the community contributions it currently makes. These existing contributions have a positive, although small, economic impact on the Darebin community.</p> <p>Marginal weight.</p>



	Additional employment	58 to 62	<p>The Applicant submitted that the Application will result in the creation of between 7.5 and 8.5 FTE positions once all 6 stages are complete.</p> <p>However, considering that 90 per cent of the additional gaming expenditure will be transferred from other venues in the City of Darebin, it is likely that some of the additional employment may be transferred from other venues.</p> <p>Marginal weight.</p>
	Gaming expenditure not associated with problem gambling	63 to 69	<p>The portion of addition gaming expenditure that is not attributed to problem gambling is considered a benefit.</p> <p>The expected new expenditure is \$224,790 per annum, which represents an increase in the total expenditure within the City of Darebin of approximately 0.3 per cent.</p> <p>No weight.</p>
	Increased gaming competition in the City of Darebin	70 to 74	<p>The Application has the potential increase gaming competition in the LGA by making the Premises more attractive to gaming patrons. This, in turn, might lead to improvement in facilities offered by competing venues.</p> <p>Marginal weight.</p>
Disbenefits	Gaming expenditure associated with problem gambling	75 to 91	<p>To the extent that a portion of the new gaming expenditure is attributable to problem gambling, this represents an economic disbenefit.</p> <p>The Commission accepts evidence that the catchment area exhibits relatively mixed level of socio-economic disadvantage and that there are indicators that make the community more vulnerable to the risks of problem gambling. The Commission notes a portion of the expected new expenditure of \$224,790 per annum will be associated with problem gambling. The manner in which the Applicant conducts gaming and the RSG measures proposed by the Applicant mitigate some of the harm associated with problem gambling.</p> <p>Marginal weight.</p>



	Diversion of trade from other gaming venues	92 to 93	<p>Due to the number of venues in the Premises' catchment area, the Commission considers the potential diversion of trade is unlikely to be felt by a single venue.</p> <p>No weight.</p>
--	---	----------	---

Social impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	Improved facilities enabling a greater range of services	96 to 102	<p>The Commission accepts that the proposed works will result in new non-gaming services and facilities that are not currently on offer at the Premises, such as a café/lounge and the reopening of a recreation centre.</p> <p>Other facilities, such as the sports bar and the bistro, will also be improved.</p> <p>Low weight.</p>
	Increased gaming opportunities for those who enjoy gaming	103 to 104	<p>The City of Darebin currently has 754 EGMs across 12 venues. The 15-machine increase the subject of this Application will provide limited additional opportunities for gaming.</p> <p>No weight.</p>
	Social benefit derived from increased community contributions	105 to 111	<p>In relation to the community contributions said to arise specifically as a result of the granting the Application, the addition of a paid welfare officer and a second community bus and driver will increase the social benefits that the Applicant is able to offer.</p> <p>The Applicant has also committed to an annual cash donation of \$15,000 (indexed to CPI) for the term of the gaming machines' operation. The Commission considers this would have a positive social impact on the community by supporting services provided by community organisations.</p> <p>The Commission accepts the evidence that the granting of the Application will allow the Applicant to remain financially viable and therefore able to continue contributing to the community.</p> <p>Marginal weight.</p>



Disbenefits	Possibility of increased incidence of problem gaming and the potential impact on the community	112 to 116	<p>The City of Darebin is a mature gaming marketplace and the addition of 15 machines is not likely to have a significant impact.</p> <p>Relying on its findings and comments in relation to the economic impact of expenditure associated with problem gambling, the Commission notes the addition of 15 gaming machines will, however, take the Premises from a medium gaming venue to a large gaming venue and this is associated with increased risk of gambling-related harm. This risk is mitigated to some extent by the Applicant's strong RSG practices and management's demonstrated commitment to the welfare of its members.</p> <p>Marginal weight.</p>
	Community attitude	117 to 124	<p>The Commission acknowledges the submission from members of the community and the survey presented by the Council expressing concern for the additional gaming machines.</p> <p>Overall, the Commission considers that there is evidence of a negative attitude to the Application amongst some members of the community.</p> <p>Low to moderate weight.</p>
	Increased exposure of children to gambling activity	125 to 127	<p>The Applicant has committed to installing the proposed protective measures at Stage 1 of the Proposed Works and there is the potential that the exposure of children to the sights and sounds of gambling activities at the venue would decrease were the Application to be granted, although more children might be present at the Premises due to increased family patronage.</p> <p>No weight.</p>