

## 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 Sayers Property Holdings Pty Ltd to amend its venue operator licence to vary the number of electronic gaming machines at the approved premises, Hotel 520 located at 520 Sayers Road, Tarneit from sixty-five (65) to seventy-seven (77).

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**Commission:** Fran Thorn, Chair  
Dr Ron Ben-David, Deputy Chair  
Mr Chris O'Neill, Commissioner

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**Date of Hearing:** 9 and 10 November 2023

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**Date of Decision:** 4 December 2023

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**Date of Reasons:** 4 December 2023

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**Appearances:** Ms Nicola Collingwood of Counsel for the Applicant, instructed by BSP Lawyers  
Mr John Rantino of Maddocks Solicitors for the Wyndham City Council  
Ms Helen Sims and Mr Jaryd Rankin of Norton Rose Fulbright assisting the Commission

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**Decision:** The application is granted subject to the conditions set out in Appendix B

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**Signed:**



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Fran Thorn

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Chair

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## Background

1. Sayers Property Holdings Pty Ltd (**Applicant**) owns and operates Hotel 520, located at 520 Sayers Road, Tarneit (**Venue**).
2. This is an application by the Applicant to the Victorian Gambling and Casino Control Commission (**Commission/VGCCC**) to amend its venue operator's licence to increase the number of electronic gaming machines (**EGMs**) operating at the Venue, from sixty-five (65) to seventy-seven (77) (Application). In the 2022/23 financial year, the net gaming expenditure (being the total amount lost by players) at the Venue was \$13,433,100.89.
3. The relevant municipal authority is Wyndham City Council (**Council**). The Council opposes the Application.

## Role of the Commission

4. An application for a licence to operate EGMs (or an application to amend a licence to increase the number of EGMs at a venue) is a serious matter. It concerns permission to conduct a legitimate commercial recreational activity which has the potential to present a significant risk to individual players, their families and friends, as well as the wellbeing of the community.
5. Minimising the harm caused by gambling is central to the Commission's functions. The Commission has published a position statement on harm minimisation<sup>1</sup>. Protecting patrons, their families and the community from gambling harm is at the centre of everything the Commission does. The Commission is now embedding a harm minimisation focus into every element of its regulatory activity, including how it evaluates all licencing approvals and applications, including this Application.

## Legislation and the Commission's task

6. This Application must be determined in accordance with the relevant provisions of the Gambling Regulation Act 2003 (Vic) (**GR Act**). In summary, the Commission must refuse the Application unless:
  - a. the Commission is satisfied that the net economic and social impact of the amendment to the Applicant's licence will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located (the no-net-detriment test);
  - b. the Commission is satisfied that the amendment of the licence does not conflict with a ministerial direction, if any, given under section 3.2.3 of the GR Act;
  - c. 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 granting of the Application; and
  - d. if premises are proposed to be added to the licence as an approved venue and the premises are situated within 100 metres of an approved venue of which the applicant for the amendment, or an associate of the applicant, is the venue operator, the Commission is satisfied that the management and operation of the approved venue and the proposed approved venue are genuinely independent of each other.
7. If the Commission is satisfied that all of the criteria listed above, including the 'no net detriment' test are met, it still has an ultimate discretion as to whether or not to grant the approval.<sup>2</sup>
8. The relevant legislation is set out in **Appendix C** to this decision, along with some commentary on consideration of that legislation by judicial authorities and decisions of the Victorian Civil and Administrative Tribunal concerning that same legislation.

<sup>1</sup> [https://www.vgccc.vic.gov.au/sites/default/files/our\\_position\\_on\\_gambling\\_harm.pdf](https://www.vgccc.vic.gov.au/sites/default/files/our_position_on_gambling_harm.pdf)

<sup>2</sup> See *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M; see also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [97] and following per Dwyer DP (with respect to section 3.3.7 GR Act).

## The role of the municipal Council

9. The GR Act provides that in an application to increase the number of EGMs at a venue, the municipal council may make a submission to the Commission:
- addressing the economic and social impact of the proposed amendment on the well-being of the community of the municipal district in which the venue is located; and
  - taking into account the impact of the proposed amendment on surrounding areas.
10. In this Application, the Council filed a social and economic impact assessment, instructed a solicitor to appear at the hearing of the Application, and provided written closing submissions following the hearing.
11. The Commission notes the following submission made by the Council in its closing submissions:
- “As the President of the Tribunal in Branbeau<sup>3</sup> emphasised, a council’s special status under the Act stems in large part from the fact that the Local Government Act 1989 “provides that the primary objective of a council is to endeavour to achieve best outcomes for the local community having regard to the long term and cumulative effects of decisions...a council must have regard to the social, economic and environmental viability and sustainability of the municipal district and overall quality of life of the local community”<sup>4</sup>*

## Material before the Commission

12. The Applicant provided the Commission with the following material in support of the Application:
- ‘Application for increase in gaming machines’ dated 19 April 2023 (Application Form);
  - Social and Economic Impact Assessment prepared by Mr Rhys Quick of Urbis Pty Ltd, dated June 2023 (Urbis Report);
  - ‘Expert’s Report in Respect of Application to vary the number of Electronic Gaming Machines’ prepared by Mr Tim Stillwell of SW Accountants & Advisors, dated 16 March 2023 (SW Report);
  - ‘Statement of Evidence’ prepared by PVS Australia Pty Ltd (PVS Report), dated 1 June 2023;
  - letter from BSP Lawyers (solicitors for the Applicant) to VGCCC dated 10 August 2022 (annexing a copy of the decision of the then Victorian Commission for Gambling Regulation dated 7 October 2010);
  - suggested conditions to attach to the approval;
  - a witness statement of Mr Bruce Montgomery dated June 2023 (Montgomery Statement);
  - a witness statement of Ms Julie Louise Shelton dated June 2023 (Shelton Statement);
  - a summary of historical donations; and
  - a Site Plan and Gaming Room Plan.
13. The Council provided an economic and social impact submission in opposition to the Application, by way of a report dated 6 October 2023 from Ms Bonnie Rosen of Symplan (**Symplan Report**).
14. The following reports, prepared by VGCCC officers, were provided to the Applicant and the Council and were considered by the Commission:
- Pre-Hearing Inspection and Compliance Report dated 8 September 2023 (**Compliance History Report**);
  - Pre-Hearing Size, Layout and Facilities Report dated 8 September 2023 (**VGCCC Venue Report**); and
  - Economic and Social Impact Report – EGM Increase dated 18 October 2023 (**VGCCC Report**).
15. In addition, Ms Rosen and Mr Quick participated in a pre-hearing conclave and produced a joint report dated 4 November 2023.
16. Letters were also received from City of Melton, City of Greater Geelong, City of Brimbank and Hobsons Bay City Council objecting to the application.

<sup>3</sup> *Branbeau Pty Ltd v VCGR* [2005] VCAT 2006.

<sup>4</sup> *Branbeau Pty Ltd v VCGR* [2005] VCAT 2006.

17. The applicant also produced information and documents to the Commission in response to requests for information from the Commission.
18. The following witnesses gave oral evidence at the Hearing:
- a. Mr Rhys Quick (author of the Urbis Report);
  - b. Mr Tim Stillwell (author of the SW Report);
  - c. Mr Andrew Jeynes (author of the PVS Report);
  - d. Ms Bonnie Rosen (author of the SymPlan Report);
  - e. Ms Shelton; and
  - f. Mr Montgomery.
19. The Applicant and Council both made written submissions following the hearing, and the Applicant made further submissions in reply.
20. The venue was also visited and inspected by two of the Commissions determining this Application following the hearing.
21. The Commission expects a high level of attention to detail, accuracy, clarity and consistency in materials provided to it in support of this application. Expert reports relied on by parties need to demonstrate a sophisticated and rigorous level of analysis and their conclusions need to be properly supported by that analysis and explained in their report.
22. In some instances, the material produced to the Commission in this matter fell short of those expectations. This is described further below at paragraph 123. The intention of drawing to these matters is not to criticise the Applicant (or their representatives or witnesses), but to make the Commission's expectations clear to future applicants in similar types of applications.
23. There were some positive aspects of the Application for which the parties should be commended. In particular, the applicant and Council's expert witnesses who gave a social and economic impact assessment participated in a conclave (at the direction of the Commission) and produced a joint report which identified some areas where they had reached agreement, and identified remaining areas of disagreement. This process assisted the Commission and was appreciated by it. The Commission encourages parties in future applications to take a similar approach.

## The Venue and its surrounding area

### *Location*

24. The Venue is in the City of Wyndham<sup>5</sup>, a metropolitan municipality located approximately 40km south-west of Melbourne. Major suburbs include Werribee and Hoppers Crossing. The Venue itself is in Tarneit. According to the VGCCC Report, the estimated total adult population is 228,218, ranking 2nd out of 31 metropolitan municipalities (1 being the most populated area).<sup>6</sup> The City of Wyndham's estimated annual population growth of 3.67% is projected by the Department of Transport and Planning to be higher than the Victorian average of 1.1%.

### *Current gaming in the City of Wyndham*

25. Currently, there are thirteen (13) gaming venues operating within the City of Wyndham with approvals to operate a total of 903 EGMS with attached entitlements. The maximum permissible number of gaming machine entitlements in the City of Wyndham is 1190, divided into two distinct areas. One is a capped region, with a cap of 638 EGMS, of which 638 are currently in use. The other area, which includes the suburb of Tarneit where the Venue is located, has a municipal limit of 552, of which 265 gaming machines are currently in use.<sup>7</sup>
26. The approval of the Application would result in the number of licensed EGMS or entitlements in the municipality increasing by 12.

<sup>5</sup> Where reference is made in these reasons to City of Wyndham, this is a reference to the local government area (LGA).

<sup>6</sup> VGCCC Report, page 10.

<sup>7</sup> Ministerial Order made under section 3.2.4 and 3.4A.5(3A) of the Act, dated 29 September 2017

27. The VGCCC Report notes that the City of Wyndham has an EGM density of 3.96 EGMs per 1,000 adults, which is 9.3% less than the metropolitan LGA average (4.4) and 16.1% less than the State average (4.7). This ranks the City of Wyndham as the 18th of 31 metropolitan LGA average in terms of EGM density per 1,000 adults.<sup>8</sup>
28. Also as stated in the VGCCC Report, in the 2022-23 financial year, the City of Wyndham had an average gaming expenditure (i.e net losses) of \$547.30 per adult, which is marginally lower than the metropolitan average (\$548.12) and slightly higher than the State average (\$542.56). Applying the Applicant's estimate of increased gaming expenditure arising from the operation of the additional 12 EGMs at the Venue, the first year of operation would result in an increase in average gaming expenditure per adult from \$547.30 to \$552.12, which is an increase of 0.88% in the LGA.
29. In the 2022-23 financial year, the expenditure (player losses) on gaming for the City of Wyndham was \$124,903,632.06.

#### *Socio-economic profile of the City of Wyndham*

30. The City of Wyndham is characterised by an above average socio-economic profile, in comparison to metropolitan municipalities. It is ranked 8th of 31 metropolitan LGAs and 44th of 79 LGAs in Victoria on the Socio- Economic Indexes for Areas (**SEIFA**) index of relative socio-economic disadvantage (**IRSD**),<sup>9</sup> indicating a higher level of disadvantage within the LGA (1st being the LGA with the greatest disadvantage).
31. In relation to the immediate surrounding area of the Venue (i.e. within 2.5 kilometres),<sup>10</sup> the SEIFA IRSD index is 0.74% less than<sup>11</sup> the SEIFA IRSD index for the City of Wyndham, and 0.92% less than the SEIFA IRSD index all metropolitan LGAs. On the SEIFA IRSD, a higher score indicates a higher level of disadvantage, therefore the immediate surrounding area from the City of Wyndham experiences a relatively higher disadvantage than Victoria as a whole. 16% of SA1s<sup>12</sup> in the immediate surrounding area are in the 1st quintile<sup>13</sup> of SEIFA scores (marginally below the metropolitan average of 17%), and 45% are in the 2nd quintile (materially higher than the metropolitan average of 18.1%). This also suggests that the area immediately surrounding the Venue experiences relatively higher levels of disadvantage than the metropolitan LGA average.
32. The VGCCC Report also indicates that, among other things:
- the unemployment rate in the City of Wyndham is 4.47%. This is higher than the metropolitan LGA average of 3.84%, and the State average of 3.67%.
  - the equivalised household income in the City of Wyndham is \$1,220.16, which is lower than the metropolitan LGA figure of \$1,339.28, and the State figure of \$1,273.57. The equivalised household income in the immediate surrounding area is \$1,137.30, being 15.1% less than the metropolitan LGA average;
  - housing stress in the City of Wyndham is 51.7%, which is less than the metropolitan average of 57.6%, and the State average of 53.7%. Housing stress in the immediate surrounding area is 50.3%; and
  - the homelessness rate in the City of Wyndham is 4.8 per 1,000 adult population, which is 15th highest of the 31 metropolitan LGAs. The homelessness rate within the immediate surrounding area is 8.4% lower than the LGA rate and 25.2% lower than all metropolitan LGAs.

#### *Nature of the Venue*

33. On 7 October 2010, the former Commission for Gambling Regulation approved the premises at the Tarneit Tavern (now known as Hotel 520 on Sayers) as suitable for gaming with 65 electronic gaming machines. This is

<sup>8</sup> VGCCC Report, page 11.

<sup>9</sup> SEIFA is a product developed by the ABS to assist in the assessment of the welfare of Australian communities. The SEIFA Indices allow the ranking of regions/areas, providing a method of determining the level of social and economic well-being in each region or area. As such, the SEIFA IRSD provides a relative, rather than an absolute, indication of the level of socio-economic disadvantage within the relevant area.

<sup>10</sup> The VGCCC Report adopts a 2.5km radius as the immediate surrounding area for applications to amend EGM venue operators' licences for venues within metropolitan and major regional LGAs.

<sup>11</sup> A lower SEIFA score indicates a high proportion of relatively disadvantaged people in an area, while a high score indicates a lack of disadvantage (not a high level of advantage).

<sup>12</sup> (Statistical Areas Level 1 (SA1s)) have been designed by the ABS as the smallest unit for the release of Census data, and generally have a population of 200 to 800 persons, with an average of 400 persons.

<sup>13</sup> SEIFA IRSD is divided into five quintiles each comprising 20% of areas (SA1s) ranked by socioeconomic status from the most disadvantaged (lowest / 1st quintile) to least disadvantaged (highest / 5th quintile). High disadvantage is indicated by a low SEIFA score (and low disadvantage by a high score).

the first application to increase the number of EGMs at the Venue since it was first approved in 2010 to operate 65 machines.

34. The Venue currently comprises a range of facilities including:
- a. a bistro dining room;
  - b. a children's play space;
  - c. a function room seating between 150 - 180 guests, with a pre-function room space and an external courtyard attached;
  - d. private dining function space;
  - e. sports lounge with an external courtyard (that is regularly used as an alternative function space);
  - f. gaming room (which currently accommodates 65 EGMs); and
  - g. a Thirsty Camel bottle shop.<sup>14</sup>
35. The current permitted hours of operation for the gaming room and the rest of the Venue are:
- a. Sunday to Wednesday: 9.00am to 1.00am the following day; and
  - b. Thursday to Saturday: 9.00am to 3.00am the following day.<sup>15</sup>

## Reasons for decision

### Issues for determination

36. As set out in paragraph 6 above, the Commission cannot grant the Application unless it is satisfied as to the four matters set out in section 3.4.20 of the GR Act. These matters are considered in parts A to D below.
37. Even if the four criteria set out in section 3.4.20 of the GR Act are satisfied, the Commissioner has a discretion to grant or refuse the Application. That discretion may be exercised having regard to the objects of the GR Act and the broader policy principles underpinning it.

#### A. The 'No net detriment' test

38. The Commission must be satisfied that, if the Application is granted, the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the Venue is located. Set out below (and summarised in tabular form at **Appendix A**) 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.
39. The Commission considers that it does not matter whether impacts of the Application are considered as social or economic impacts, or both, so long as such impacts are considered and not double-counted in the ultimate composite test. The Commission has considered the economic and social impacts together as in most instances they are not mutually exclusive. For example, the incidence of problem gambling has both a social and economic aspect and the Commission has considered the impacts together and weighted them on a basis that combines the benefits and/or detriments so as to avoid double counting.

#### Economic and social impacts

##### Renovation works

40. The Application concerns not just the addition of 12 EGMs to the venue, but also a broader redevelopment of the venue including the creation of an additional "burger bar" eatery (which can also be used as a function space), movement of the administrative offices to a separate part of the venue, and improvements to the venue's function space. These changes to the venue are referred to in the balance of this decision as the "**renovation works**".
41. The only lay witness who gave evidence in respect of the nexus between the renovation works and the Application was Mr Montgomery, who gave a witness statement three and a half pages in length. The extent of his evidence on the nexus between the Application and the broader renovation works in his witness statement

<sup>14</sup> Urbis Report, page 6.

<sup>15</sup> Application form dated 19 April 2023, page 4.



- were the following two sentences: “without the cash flow from the additional machines we will not fund these works” and “these works will not take place unless this approval is obtained”. The Commission notes that this is a fairly typical approach taken by applicants who are seeking approval to increase the number of EGMs at their venue – that is, applicants generally “bundle” together an application to increase the number of EGMs with a proposal to renovate the venue, such that there is an economic benefit from the renovation works which the applicant submits should be considered as part of the no-net-detriment test.
42. There was no information provided in the Applicant’s initial material about why it was the case that the renovations could or would not occur in the absence of the Application being approved. In advance of the hearing, the Commission requested further information from the Applicant to understand its position on this matter. After describing the request as “unreasonable”<sup>16</sup>, the Applicant provided some additional information regarding its position that it would not undertake the renovation works unless the Application was approved.
43. The evidence given by Mr Montgomery at the hearing in this regard included that:
- the renovation works would be funded by borrowings, and there had been informal discussions with the Applicant’s banker, NAB, that the borrowings would not be available without the increased revenue from the additional EGMs;
  - the board had made a unanimous decision to not proceed with the renovations unless the Application was approved; and
  - even if the borrowings could be obtained without the additional EGMs being approved, the board did not have an appetite for incurring additional debt without the revenue from the additional EGMs.
44. In its closing submissions, the Applicant submitted<sup>17</sup> that “*it is inappropriate for the Commission to undertake a feasibility assessment or forensic analysis of the financial circumstances of the Applicant...*” and “*it is appropriate to take the application at face value*”.
45. The Applicant’s submission that the Commission should “*take the application at face value*”<sup>18</sup> is mistaken. The financial position of the applicant is a relevant consideration when assessing the weight to give to the assertion that the building works would not be completed if the Application for the additional EGMs was not approved. An application such as this must be refused unless the Commission is satisfied of the absence of a net detriment to the community.<sup>19</sup> That inevitably imposes a challenge to the applicant to persuade the Commission that it should be so satisfied.<sup>20</sup> If the material put forward by an applicant is unreliable or lacks the required detail or analysis such that it cannot be relied on with a sufficient degree of confidence by the Commission, then it is open to the Commission to disregard (or at least give little weight) to that evidence in determining the application.
46. At no stage did the Commission propose to undertake a “*feasibility assessment*” of the type referred to in *Monash CC v L’Unico Pty Ltd* [2013] VCAT 1545. An applicant who makes a submission that certain renovation works cannot or will not be conducted without revenue from additional EGMs is expected to explain the basis for that position, having regard to the Applicant’s financial circumstances, so that the Commission can understand the Applicant’s position and determine the weighting to be given to it. The submissions made by the Applicant that the Commission’s line of inquiry in this regard was mistaken and irrelevant reflects a misunderstanding of the Commission’s role in assessing the evidence before it in an application such as this.
47. At the hearing, Mr Montgomery gave evidence that the Applicant would need to borrow approximately \$1,000,000 from the bank to fund the renovations<sup>21</sup>, and that that the board was “unanimous”<sup>22</sup> that if the Application was not approved, the Applicant would not proceed with the development works.
48. The Applicant submits that the capital costs of the renovation works are estimated to be \$1.75million (including GST), and that there will also be additional economic benefits associated with the renovation works in the form of:

<sup>16</sup> Letter from Applicant dated 30 October 2023.

<sup>17</sup> Relying on the VCAT decision of *Monash CC v L’Unico Pty Ltd* [2013] VCAT 1545 in addition to some other decisions of VCAT and the Commission (or its predecessors).

<sup>18</sup> The Commission understands this submission to mean that the Commission should have taken the proposition in Mr Montgomery’s statement that the renovation works would not proceed unless the Application was granted at face value, without any interrogation.

<sup>19</sup> *New Theme Pty Ltd v Victorian Casino and Gaming Authority* [2002] VSCA 80 at [63].

<sup>20</sup> *Ibid.*

<sup>21</sup> Transcript, 10 November 2023, P-308.

<sup>22</sup> Transcript, 10 November 2023, P-308.

- a. increased supply contracts (i.e. increase levels of spending by the Applicant on things such as food and beverage purchases), which the Applicant estimates will be \$756,800 in the first 12 months;
  - b. increased non-gambling expenditure at the venue (estimated by the Applicant to be \$1,664,000 in the first twelve months);
  - c. an increase in 50 – 70 full time equivalent (FTE) short term positions associated with the construction; and
  - d. the creation of 1 – 2 FTE gaming positions, and 5 – 7 FTE non-gaming positions.
49. The Applicant submits that the capital expenditure for the renovation works, and the associated benefits set out at paragraph 48 above, are the primary economic benefits associated with the Application.
50. At the hearing, Mr Montgomery gave evidence of a “unanimous” position of the board that the renovations could only be funded using additional borrowings, and that having regard to Applicant’s existing debt levels, the board was unwilling to borrow additional money without the revenue that the additional EGMs would generate. The Commission was not provided any evidence of this “unanimous” position of the board – for example, minutes of a board meeting recording the decision, or evidence from other board members confirming that the decision was unanimous and the basis for the board holding that position.
51. In addition, Mr Montgomery’s evidence at the hearing was that there had been “informal discussions” with the Applicant’s banker, NAB, who wanted the Applicant to be able to demonstrate how it would repay the extra borrowings, which the Applicant proposed to do by using revenue from the additional machines. In a response to request for information, the Applicant also stated that “*the applicant has had preliminary discussions with the NAB but [sic] no formal application can be made until there is certainty around the additional cash flow from the machines*”.
52. Accordingly, the Applicant’s position (which was central to its submission that the benefit of the renovation works was linked to the Application) arose partially from the submission that it was not able to formally approach its bank for funding until it knew whether this Application was approved. However, other than a single sentence in a letter to the Commission, and Mr Montgomery’s evidence at the hearing (noting that these matters were not traversed in his witness statement), the Commission was not provided with any evidence of the substance of the “informal” discussions had with NAB – in particular, who those discussions were between, the substance of the conversation, the date they occurred, or any notes or written communications recording the substance of what was said.
53. Notwithstanding the difficulties with the Applicant’s evidence on this subject, the Commission accepts the Applicant’s submission that the renovation works will not go ahead in the near-term if the Application is not approved. The Commission accepts that the economic and social benefits of the renovation works should be considered as part of the no-net-detriment test.
54. In the Urbis Report, Mr Quick listed various effects of the renovation works as separate items relevant to the economic and social benefits of the Application, each which he provides a separate weighting. The effects which were separately weighted by Mr Quick included the “value of the development works”, the “ongoing effects due to the development works and increased activity”, “employment creation” and “improved facilities enhancing social interaction”. Although each of these effects are considered individually below, the Commission considers that weighing each of these matters as if they are tangibly separate benefits risks duplicating the number of positive aspects of the renovation works. Instead, the Commission has given a weighting to the renovation works, which includes all of the various components listed in paragraph 48 above, plus any social and economic benefits provided to residents of the municipal area by the improved facilities.
55. It should also be noted that Mr Quick’s report states “that the renovation works may proceed in time, although without the additional profitability of the additional EGMs, that investment will be delayed”. The Commission notes that this does not align with Mr Montgomery’s emphatic evidence (in his witness statement and at the hearing) that the renovation works would not go ahead if the Application were not approved. Mr Quick’s evidence at the hearing was that he was not definitively instructed that the renovations would not go ahead at all if the application was not approved, which the Commission considers to be the likely explanation for difference in approach.
56. In her report<sup>23</sup>, Ms Rosen gave evidence that the positive economic impact of the renovation works was negligible, for reasons including that:

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<sup>23</sup> At page 58.



- a. there was no “guarantee” that the Applicant would engage companies from within the City of Wyndham to carry out the works or supply materials for the proposed development;
  - b. the economic benefit was likely to be negligible in the context of the overall economy of the City of Wyndham;
  - c. there was no evidence of an intention by the Applicant to fill the long-term positions with residents of the City of Wyndham; and
  - d. there was no evidence that the increased supply contract expenditure would flow to businesses located in the City of Wyndham.
57. At the hearing, Mr Montgomery gave evidence that the Applicant had a “*policy to use local tradies, local suppliers, food suppliers*”. This was the totality of the evidence provided by the Applicant to demonstrate that the economic benefits of construction, the increase in short term and long-term employment, and the increase in value of supply contracts would flow to the City of Wyndham. The Applicant has also not proffered any conditions which would ensure that such benefits flowed to the City of Wyndham. In the absence of such evidence, the Commission is unable to determine with any degree of confidence that the value of the construction works (and the associated increase in short term employment) and the increased value in supply contracts will flow to the City of Wyndham. However, the Commission considers it probable that the creation of long-term employment positions in the City of Wyndham will benefit the City of Wyndham.
58. Even if there was evidence that all or the bulk of the benefits of the capital expenditure of the renovation works would flow to businesses based in the City of Wyndham, the Commission also considers that the amount of capital expenditure, while not being an immaterial sum, is not of such an amount that it deserves a particularly high weighting.
59. Having regard to the above matters, the Commission has formed the following view in respect of the economic and social benefits associated with the renovation works:
- a. Renovation works (capital expenditure): Marginal to low.
  - b. Increased supply contracts: Marginal to low.
  - c. Increase in short-term employment: Marginal to low.
  - d. Increase in long-term employment: Marginal to low.
  - e. Social and economic benefits from improved non-gambling facilities: Marginal to low.
60. The Commission weighs the combined economic and social impacts associated with the renovation works as marginal to low. Given that the primary benefit of the Application is the benefit of the renovation works described in the paragraph above, the Commission has imposed conditions (see Appendix B) that make operation of the EGMs conditional upon the Applicant having entered into a building contract for the works, and the completion of the building works within 24 months of operation of the machines.

### **Community contributions**

61. During the course of this Application, a number of matters have arisen regarding the Applicant’s historical approach to fulfilling its commitment to make community contributions.
62. As part of its application for approval of the existing EGMs at the Venue, the Applicant committed to the then Victorian Commission for Gambling Regulation (**VCGR**) that it would establish a community benefit program providing \$150,000 per annum for 10 years (between 2012-2022). That commitment was not recorded as a condition of the licence, but it is clear from the reasons of the VCGR that the commitment had a material bearing on the VCGR’s decision to approve the application.<sup>24</sup>
63. It is unclear from the reasons of the VCGR whether it was intended by the VCGR and the Applicant that the community contribution commitment would be satisfied by payment of cash contributions, cash in kind contributions, or a combination of both. On 12 August 2022, the Applicant’s solicitor wrote to the VGCCC on 10 August 2022 stating:

*In the course of providing advice to our client in relation to an unrelated matter, it has become apparent that the venue operator has been satisfying its obligations (which are not secured by way of condition) through a mixture of cash and in-kind contributions.*

<sup>24</sup> See paragraphs 72 and 73.

*In discussions with our client it is clear that this was always the intention of the venue operator at the time that the application was lodged. I am instructed by Mr Salvalaggio, who gave evidence to the VCGR as part of the premise approval that this was the basis of him giving evidence at the Commission in relation to the obligation as pledged.*

64. As described in more detail in paragraph 122 below, the Applicant did not call Mr Salvalaggio as a witness. The Commission was disappointed by this approach, given that he was clearly the appropriate person to address the Commission in respect of these matters.
65. As it transpires, the Applicant has sought to satisfy its historical commitment by a mixture of cash and purported “cash-in-kind” benefits, many of which were clearly inappropriate to claim as community contributions. For example:
- a. The Applicant has claimed to have made significant cash in kind contributions (\$26,400 in FY21 and \$33,270 in FY22) by way of “free of charge” room hire to community groups, notwithstanding that the rooms have been available to all customers free of charge for approximately two years (and are advertised publicly as such). Clearly, the provision of rooms that are ordinarily made available free of charge is not a cash in kind community contribution. In addition, the material provided to the Commission indicates that, even for those years when the function spaces were not always available for free, the Applicant has counted the provision of function spaces for private events (such as birthday parties) as a cash in kind community benefit.
  - b. The Applicant has claimed the payment of apprentice wages and staff training costs as a cash in kind community contribution. As recently as 3 November 2023, the Applicant confirmed in a letter to the Commission that it proposed to continue to fulfil any obligation to make cash in kind contributions by way of payment of staff and apprentice wages. Although as noted below the Applicant has indicated a willingness to “modernise” its approach to community contributions, in its closing submissions the only specific concession it has made about the incorrectness of its approach was in respect of room hire, and it has not acknowledged that it was and is incorrect to characterise payments of apprentice wages and staff training costs as a cash in kind community benefit.
  - c. The Applicant has claimed the provision of discounted meals to seniors as a cash in kind community benefit (in amounts ranging up to \$16,016 per year).
66. When giving evidence at the hearing, Mr Montgomery acknowledged that the Applicant would have to “relook” at the Applicant’s approach to determining what constituted a cash in kind contribution, and in a letter dated 17 November 2023 the Applicant confirmed that it now understood that “*the accounting methodology it previously employed in good faith is inconsistent with modern expectations*”.
67. The Commission agrees that the methodology previously adopted by the Applicant is inconsistent with modern expectations.
68. The Applicant has proposed that an obligation to make community contributions be made a condition to attach to the approval of the Application.
69. In assessing the economic benefit of the future community contributions, the Urbis Report (being a report provided by the Applicant) weights the positive impact of the social and economic contributions is “low”.<sup>25</sup>
70. The SymPlan Report weighs the benefit of the future community contributions as being negligible to low.<sup>26</sup> The reasons for that weighting in the SymPlan Report include that the social and economic benefit of the community benefits is uncertain because (among other things) there is no evidence in the draft conditions outlining a process which will ensure the effective of equitable distribution of the funds to organisations.
71. The Applicant has not submitted or led evidence that if the Application is refused, its practice of providing community contributions, in the manner it has done historically, will cease. At the hearing, Mr Montgomery gave evidence that the board of Applicant had not made any decision about whether it would continue making community contributions if the Application was refused, but that the board would “look at it” and “probably reduce it”.<sup>27</sup>
72. Having regard to the above matters, the Commission considers the weighting of the social and economic benefit of the future community contributions to be positive but marginal.

<sup>25</sup> Urbis Report, page 35.

<sup>26</sup> SymPlan Report, page 57.

<sup>27</sup> Transcript, 10 November 2023, P-312.

**Gaming expenditure as an economic benefit, improved services and facilities at the Venue and increased gaming opportunities for those who enjoy gaming**

73. As the economic category of gaming expenditure not associated with problem gambling includes consumption, then to the extent that such expenditure is not associated with problem gambling, it has been recognised that it can be treated as an economic positive.<sup>28</sup> As Bell J noted 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.<sup>29</sup>
74. The Urbis Report gives a “low” weighting to the positive impact that arises from the increase in gaming expenditure: *“The increase in gaming expenditure is relatively modest. Any expenditure on gaming by those who are not problem gamblers is considered a benefit to those players. The community benefit is low as this benefit accrues only a small share of the population.”*
75. The SW Report concludes that:
- the level of additional gross gaming expenditure generated from an increase in EGMs at Hotel 520 on Sayers would be between \$1,501,285 and \$1,834,903 per annum in the first 12 months of trade post installation of the additional 12 EGMs; and
  - of this additional expenditure, 40% would be transferred expenditure, with the remaining expenditure being new expenditure. This would equate to new expenditure of between \$900,771 and \$1,100,942 in the first 12 months of trade post installation of the additional 12 EGMs.
76. During the evidence of Mr Stillwell (the author of the SW Report) the following matters transpired:
- Mr Stillwell acknowledged that he gave evidence in a recent application before the Commission relating to Club Tarneit, where Club Tarneit was granted approval to operate 70 EGMs at 115 Woods Road, Truganina. That venue is located approximately 5 kilometres from the Venue which is the subject of this Application.
  - Mr Stillwell acknowledged that he gave evidence in the Club Tarneit application that Club Tarneit would generate \$7.3 to \$8million in gaming expenditure in its first twelve months of operation, and \$9.2 to \$10.05million in the second twelve months, and that 50% of the first years’ expenditure would be transferred from other venues, and 45% of the second years’ expenditure would be transferred neighbouring venues. In the Club Tarneit application, Mr Stillwell gave evidence that that the majority of the transferred expenditure would come from Hotel 520 (the Applicant), being the closest venue to Club Tarneit.
  - Mr Stillwell confirmed that his expenditure analysis report in this Application had not been adjusted to reflect his evidence given in another application that the opening of Club Tarneit would result in a significant transfer of expenditure away from Hotel 520. Mr Stillwell acknowledged that the transfer of expenditure from the Applicant to Club Tarneit would have an impact on his expenditure analysis in this Application.
  - Mr Stillwell confirmed that he had not been instructed to revise his report in this Application for consistency with his evidence in the Club Tarneit matter.
77. The Commission notes that it is unsatisfactory that an expert report was filed by the Applicant in this proceeding which was materially incomplete having regard to the evidence given by that expert in another application before this Commission. Due to those issues, the Commission considers Mr Stillwell’s report to be unreliable.
78. The SymPlan report gives a negligible weighting to the positive impact that arises for the increase in gaming expenditure by those not affected by gambling-related harm. While acknowledging that gaming patrons not affected by gambling-related harms may derive a financial benefit from the use of the additional EGMs, the SymPlan report states that *“Given the low utilisation rate of the existing EGMs for the majority of the venue’s trading hours and the existence of other gaming venues in the proposal site’s catchment, the economic benefit of EGM expenditure by those not affected by gambling-related harm are negligible.”*
79. The SymPlan report notes that the additional EGM expenditure is associated with additional taxes for the Victorian State Government. The Commission does not consider increased gaming tax revenue to be relevant to the no-net-detriment test, because the no-net-detriment test is concerned with benefits and detriments that

<sup>28</sup> See *Romsey No. 2* [2009] VCAT 2275 [351] per Bell J.

<sup>29</sup> *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.

flow to the local government area (and the Commission can draw no conclusions about the linkage between revenue raised via taxation and expenditure by the State government in the local government area).

80. Due to the matters set out in paragraph 76 above, the Commission is unable to determine with any reliable degree of precision the amount of increased expenditure that will result from the Application being approved. Accordingly, the Commission does not place any weight on the economic or social benefit of gambling not associated with problem gambling.
81. In addition, any additional “entertainment spend” on the additional EGMs that is not associated with problem gambling can be assumed to be at least partially offset by reduced entertainment spent on other sources of entertainment provided by other non-gambling service providers in the local government area. That means that while consumers might gain some additional utility from switching their expenditure to EGMs, this may partially or largely be offset by the reduced economic benefit accruing to those providers of other entertainment services.

### **Gaming expenditure associated with problem gambling and potential increased incidence of problem gambling and gambling related harm – social and economic impacts**

82. The Commission has taken into account both the economic and social impacts associated with problem gambling associated with the Application and has given appropriate weight to this impact below.
83. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an adverse social and economic impact on the local community.<sup>30</sup> In assessing this impact (and other effects of problem gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gambling undertaken by those who have traditionally been defined as ‘problem gamblers’, as well as those who may be otherwise regarded as being at ‘low-risk’ or ‘moderate-risk’ of harm from gambling.
84. As noted in paragraphs 73 to 80 above, the Commission is unable to determine with any reliable degree of precision the amount of increased expenditure that will result from the Application being approved. The Commission has considered the Application on the basis that the additional EGMs will result in some increase in new expenditure at the Venue (in addition to any expenditure that will be transferred from other venues).
85. In considering the ‘no net detriment’ test, the Commission does not include gambling expenditure that is transferred from another venue within the local government area. That is because the transfer of expenditure from one venue to another does not exacerbate the amount attributed to harm.<sup>31</sup> The Commission notes there is a non-zero risk that some of the new expenditure at Venue may lead to gambling harm and this will have a negative social and economic impact on the local government area.

### **Vulnerability of City of Wyndham and the catchment area**

86. The extent to which new gambling expenditure will be associated with problem gambling and the resulting harm, and hence may be regarded as a disbenefit associated with the Application, will be influenced by the socio-economic status and vulnerability of the local government area, and in particular those living in the identified catchment area of the Venue. This is because communities characterised by relative socio-economic disadvantage are considered more vulnerable to the financial harms arising from problem gambling. Nonetheless, the Commission acknowledges that anyone who gambles may experience harm (as may those closest to them).
87. The VGCCC Report identifies that, within the 2.5-kilometre radius of the Venue:
- The SEIFA rankings show that, of the SA1s within a 2.5 kilometre radius of the Venue, 16.0% are in the 1<sup>st</sup> quintile (which is the most disadvantaged quintile), 45.1% are in the 2<sup>nd</sup> quintile and 31.3% in the 3<sup>rd</sup> quintile.<sup>32</sup> The SEIFA for the immediate surrounding area of the Venue (998.54) is 0.74% lower than the City of Wyndham, 1.92% lower than metropolitan LGAs and 1.17% lower than Victoria<sup>33</sup>. A lower SEIFA

<sup>30</sup> The Commission recognises that, on review, the key likely disbenefit of ‘problem gambling’ has, for convenience, been treated under the heading of ‘social impacts’ in various instances: see *Mount Dandenong Tourist Hotel Pty v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted; see, for example, *Mount Alexander Shire Council* [2013] VCAT 101 at [178] and following per Dwyer DP. For completeness, the Commission considers both the economic and social impacts of problem gambling in assessing this Application, but without “double counting” any factors as both an economic and social impact that should be considered twice for the purpose of the no-net-detriment test.

<sup>31</sup> *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J

<sup>32</sup> VGCCC Report, page 36.

<sup>33</sup> *Ibid*, page 35.



score indicates a high proportion of relatively disadvantaged people in an area, while a high score indicates a lack of disadvantage (not a high level of advantage). Accordingly, the area immediately surrounding the Venue has a higher level of disadvantaged people relative to the LGA, metropolitan Melbourne and Victoria generally.

- b. The unemployment rate for the immediate surrounding area is 3.8%, which is lower than the unemployment rate in the City of Wyndham and metropolitan LGAs of 4.47% and 3.84% respectively, but higher than the Victorian rate of 3.67%.<sup>34</sup>
- c. Housing stress is 50.3% which is lower than housing stress in the entire City of Wyndham, metropolitan LGAs and Victorian averages at 51.7%, 57.6% and 53.7% respectively.

#### *Applicant's submissions – problem gambling*

88. In the Urbis Report, Mr Quick gives the negative impact of the possible increase of problem gambling a low weighting on the basis of the following assessments of various risk factors:

- a. The socio-economic profile of residents in the area immediately surrounding Hotel 520, and the municipality generally, results in low levels of disadvantage. A portion of patrons reside from areas of higher disadvantage further afield closer to Werribee, however, there are several other venues also serving these areas. The demographic profile of residents in the local area presents as low risk for problem gambling. This is reflected by this area being excluded from the imposition of the Wyndham gaming machine cap.
  - b. the Venue is located at the junction of Sayers Road and Derrimut Road where a small group of commercial tenancies are situated that offers a low level of activity. While visible and accessible from these main roads, the venue is separated from areas of high pedestrian activity and public transport options. The vast majority of patrons drive to the venue.
  - c. The provision of EGMs per adult in the municipality is slightly below the Greater Melbourne average. The proposed addition of machines will have a negligible impact on the provision in the municipality and further lessened given ongoing population growth.
  - d. The intensity of gaming expenditure in the municipality is below average per adult, although slightly above average per EGM.
  - e. There is already access to 65 EGMs within the venue, with machines available throughout most of the week with limited peak usage. The additional 12 EGMs in this context will only have an incremental effect.
89. The PVS Report (the Applicant's compliance report) indicated that the Venue was compliant with regulatory requirements.<sup>35</sup>

#### *The Council's submissions – problem gambling*

90. The Council submitted (by way of the SymPlan report) that the Application was associated with both protective and risk factors relevant to determining the extent of the negative social and economic impact on people directly or indirectly affected by gambling-related harm.

91. The Commission has considered all of the factors which the Council has submitted as risk factors associated with problem gambling at the venue.<sup>36</sup>

92. The Council's expert concludes that:

- a. the multiple risk factors associated with the socio-economic profile of the community in the proposal site's catchment, the venue's expenditure indicators and those of the gaming venues in the proposal site's catchment, the venue's management and operations and design of the venue are likely to outweigh the effectiveness of protective factors and their potential to prevent or minimise gambling-related harm; and
- b. as a result of these factors, the proposal is likely to have a moderate to high negative social and economic impact on gambling-related harm in the community.

93. The Council's closing submissions also note that:

- a. upwards of 35% of the Applicant's gaming room patrons come from the suburbs of Hoppers Crossing and Werribee, being suburbs with a higher level of disadvantage relative to Tarneit; and

<sup>34</sup> Ibid, page 39.

<sup>35</sup> PVS Report, page 8.

<sup>36</sup> These are set out across pages 51 to 60 of the SymPlan Report.



- b. there were significant hours of trading late at night where gambling was the sole, or if not sole, the dominant activity at the Venue.

#### *Conclusion – economic and social impacts of problem gambling*

94. Having regard to the matters in paragraph 82 to 93 above, and weighing the competing submissions made by the Applicant and Council, the Commission considers that the potential increase of problem gambling arising from the approval of the Application to be negative impact to which marginal to low weight is given.

#### *Other social and economic impacts*

##### *Increased Gaming competition in the City of Wyndham*

95. Increased competition in gaming in the City of Wyndham is a factor to be considered by the Commission in light of the statutory purposes of the GR Act<sup>37</sup> and the consumer benefits that derive from competition.

96. The material filed by the Applicant does not place any particular weight on any increase in competition that would result from the Application being approved.

97. At the hearing no evidence was given to suggest that there would be any additional benefit arising from increased competition over and above the additional expenditure.

98. In addition, the Commission notes that the EGMs currently installed at venue have fairly low utilisation rates, with there only being a few peak periods where over 70% of the EGMs are utilised. This indicates that there are already enough EGMs available at the venue for players who want to use them.

99. On balance, the Commission considers the impact of increased competition to be an economic benefit to which it gives nil weight.

##### *Diversion of trade from other gaming venues and retail facilities*

100. The Urbis Report considered the diversion of trade from other gambling venues and retail facilities as a negligible detriment, on the basis that diversion of trade was a reflection of increased competition, and also because the loss of trade would only generate a detriment if it lowered the overall level of service available to the community.

101. The SymPlan Report considered the impact of the approval to be economically neutral.

102. As noted in paragraph 75 above, the SW Report concludes that some of the increased expenditure will be diverted from local competitor venues.

103. There was no evidence put before the Commission that the diversion of trade would lead to an overall reduction in the services available to the community. The Commission considers any diversion of trade to be an economically and socially neutral factor.

#### *Community attitude*

104. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*<sup>38</sup>, the Commission recognises that while community apprehension is not an over-riding factor (in the sense that the Application is not a referendum on gaming), it is certainly a relevant factor in the consideration of the no-net-detriment test.

105. The Commission notes that no community survey was conducted by the Applicant nor the Council, therefore leaving the Commission without the capacity to reliably assess the extent of the broader community attitude to the Application.

106. The Commission notes that the Council opposes the Application. The Commission has received letters from Melton City Council, City of Geelong and Brimbank City Council (all of which adjoin the local government area in which the Venue is located) objecting to the Application.

107. The letters from each adjoining council refer to their objection to the Application being in accordance with that council's policy on relevant gambling policy.

108. The Commission notes Council's policy on gambling and has taken this into account in its consideration of the application. In other applications, consumer attitude surveys were undertaken and submitted to the commission as evidence either in support of, or opposition to, an application. Neither the applicant nor Council commissioned such a survey in this instance. In the absence of such evidence, but noting council's policies and

<sup>37</sup> See GR Act, section 3.1.1(2).

<sup>38</sup> *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.

concerns, the Commission considers there is likely to be mixed community views about the additional machines. The Commission attaches no weight to this inferred community attitude.

### Net economic and social impact

109. 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 an approval of the application on the well-being of a relevant community will be either neutral or positive.
110. After consideration of the material before it, including the evidence provided at the hearing (and weighted as outlined above and in tabular form at Appendix A of these reasons), the Commission is satisfied that the social and economic impact on the well-being of the community of the municipal district in which the Venue is located will not be detrimental. The Commission is satisfied that the approval will result in an impact that is finely balanced and neutral. Accordingly, the pre-condition set out in section 3.4.20(1)(c) of the GR Act is satisfied.

### B. Independence from other gaming venues

111. The Application is not proposing to add the Venue 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 Venue.
112. The mandatory pre-condition set out in section 3.4.20(1)(d) is not applicable to this Application.

### C. Directions given under section 3.2.3

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

### D. Municipal Cap

115. As noted in paragraph 25 above, the City of Wyndham is subject to a municipal cap on the number of EGMs under a Ministerial Order under sections 3.2.4 and 3.4A.5 of the GR Act. The maximum permissible number of gaming machine entitlements in the City of Wyndham is 1190, divided into two distinct areas. One is a capped region, with a cap of 638 EGMs, of which 638 are currently in use. The other area, which includes the suburb of Tarneit where the Venue is located, has a municipal limit of 552, of which 265 gaming machines are currently in use.
116. The granting of this Application would not result in the number of EGMs increasing by 12, but would not cause the number of EGMs in the relevant area to exceed the municipal cap.
117. The Commission also notes that Club Tarneit, which is located in the area with a municipal limit of 552 machines, has recently been approved to operate 70 EGMs. When the additional EGMs which are the subject of this Application are taken into account alongside the EGMs which will be operating at Club Tarneit, there will be 347 EGMs operating in the area of the City of Wyndham that has a municipal limit of 552 machines.

### General discretion of the Commission

118. As noted above, the Commission retains an ultimate discretion whether to grant or refuse the Application, once the mandatory preconditions set out in section 3.4.20(1) have been found to be satisfied.
119. In exercising its discretion whether or not to approve the Application, the Commission may take into account relevant matters.<sup>39</sup> These include broader policy considerations, drawn from the content and objectives of the GR Act as a whole.<sup>40</sup>

<sup>39</sup> Section 3.4.20(1).

<sup>40</sup> Ocean Grove Bowling Club v Victorian Commission for Gambling Regulation [2006] VCAT 1921.

120. The Commission notes that the 'policy context' of the GR Act, is referenced through some, if not all, of the following six principles set out in the second reading speech for the Bill:
- a. developing and reinforcing the government's commitment to responsible gambling through measures that assist and protect problem gamblers and those at risk of becoming problem gamblers, their families and the wider community;
  - b. developing and maintaining the state's commitment to the highest standards of probity for gambling service providers;
  - c. accepting gambling is a valid activity for many Victorians who are entitled to expect ongoing high standards of service, transparency and accountability from the gambling sector;
  - d. ensuring that the legitimate financial benefits of gambling (both private and public) are transparent, appropriately recognisable and fairly distributed to the Victorian community;
  - e. that to the extent possible consistent with the other principles, gaming service providers operate in a competitive environment; and
  - f. establishing proper consultative processes to ensure that appropriate information is given to, and input is received from, the wide variety of persons interested in gambling including stakeholders, affected parties and, to the widest extent possible, the broader Victorian community.<sup>41</sup>
121. The stated purposes of Chapter 3 of the GR Act include to 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<sup>42</sup>. As noted in paragraph 25 above, the Venue is located in an area with a municipal limit of 552 EGMs (of which 265 gaming machines are currently in use).
122. The Commissioner has not identified any matters to justify it using its discretion to refuse the Application.

### General comments regarding the Application

123. As noted in paragraph 22 above, in some instances the material filed in this Application fell short of the Commission's expectations, and made the Commission's consideration of the Application more difficult than it would otherwise have been. Some of those shortcomings included the following:
- a. The reports and submissions filed by the parties contained several careless errors and inconsistencies which, when identified by the Commission, required the parties to amend and resubmit that material. Although the Commission appreciates that mistakes can be inadvertently made, the Commission expects the parties' material to be free from obvious errors and inconsistencies.
  - b. In addition, some of the applicant's material was lacking the consistency and clarity required for the Commission to properly consider it. For example, the Applicant filed material and made submissions in respect of historical community contributions it had made. The Applicant produced to the Commission no less than four different misaligned sets of historical community contribution figures<sup>43</sup>, without an explanation or a reconciliation of the different figures.
  - c. The applicant used outdated data, such as utilisation survey data from February and March 2022, which was over a year old when the application was filed in April 2023 and over 18 months old by the hearing date. Applicants are expected to ensure the currency of information provided to support its application.
  - d. For reasons that remain unexplained, the Applicant failed to call the director of the Applicant who was listed as the "authorised representative" for the purpose of the Application Form. The representative that gave evidence before the Commission (Mr Montgomery), was not familiar with the company's financial statements and indicated instead that the "authorised representative" was the person capable of giving the relevant evidence, required by the Commission.<sup>44</sup>

<sup>41</sup> Hansard, Legislative Assembly, 6 November 2003 at p 1595 (Hon. John Pandazopoulos, Minister for Gaming).

<sup>42</sup> GR Act, s 3.1.1(2)(a)

<sup>43</sup> One set in its economic and social impact assessment, another in the witness statement of Mr Montgomery, another in the company's financial statements which were produced to the Commission, and another in the set of records of the "community contributions meetings" produced by the Applicant.

<sup>44</sup> Transcript, 10 November 2023, P-330.

- e. The lay witness statements filed by the Applicant were lacking in relevant detail, particularly in respect of the proposition that the renovation works would not occur unless the additional EGMs were approved. This is addressed in more detail in paragraphs 40 to 53 above.
124. Another matter of concern that arose during the course of the Application was the Applicant's historical approach to making "cash in kind" community contributions. This is described in more detail in paragraphs 61 to 72 above.
125. The Commission notes that the Applicant and Council's expert witnesses considered various factors when assessing the risk of harm from gambling at the venue, but they did not estimate the extent of problem gambling or gambling harm at the venue or its potential impact if the application were approved. Despite the challenge of pinpointing precise rates, there are existing studies on problem gambling prevalence. The Commission expects all parties involved in applications to perform as rigorous an analysis as possible, using the most reliable data and methods available, to estimate the harm that may arise if the application is approved. The Commission considers such an assessment to be central to its consideration of the no-net-detriment test.

## Decision

### Conclusion

126. On the material that has been put before it, the Commission has determined that the mandatory pre-conditions for approval are set out in section 3.4.20(1) have been satisfied in that the no-net-detriment test has been satisfied, and that exercising its discretion to grant the application is appropriate.
127. The Application is therefore granted subject to the conditions set out in Appendix B.

**The preceding 127 paragraphs are a true copy of the Reasons for Decision of Ms Fran Thorn, Chair of the Commission, Dr Ron Ben David, Deputy Chair and Mr Chris O'Neill, Commissioner.**

## Appendix A

### Appendix A - Summary of economic and social impacts

	Impact	Weight
<b>Benefits</b>	This category captures the impact of the renovation works (excluding gaming expenditure not associated with problem gambling as an economic benefit, and enhanced access to EGM facilities for residents and visitors). This category includes the: <ul style="list-style-type: none"> <li>• capital expenditure associated with the renovation works;</li> <li>• increased supply contracts;</li> <li>• increase in short-term employment;</li> <li>• increase in long-term employment; and</li> <li>• social and economic benefits from improved non-gambling facilities:</li> </ul>	Marginal to low.
	The economic and social benefits of the community contributions which are captured in the conditions attached to the approval of the Application.	Marginal.
	Ongoing economic and social benefits from development works (excluding those already captured above in the category relating to the impact of the renovation works), including diversification and quality of social, leisure, entertainment and recreation facilities.	No weight to marginal weight.
	Gaming expenditure not associated with problem gambling as an economic benefit, and enhanced access to EGM facilities for residents and visitors.	No weight to marginal weight.
	Increased gambling competition.	No weight.
<b>Total weight of social and economic benefits</b>	<b>Marginal to low</b>	
<b>Detriments</b>	Increased expenditure associated with problem gambling and increase in problem gambling and associated social impacts.	Marginal to low.



	Community attitude (reflected in the Council's opposition, and the letters of objection received from the surrounding LGAs)	No weight.
	Diversion of trade from other gambling venues	No weight.
	Diversion of trade from retail facilities or other businesses	No weight.
<b>Total weight of social and economic detriments</b>	<b>Marginal to low</b>	

## Appendix B – Conditions

Conditions of the decision of the Commission dated 4 December 2023 to vary the number of EGMs permitted in the approved premises located at 520 Sayers Road, Tarneit (the Premises) from sixty-five (65) to seventy-seven (77), imposed under section 3.4.20(3) of the Gambling Regulation Act 2003.

The Conditions of the decision are conditions of the venue operator's licence.

### 1. Community Contributions

- 1.1. Sayers Property Holdings Pty Ltd (**Venue Operator**) will make cash contributions in the sum of \$125,000 per annum (indexed annually to CPI) (**the Contribution**) for as long as any of the additional twelve (12) gaming machines (**the Additional EGMS**) are operational at the Premises.
- 1.2. The Contribution will be allocated each year to not-for-profit community groups and sporting organisations providing services and facilities to residents within the City of Wyndham with a focus on the growth areas of Wyndham including Tarneit and Truganina.
- 1.3. If the Contribution is not allocated in full each year in accordance with this condition, the Venue Operator must notify the Victorian Gambling & Casino Control Commission (**the Commission**) as soon as reasonably practicable of that fact, and the operation of the Additional EGMs must cease immediately until the Commission is satisfied that the Contribution for that year is no longer outstanding.
- 1.4. The Venue Operator must keep detailed financial records of its payment of the Contribution and will provide financial accounts evidencing payment of the Contribution to the Commission on request.
- 1.5. In addition to the Contribution, the Venue Operator must make in-kind contributions to sporting and community organisations at a minimum value of \$25,000 per annum (indexed annually to CPI). For the avoidance of doubt, the following are examples of matters that are not in-kind contributions contemplated by this condition:
  - (1) function or board room hire;
  - (2) payment of staff wages, apprentice wages or staff training costs; and
  - (3) discounted meals or beverages.
- 1.6. If there is any shortfall in annual in-kind contributions for a given year:
  - (1) the Venue Operator must notify the Commission of that shortfall as soon as reasonably practicable, and the reasons for the shortfall; and
  - (2) the amount of the shortfall must be carried over into the following year and a cash equivalent of the shortfall will form part of the Contribution payable for that reporting period (in addition to the cash Contribution already payable under condition 1.1).
- 1.7. The Venue Operator must submit an annual attestation to the Commission confirming that the Contribution and the in-kind contributions have been allocated in full for that year. The attestation must be signed off by a senior representative of the Venue Operator (either at Board level or Director level) as being true and correct.

### 2. Works

- 2.1. The Additional EGMs cannot be installed until the Commission has been provided with the following:
  - (1) planning permission for the Works (defined below) and the Additional EGMs (if such planning permission is required by the relevant authority);
  - (2) written confirmation from a lender that funding has been obtained for the Works; and

- (3) written confirmation that a building contract has been entered into between the Venue Operator and a construction company in relation to the commencement and completion of the Works with dates specified within the contract for that commencement and completion (and must provide copies of same if requested).
- 2.2. The Works at the Premises (as defined in condition 2.3) must be substantially completed to the satisfaction of the Commission by the date that is 24 months after the commencement of the operation of any of the Additional EGMs at the Premises.
- 2.3. If any officer or director of the Venue Operator forms the view that it is probable, or reasonably likely, that the Works will not be substantially completed by the date contemplated in condition 2.2, then the Venue Operator must notify the Commission within 7 days.
- 2.4. The Works must be generally in accordance with the floor plans of the Premises prepared by Studio Equator (**the Works**), as presented to the Commission at the hearing but modified to show:
- (1) the Southern entry to the gaming room as an emergency exit only;
  - (2) the entry to the venue from the car park as an emergency exit only; and
  - (3) installation of screens behind the sliding door entrance to the gaming room.
- 2.5. If the Works referred to in condition 2.3 are not substantially completed by the date contemplated in condition 2.2 then the approval to operate the Additional EGMs at the Premises will lapse until such point in time the Commission grants approval for their continued operation.
- 2.6. The Commission may, upon request of the Venue Operator, agree to extend the time for completion of the Works. Any request for an extension of time must:
- (1) demonstrate compliance by the Venue Operator with condition 2.2; and
  - (2) include an explanation as to why the Works have not been substantially completed.
- 2.7. The Commission may decide not to grant an extension for time under condition 2.6 if the Applicant cannot demonstrate compliance with conditions 2.2 and 2.6.

### 3. Harm minimisation

- 3.1. Before the installation of the Additional EGMs at the Premises the Venue Operator must submit to and have approved by the Commission a harm minimisation policy and procedures manual (**the Policy**).
- 3.2. The purpose of the Policy is to enshrine timely, pro-active, effective and demonstrable harm minimisation practices in connection with the use of EGMs at the Premises.
- 3.3. The Policy must include:
- (1) steps that the Venue Operator will take to minimise harm arising from EGM use (over and above any existing requirements detailed in the Premises' Code of Conduct, the current VGCCC Gambling Venue Checklist and harm minimisation strategies set out in the *Gambling Regulation Act 2003* and/or relevant Regulations).
  - (2) An obligation on the Venue Operator to communicate to adults with minors accompanying them on the premises that minors must:
    - (a) be monitored; and
    - (b) must not approach or enter the gaming room.

- (3) Confirmation of the venue's current existing practices of:
- (a) prohibiting the service of food and beverage to patrons whilst seated at an EGM;
  - (b) confirmation of minimum staffing levels as follows:
    - (i) prior to 12.00pm: a minimum of 2 staff on duty in the Gaming Room at all times the Gaming Room is operational; and
    - (ii) after 12.00pm until close: a minimum of 3 staff on duty in the Gaming Room at all times the Gaming Room is operational;
  - (c) after 10.00pm until the close of the Hotel on Thursday, Friday and Saturday nights, 2 security guards will be rostered on for duty
  - (d) prohibiting staff from using EGMs at the venue at any time; and
  - (e) prohibiting patrons from reserving EGMs to use another EGM.
- 3.4. The Policy, including the matters specified herein, may be amended only with the approval of the Commission.
- 3.5. Once approved by the Commission, the Policy:
- (1) is to be implemented at the Premises to the satisfaction of the Commission; and
  - (2) is to be provided to the Premises' Venue Support Worker; and
  - (3) is to be displayed in the Gaming Room in a manner that invites public attention at all times the Gaming Room is open to the public.
- 3.6. The Venue Operator must confirm in writing each year that the gaming room is being operated in accordance with the Policy.
- 3.7. The Venue Operator must keep a register of breaches of the Policy and that register must be made available to the Commission for inspection upon request.
- 3.8. If the Commission determines that the Venue Operator has not implemented or complied with the Policy, the Commission may direct the Venue Operator to cease operating any of the Additional EGMs at the Premises until:
- (1) such failure to implement or comply with the Policy is rectified to the satisfaction of the Commission; and
  - (2) the Commission is satisfied that the Venue Operator has adopted such practices, procedures, policies and systems as are necessary to prevent the breach of the Policy from occurring again.
- 3.9. All entrances and external windows to the gaming room must have frosted glass or other treatment to obscure vision into the gaming room.

#### **4. Other Conditions**

- 4.1. The Venue Operator must ensure that food and drink is made available to patrons from the café/main bar at all times the gaming room is in operation.
- 4.2. The exit/entrance to the Hotel from the car park must be clearly marked as an emergency entry/exit only. In relation to that door:

- (1) A sign must be erected at the car park entrance to the Hotel stating:

*There is no entry to the Hotel from this entrance. Please use the main entrance.*

- (2) A sign must be erected at the car park exit from the gaming room stating:

*This is an emergency exit only.*

- 4.3. The Venue Operator will engage an external training organisation to provide Anti-Money Laundering (**AML**) and Counter Terrorism Finance (**CTF**) risk awareness training to one (1) Director of the Venue Operator, the nominee, managers and all gaming room staff using a know your customer approach (**AML/CTF Risk Awareness Training Program**).
- 4.4. The AML/CTF Risk Awareness Training Program must be a written plan that shows how the Venue Operator, the nominee, managers and all gaming room staff are instructed about the following:
  - (1) the Venue Operator's obligations under Australia's AML/CTF legislation;
  - (2) the consequences of not complying with AML/CTF legislation;
  - (3) the type of AML/CTF activity staff may see at a gaming premises and the consequences of the risk of this activity; and
  - (4) how the Venue Operator will meet its obligations, including processes and procedures to identify, manage and mitigate this risk.
- 4.5. This training must be undertaken by the Venue Operator at the Premises once every two (2) years.
- 4.6. If the Commission determines that the Venue Operator has not complied with this condition 4 the Commission may direct the Venue Operator to cease operating any of the Additional EGMs at the Premises until such time as compliance is rectified to the satisfaction of the Commission.



## Appendix C – Relevant legislation

1. In July 2022, the Casino and Liquor Legislation Amendment Act 2022 (Vic) (**Act**) came into effect.
2. The Act made substantive changes to the regulatory powers of the VGCCC. Specifically, the Act amended the Victorian Gambling and Casino Control Commission Act 2011 (Vic) (**VGCCC Act**) and clarified the objectives of the VGCCC, including a specific reference to minimising gambling harm and problem gambling.
3. The Second Reading Speech explained that:  
*“by embedding harm minimisation in the core functions and objectives of the VGCCC, this [Act] will ensure that it shapes every decision being made by the regulator and protect Victorians from gambling-related harm.”*
4. The objectives of the VGCCC Act are set out at section 8A, which provides:  
 The objectives of the Commission are—
  - (a) *to maintain and administer systems for the licensing, supervision and control of gambling businesses and casinos, for the purpose of—*
    - (i) *ensuring that the management and operation of gambling businesses and casinos remain free from criminal influence and exploitation through oversight of those gambling businesses and casinos and liaison with other regulatory agencies; and*
    - (ii) *ensuring that gambling conducted or operated by a gambling business and gaming and betting in a casino are conducted or operated honestly; and*
    - (iii) *fostering responsible gambling conducted or operated by a gambling business or in a casino; and*
  - (b) *to minimise gambling harm and problem gambling.*
5. In effect this has strengthened the Commission’s focus on minimising gambling harm, and has led to an increased expectation on venue operators to minimise such harm.
6. Section 9(1)(i) of the VGCCC Act provides that the functions of the Commission will include, among other things “to undertake activities to minimise gambling harm.”
7. Section 9(3) of the VGCCC 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.”*

### **Gambling Regulation Act 2003**

8. Gaming on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the Gambling Regulation Act 2003 (**GR Act**). The GR Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities, and some members of some communities. For this reason, the GR Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some, and a potentially harmful activity for others.
9. 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;*

- (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.

10. 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.*

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

12. 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.*
13. 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.*
14. Section 3.4.20 sets out matters that are required to be considered by the Commission with respect to such a proposed amendment, as follows:
- (1) Without limiting the matters which the Commission may consider in deciding whether to make a proposed amendment the Commission must not amend a venue operator's licence unless—
- (a) *the Commission is satisfied that the amendment of the licence does not conflict with a direction, if any, given under section 3.2.3; and*
- (b) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the regional limit or municipal limit for gaming machines for the region or municipal district in which the approved venue is located will not be exceeded by the making of the amendment; and*
- (c) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the net economic and social impact of the amendment will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located; and*
- (d) *if Venue are proposed to be added to the licence as an approved venue and the Venue are situated within 100 metres of an approved venue of which the applicant for the amendment, or an associate of the applicant, is the venue operator, the Commission is satisfied that the management and operation of the approved venue and the proposed approved venue are genuinely independent of each other. 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.*
15. Section 3.4.20(1)(c) provides for what is now commonly described as the 'no net detriment' test. It requires the Commission to be satisfied that there is no net detriment arising from the approval through positively and objectively establishing that the net economic and social impact will not be detrimental to the well-being of the community.<sup>45</sup>

<sup>45</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [52] per Dwyer DP.

16. 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:
- (1) the likely economic impacts of approval;
  - (2) the likely social impacts of approval; and
  - (3) the net effect of those impacts on the well-being of the relevant community.<sup>46</sup>
17. As such, the 'no net detriment' test is a composite test requiring consideration of a single net impact in economic and social terms on the well-being of the community.<sup>47</sup> The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.
18. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.<sup>48</sup> On review, decisions in the Victorian Civil and Administrative Tribunal (VCAT) have held that for impacts that may be both economic and social – for example the benefits of gaming consumption – it does not matter whether the impact is considered on the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.<sup>49</sup>
19. The Commission also notes the position taken by VCAT that
- A table of likely economic and social benefits and disbenefits, and with some comments relevant to the relative weight to be given to particular factors ... is a useful way of transparently dealing with the 'no net detriment' test, and might perhaps be considered for wider application.*<sup>50</sup>
20. If the Commission is not satisfied that the 'no net detriment' test is met, that is clearly fatal to the application before it, as, given the opening words of section 3.4.20(1) of the GR Act, satisfaction of the test is a mandatory pre-condition to approval. However, although section 3.4.20(1) sets out certain mandatory considerations for the Commission, the provision is not exhaustive. If the Commission is satisfied that the 'no net detriment' test is met, it still has an ultimate discretion as to whether or not to grant the approval.<sup>51</sup> The Commission must decide whether to make the proposed amendment, with or without any changes from that proposed by the Applicant, even where the Applicant has satisfied the minimum threshold of the 'no net detriment' test.<sup>52</sup>
21. In considering the exercise of this discretion:
- (1) it must be exercised having regard to the purposes of the GR Act and, in particular, the specific purposes of Chapter 3 of the GR Act dealing with the regulation, supervision and control of gaming machines;<sup>53</sup>

<sup>46</sup> *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd (2008) 19 VR 422*, [42]-[43] per Warren CJ, Maxwell P and Osborn AJA.

<sup>47</sup> *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275, [332], [348] per Bell J cited in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [58] per Dwyer DP.

<sup>48</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [57] per Dwyer DP.

<sup>49</sup> See *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275, [352] per Bell J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [58] per Dwyer DP.

<sup>50</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [60] per Dwyer DP.

<sup>51</sup> See *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M; see also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [97] and following per Dwyer DP (with respect to section 3.3.7 GR Act).

<sup>52</sup> GR Act, section 3.4.20

<sup>53</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [98] per Dwyer DP.

- (2) it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the GR Act as a whole.<sup>54</sup>
22. The Commission notes the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*<sup>55</sup> that, if all of the mandatory considerations under the GR Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval – other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.
23. Finally, pursuant to section 9(4) of the VGCCC Act, the Commission must have regard to Ministerial Guidelines issued under section 5 of the VGCCC Act when performing functions under gambling legislation. The Commission did not identify any Ministerial Guidelines directly relevant to its consideration of this Application.

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<sup>54</sup> *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M. As to policy principles identified for consideration, see the *Romsey case* (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

<sup>55</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [98].