



Victorian Commission for Gambling Regulation

DECISION AND REASONS FOR DECISION
--

In the matter of the *Gambling Regulation Act*
2003

- and -

In the matter of an application under section
3.3.4 of the *Gambling Regulation Act* 2003 by
Footscray Football Club Ltd for approval of
premises at the Cnr. Edgewater Boulevard and
Skyline Drive, Maribyrnong, as suitable for
gaming with seventy (70) gaming machines.

DECISION

Commission: Mr I. Dunn, Chair
Mrs. J. King, Deputy Chair
Mr P. Cohen, Executive Commissioner

Decision: That the application is granted, subject to the conditions
in paragraphs 285-287.

(Sgd.) I. Dunn

REASONS FOR DECISION

Date: 24 December 2008 **Mr I. Dunn, Chair**
Mrs J. King, Deputy Chair
Mr P. Cohen, Executive Commissioner

1. On 18 December 2007 the Footscray Football Club Ltd applied to the Commission for approval of premises at Cnr. Edgewater Boulevard and Skyline Drive, Maribyrnong, as suitable for gaming, with sixty five (65) electronic gaming machines (“egms”). The application was later amended to seek seventy (70) egms, combined with a proposal to relocate certain egms within the City of Maribyrnong, and it was on this basis that the application came to be considered by the Commission.

THE LEGISLATION

2. The legislative provisions governing this application are found in the *Gambling Regulation Act 2003* (the Act). Section 10.1.20 (1) of the Act provides that the Commission may hold inquiries for the purpose of the exercise of its functions under the Act. Section 10.1.22(1) provides that the Commission may hold such inquiries in public or private. Sub-section (2) requires that inquiries for the purpose of making a finding or a determination relating, *inter alia*, to an application for approval of premises for gaming must be conducted in public unless the Commission determines that there are special

circumstances requiring that the inquiry or part of it shall be held in private. This Inquiry was completely held in public.

3. The matters to be taken into consideration by the Commission in making its determination are set out in section 3.3.7, the relevant parts of which are as follows –

“The Commission must not grant an application for approval of premises as suitable for gaming unless satisfied that-

- (a) the applicant has authority to make the application in respect of the premises; and*
- (b) the premises are or, on the completion of building works will be, suitable for the management and operation of gaming machines; and*
- (c) the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located.”*

4. Upon making an application the applicant is required by section 3.3.5, to notify the relevant authority, such notification to be provided by serving a copy of the application upon the responsible local government authority.
5. Section 3.3.6 provides that the relevant authority may make a submission addressing the economic and social impact of the proposal for approval, on the well-being of the community, and also taking into account the impact of the proposal on surrounding municipal districts.

THE RELEVANT AUTHORITY

6. The City of Maribyrnong (the Council) made a submission opposing the application, and was represented at the Inquiry by Mr J Larkins and Mr H Jackson of Counsel. Mr N Tweedie and Ms S Brennan appeared for the applicant and the Commission was assisted by Mr S Moloney.

THE BACKGROUND TO THIS APPLICATION

7. The applicant in this matter is the Footscray Football Club Limited (the applicant), a Football Club which has been a member of the Victorian Football League since 1926 and subsequently a participant in the Australian Football League (AFL).
8. Until September 1997, the applicant had operated entirely out of premises at what had been previously known as the Western Oval, subsequently Whitten Oval, but in September 1997 the Club played its last AFL match at that oval. It initially moved its home matches to Princes Park which it shared with the Carlton Football Club. Subsequently, as set out in these reasons, it re-located its home games to Colonial Stadium (Docklands) in 2000.
9. As is also set out in these reasons, the Club had not enjoyed a satisfactory financial situation. It had nearly foundered as a stand alone Club in 1989.
10. In 1992 the applicant's social club at the Whitten Oval had been the first Club in Victoria to be granted a gaming licence and, at that stage, it had 105 egms. After the Whitten Oval ceased to be the applicant's

- headquarters for home games, there were reductions in egms carried out by Tabcorp, then the operator providing the egms for the applicant at the Whitten Oval.
11. A further reduction in the number of egms had been carried out following the decision by the Minister for Gaming, the Hon Tony Robinson MP, to impose caps upon the number of egms permitted in certain municipalities and, particularly, the City of Maribyrnong. This decision resulted in a further reduction in the number of egms at the Whitten Oval from 55 to 48 on 28 November 2007. The applicant also operates another gaming venue within Maribyrnong, notably Club Leeds, which also suffered a reduction of egms at that time from 37 to 30. The overall reduction in the number of egms within Maribyrnong was from 675 to 511, a reduction of 24 per cent. We also note that the applicant leases the Vic Inn at Williamstown which is in the LGA of Hobson's Bay.
 12. The application relates to a proposal for a Club to be known as Club Edgewater and which would be located at Edgewater Boulevard in Maribyrnong. A map showing the location of the proposed venue is Annexure 1 to these Reasons. While further details as to the proposed Club are set out in due course, in summary, what is proposed is that in addition to a gaming room to contain 70 egms, there will be a large bistro, together with a café, and including alfresco dining on the eastern side of the building. There will be the customary bars, including a sports bar. There will also be significant function rooms. An important additional proposal is for 59 hotel rooms, variously described as being of three and a half to four star in quality. The sum

- total of all of the facilities to be offered means that the gaming room will occupy only a relatively small portion of the total floor space for the use of guests.
13. When the original application was filed with the Commission in December 2007, it was for approval of premises at Club Edgewater as suitable for gaming with 65 gaming machines. By letter of 27 June 2008 from the applicant's solicitors, Bazzani Scully Brand, the Commission was advised that the application was to be amended so as to seek the installation of 70 egms. That letter also advised that all of the egms to be located at the proposed Club Edgewater would be relocated from other venues within the City of Maribyrnong and that, further, if the application is approved, eleven egms would be removed altogether from the Maribyrnong LGA. Details of the other gaming venues from which egms are proposed to be removed are set out in due course.
 14. In addition to this application to the Commission, the applicant was obliged to apply for a planning permit for the proposed Club Edgewater, to the Maribyrnong Council. Such an application was made but it was refused, and the Commission has been advised that the applicant has appealed to the Victorian Civil and Administrative Tribunal (VCAT) and that the Appeal is due to be heard on 19 March 2009.

**GAMING AND OTHER INDICIA AND THE CITY OF
MARIBYRNONG**

15. Historically, the City of Maribyrnong has had very high numbers of egms per thousand adults, and commensurately, high expenditure per adult. In 2007, prior to the removal of the 164 egms referred to above, there were 12 venues with gaming within the City of Maribyrnong. They had a total of 675 egms. The number of adults within Maribyrnong, as calculated by the Department of Sustainability and Environment, was 51,813. (Urbis, the firm which conducted the social and economic impact assessment on behalf of the applicant considered that the figure was higher, notably 54,732). Using the DSE calculation of population, the result is 13.03 egms per thousand adults, compared with 6.86 egms per thousand adults, across Melbourne and metropolitan municipalities.
16. By reason of the further caps which came into operation in December 2007, whilst the number of venues remained the same (12) the number of egms was reduced to 511. This led to the result that following the caps, there were (using DSE calculations) 9.74 egms per thousand adults.
17. Urbis point out that it is appropriate to consider what the outcome will be as at the earliest date that the Club could become operational (2010). By reason of the increase in population within the City of Maribyrnong, it is calculated that at that time egm density will have reduced to 9.32 egms per thousand adults.
18. We turn now to egm expenditure. In 2007 the total egm expenditure within the City of Maribyrnong was \$59.5 million. When applied against the DSE estimate of adult population, a figure of \$1,148

- expenditure per adult per annum is reached. This compares with the metropolitan average in 2007 of \$688.
19. Although the effect of the regional cap in Maribyrnong was to reduce the number of egms by some 24 per cent, there was no commensurate reduction in expenditure. However, expenditure did reduce by about 3.5 per cent, from \$1,148 per adult per annum to \$1,107.
 20. Accordingly, egm expenditure per adult in Maribyrnong is higher than in Melbourne metropolitan municipalities by approximately 60 per cent.
 21. It might, therefore, be anticipated that any application seeking to introduce new egms, or increase gaming expenditure into the City of Maribyrnong would be regarded by the Commission as being very problematic.

THE ARCHITECT'S EVIDENCE

22. The Architect for the proposed building is Richard Kenneth Stafford, a director of Design Inc, an Adelaide-based company. Both the firm, and Mr Stafford, have had prior experience in the design of buildings for clubs and hotels.
23. Mr Stafford produced (before the hearing) the plans for the building. At the hearing he illustrated what is proposed by a power-point presentation. He described in detail the site with particular reference to the view which it commands to its east, over the Maribyrnong,

towards Flemington Racecourse and the city. An interesting proposal is for alfresco café facilities on the east side of the building to take advantage of this view. The facility will also have:

- a bistro (to accommodate 250 diners) and function rooms (with capacity for 410 attendees) located on the ground floor, as are the separate café facilities.
- on the first and second floors there are the 59 bedrooms plus, on each level, car parking for the venue (329 spaces).
- Mr Stafford commented that there was a market for people from the country or interstate who did not want to stay in the city. He said that the proposed venue is “fantastically situated” with its proximity to Docklands and Flemington Racecourse.

24. The Commission agrees with this evidence which, eventually, was not challenged. It is not in dispute, we believe, that if the project proceeds, the building which is proposed will provide very adequate accommodation for the purposes proposed. And the evidence served to highlight another important aspect. The space occupied by gaming will only comprise 15% of the available floor space on the ground floor.

THE EVIDENCE OF THE FOOTBALL CLUB REPRESENTATIVES

25. Three representatives of the Football Club were called to give evidence. All filed detailed witness statements (running to some hundreds of pages). The witnesses were the current President, Mr David Smorgon, the Club's Chief Executive, Dr Campbell Rose and the Chief Operating Officer of the Club, Mr Robert Stubbs. Whilst there were some aspects of their evidence which could be the subject of criticism after hearing their cross-examination, overall these witnesses presented as a dedicated group of men, doing their utmost to preserve a struggling AFL Football Club.

26. Mr Smorgon has served as President (entirely unpaid) since October 1996. He took up that position at a time of one of the more desperate crises affecting the Club. An earlier administration had been able to save the Club from a proposed merger with Fitzroy in 1989 and with a great deal of enthusiasm from members and supporters the Club was able to continue to operate in its own right. But by 1996 funds which had been contributed to the Club had been completely exhausted. In Mr Smorgon's view, the then administration was on the verge of suggesting to the AFL that it reclaim the Club's licence.

27. It is unnecessary to set out all of the steps which were undertaken by Mr Smorgon with previous administrators who have since left the Club. The Club was re-financed, and the name was changed to "Western Bulldogs" in order to encourage greater support throughout the western suburbs of Melbourne. After poor results in 1996, the Club enjoyed an improvement in its playing fortunes, reaching the preliminary final in 1997 and also playing in the finals in the three subsequent years. In 2000 the Club made a profit for the first time

under Mr Smorgon’s administration but in his view, once the Club announced that it had made a profit, public sentiment changed. There was a perception that the Club didn’t need further assistance, and membership and donations suffered severely.

28. To make matters worse, in 2001 the Club was persuaded to move its home games to the Docklands stadium (the last match had been played at the Whitten Oval in 1997, and thereafter the Club’s home games had been at Princes Park). Whilst there was a prospect that the move to Docklands would be financially beneficial, quite the opposite result was achieved. In 2001 the Club made a \$1.7 million loss. (Evidence provided later in the inquiry by Mr Stubbs, was to the effect that the Club’s profit from all of its home games over two seasons at the Docklands stadium, does not equate to the profit made by the Geelong Football Club, from a single home game at Kardinia Park).
29. The Club was only able to maintain its existence with the assistance of special grants from the AFL which made a special grant of \$1 million in April 2002. The further details as to the Club’s financial situation thereafter were provided by Mr Stubbs, and as we think it more convenient that these matters are recorded at this point, we include the following table from the second witness statement of Mr Stubbs.

<i>Year</i>	<i>Operating profit (loss)</i>
2001	(\$1,713,000)
2002	(\$1,960,000)
2003	(\$554,000)
2004	(\$693,000)
2005	(\$480,000)

2006	(\$206,000)
2007	\$534,000
2008	\$640,000

It will thus be seen that the Club has accumulated, in the current decade, some \$5.6 million in losses which have been offset, to some extent, by the profits amounting to \$1,174,000 since 2007.

30. Reverting to the evidence of Mr Smorgon, a major event in the resurrection of the Club's fortunes was the appointment, in 2002, of Campbell Rose as the Club's Chief Executive. One of his earliest actions was to implement a 15 per cent pay cut throughout the Club, and which was applicable to executives (including Mr Rose) and players alike. Subsequently better sponsorship arrangements were entered into and gradually the Club was able to accumulate more memberships to the point that the Club now has some 28,500 members.
31. Mr Smorgon's plans for the future may be encapsulated in two paragraphs from his witness statement:

"54 – Looking forward, we want to take the Club to the next level. We need to continue to drive membership which now sits at just under 30,000 people. This Club has a new direction and no one is talking about its death anymore. Success breeds success and the confidence we have found will propel this Club forward.

55 – We have successfully changed the perception of the Club, both from within and from the outside. We never want to see this

Club go back to where it was in 1989 or in 1996 and to do this we must secure sustainable revenue that flows irrespective of on-field success from year to year. Intense competition in the AFL, particularly amongst the Victorian Clubs, means that a Club cannot simply rely on on-field success to ensure ongoing viability.”

32. In making these comments Mr Smorgon was also making significant reference to the re-development of the Whitten Oval which we deal with under a separate heading.
33. From his witness statements, and from the evidence which he provided during the inquiry, it has been clear that a major part of the reversal of the Club’s financial fortunes has been due to the efforts of Mr Rose. The physical facilities available to the Club upon his arrival were obviously appalling. At the Whitten Oval there was the social club housing egms. Mr Rose said the following:

“The social club was well positioned when the Whitten Oval was our home ground and people would come on a weekend to see the Bulldogs play and would also come down during the week to watch the team train. During this time, the social club received respectable levels of patronage. However, like the rest of the facility, as the ground was no longer our home ground for competition matches, the social club began to steadily decline in appeal to the community. The social club facility was poorly positioned, patronised by only those who knew it was there, and did not reflect the new upward and vibrant approach that we

desired to bring as part of the new strategic direction to break the bust to bust cycle of the organisation. In simple terms, the facility did not provide a vibrant or attractive social hub for the Club and its members.”

34. Mr Rose provided evidence that in his view the continued use by the applicant of the 48 egms presently in the Whitten Oval, which are to be removed as part of the redevelopment, was critical to the Club’s future and particularly critical to its ability to make contributions to its community-based programs. In making this comment he was referring to the Club’s division called Spirit West Services (SWS). SWS have a General Manager and 13 full time employees, together with many sessional staff. They support a variety of community-based initiatives and programs ranging from school truancy to the integration of new immigrants through settlement programs. An important part of the work of Spirit West is the program known as “FRESH” to which further reference is made separately.

35. Mr Rose made the claim that the investment in community based programs had grown to the point that a significant amount of direct cash is contributed annually to SWS. It is plain that the Club does make very considerable contributions to the community through SWS, by such steps as the provision of office space or administrative support. Overall, the Commission is satisfied that the operation of SWS involves costs borne by the applicant of at least \$400,000. Mr Rose made the claim that an analysis of all other AFL Clubs demonstrated that the applicant is the only Club (certainly in Victoria

and probably nationally) that has such a significant financial commitment to community welfare and development.

36. In his view, the investment in SWS is underpinned by the Club's gaming revenue. As he explained it, in the event that this revenue ceased or was reduced (bearing in mind that the Club does have the benefit of the operations of egms at Club Leeds at Footscray, and the Vic Inn at Williamstown), there would be a reduction in the capacity of the Club to continue to offer its community-based program. In paragraph 39 of his original witness statement, the witness went so far as to say that the applicant was the only AFL Club in Melbourne that operates gaming machines and significantly re-invests revenue derived from those gaming machines into the local communities from which the revenue is derived.

“All profits derived from gaming by our Club are applied to services in the west”.

But upon extensive examination of this issue, the Commission does not consider that this claim is accurate and in closing submissions Mr Tweedie agreed with the Commission's view. Quite appropriately, all of the revenue which is earned by the applicant from all sources is included in the consolidated revenue of the Club and is then expended upon the various purposes for which the Club exists. Thus, we do not accept the evidence which suggested a direct link between gaming and SWS, although we entirely accept that without the revenue from gaming, the operation of SWS (which is not, after all, a core function of an AFL Football Club) would be severely compromised.

37. Mr Rose set out in detail the steps which had lead to the current proposal in respect to Club Edgewater. After extensive efforts had been made by the applicant, with Tabcorp, former provider of egms at the Whitten Oval, to find an alternative venue for those egms, an alternative arrangement was ultimately entered into. Pursuant to this arrangement, Tattersall’s became the provider of the egms at the Whitten Oval, whilst Tabcorp took over (from Tattersall’s) the operation of the egms at the Vic Inn. This arrangement was plainly entered into with the purpose of Tattersall’s inviting the applicant to become involved in the project now known as Club Edgewater, noting that Tattersall’s is a part-owner of the land upon which the Club is proposed to be built. In the eyes of Mr Rose:

“The site presented as a wonderful opportunity to enable a new Club venue to be constructed that would provide a whole range of entertainment and social facilities that were sorely needed in the west (particularly in relation to accommodation and conferencing). But also operate as the Bulldogs primary social club and accommodate the 48 gaming machines into the new venue.”

38. Mr Rose also suggested that the proposed Club Edgewater should be regarded as a destination venue:

“Rather than the existing facilities at Whitten Oval which provide little else by way of entertainment options in conjunction with the

provision of gaming machines, and which venue, in my opinion, is certainly not a destination-style venue.”

39. A point which he made strongly throughout his evidence was that the Club had made every effort to find an alternative site (to the Whitten Oval) within the municipality, and indeed, there was other evidence which suggested that the Club had also examined other sites in different LGAs.

40. In concluding his original witness statement, Mr Rose stated:

“In the event the Edgewater Club does not proceed, this Club will be faced with the very real prospect of having to relinquish the 48 gaming machines currently operating at the Whitten Oval and as a result, it will suffer significantly as a result of the lost revenue. More importantly, a community would suffer, as the Club would be left in a position where it would have to wind down significantly, if not shut down completely, its community division and Spirit West Services.”

41. He further stated that:

“The refusal of this application would mean that the Club’s viability and position in the west would further come into question which would have a massive social and economic impact on a region that needs the iconic institution that is this club to remain, survive and thrive, and continue to represent and support its constituents.”

42. Finally, he pointed out that:

“The removal of these machines from the Whitten Oval and a failure to re-instate the machines into the Edgewater venue, would also leave the region more vulnerable to a third party (with access to wealth and capital flow that the Bulldogs do not enjoy) who may look to gain access to these machines and potentially make the relevant applications to have these machines re-instated in an alternative venue to profit themselves rather than the community”.

43. As to this, the Commission would comment that there may be some validity in this proposition, but any other party seeking to use the 48 egms presently in the Whitten Oval would be faced with the same task as this applicant, notably the task of persuading the Commission that the installation of the 48 egms at some alternative venue would not be economically or socially detrimental to the community. We are satisfied that for any proposed venue within Maribyrnong, this would be an extremely difficult assignment.

44. The evidence of Mr Stubbs confirmed that the applicant had been the recipient of the first club gaming licence dating from 1992 at the Whitten Oval. At that point, there were 105 gaming machines provided by Tabcorp. Mr Stubbs indicated that Tabcorp had slowly removed gaming machines from the venue, in line with the diminishing returns from the social club after home games ceased to be played at the Whitten Oval. By 2003 an arrangement was reached with Tabcorp for a partial refurbishment of the venue and thereafter,

for a period of time, patronage returned and total social club revenue had also improved. But by 2004/5 the net profit from the Whitten Oval Social Club was only approximately \$320,000.

45. Thereafter Mr Stubbs went into considerable detail to describe the investigations which the applicant had conducted as to alternative venues. The Club was interested, both in existing venues which it could manage, and, as to the possibility (perhaps in conjunction with other partners) of introducing gaming into other hotels or clubs in the region. It may be summarised by saying that, ultimately, nothing came of these investigations and inquiries, other than the leasing of the Vic Inn Club venue at Williamstown (within the LGA of Hobson's Bay). This continues to be a profitable venue for the applicant, but it is the subject of a lease which expires in 2009 and it is by no means certain that it will be extended. At present it provides between \$150,000 and \$200,000 in profit annually.

46. The other significant venue about which Mr Stubbs provided evidence was that of Club Leeds. This venue (which was one of many which were inspected by the Commission) is in a two-storey building in Leeds Street Footscray (very adjacent to the main shopping centre). There were originally 44 egms at this venue (although seven were removed due to the effect of regional caps). Whilst it is described as a venue "in the heart of Footscray and providing an opportunity for the Club to maintain and grow its physical presence in Footscray" it must be said that it does not, in any way, present as "the social club of the Western Bulldogs".

47. Other important matters arising from the evidence of Mr Stubbs should also be mentioned. He provided the Commission with a current picture of the Club's financial situation. It revealed current assets of some \$3.2 million and current liabilities of \$9.814 million, demonstrating a net deficit of \$6.6 million. The Club places great store on the fact that its original bank debt of \$5 million has been reduced to \$4.65 million, but at the same time, other liabilities – trade creditors and other payables have increased significantly. As Mr Stubbs stated, the only way for the applicant to rectify the deficit, is through sustainable operating profits.
48. Mr Stubbs also placed the financial position of this applicant, in context when compared with other AFL Clubs. Over the period of five years up to 2007, the applicant had sustained greater losses than any other AFL Club (no doubt the unsatisfactory position at the Docklands stadium must be a major contributor to this). Overall, it would appear that the position of this applicant, even allowing for the profits over the past two years, is either the worst or second worst amongst AFL Clubs. There is a huge revenue gap between the strongest and weakest AFL Clubs.
49. The contribution being made by gaming to the Club's overall financial situation is complicated by the temporary nature of the facilities at the Whitten Oval. During the Commission's inspection of those premises, it was clear that effectively a gaming room was being maintained for the purpose of keeping the egms operating. The applicant has derived, however, a steady stream of revenue from gaming, and it is quite plain that had this not been the case, the

applicant would have ceased to exist. Between 2004 and 2008 the applicant has made the following profits from its gaming venues (including revenue from all sources including food and beverage sales).

2004	\$546,000
2005	\$690,000
2006	\$635,000
2007	\$481,000
2008	\$523,000

50. The contribution of the facility at the Whitten Oval has steadily reduced during this period which is understandable having regard to the demolition and reconstruction which is taking place all around the gaming venue. In the past two years, the contribution from the Whitten Oval gaming has only been \$51,000 and \$79,000 respectively as opposed to figures in excess of \$250,000 in the earlier three years. These figures must be assessed when considering the fact that the 2007 and 2008 years have been the most profitable for the applicant.
51. Mr Stubbs also provided a picture of the financial situation contemplated at the proposed Club Edgewater if it comes to fruition.
52. Whilst he made it plain that no agreement had yet been reached with Tattersall's, because of a number of factors which were still uncertain, including the government's announcement about the changed environment for gaming machines post 2012, the calculations which have been prepared by the applicant and confirmed by external

advisers indicate that in the first year of operation, Club Edgewater would be likely to lose approximately \$500,000. But thereafter, in years two, three, four and five, it would produce surpluses rising from \$214,000 to \$431,000. Without setting out all of the revenue projections, it should be noted that in the fifth year of operation, anticipated total revenue would be approximately \$11.6 million, and that of that figure gaming would be responsible for approximately \$2.44 million, thus demonstrating the extent to which the other aspects of the proposed Club's operations are expected to play a major part in the generation of revenue. The projected revenue for each of accommodation, food, and beverage sales is expected to be higher than the projected gaming revenue in year five.

53. We should also mention that in these projections the Club included calculations as to the likely revenue, assuming that only a lesser number of egms were permitted. According to these calculations, if 60 egms were permitted, the Club would lose approximately \$700,000 in the first two years of operation, thereafter it would break even in year three and would return a profit of \$117,000 in year five. Considering the sums to be outlaid before such a Club can be operational, this is obviously an entirely unsatisfactory rate of return, and the Commission has accepted that this is not a case in which, assuming the Commission reached a decision in favour of the application, it could substitute a lower number of egms than that proposed by the applicant.
54. Finally, Mr Stubbs produced a report prepared by Matthews Steer, Chartered Accountants, which was carried out in order that the

calculation should be made of the financial cost to the applicant of the operation of Spirit West Services. This showed that SWS, in the 2007 year, had external revenue of \$1.45 million leading to a positive trading result of \$321,000. However, once the appropriate overhead allocation was made, Matthews Steer calculated that the operation of SWS cost the applicant some \$116,000 in 2007. And the figure for 2008 was considerably greater. The total revenue earned by SWS was reduced to \$1.26 million and the overall loss sustained by the applicant, in maintaining SWS, had risen to \$370,000. We accept the evidence of Mr Stubbs that in an operation such as that conducted by the applicant, it would be time-consuming, costly and unnecessary to allocate the SWS expense or income against various parts of the Club's financial commitments. He gave an example of the servicing of the SWS computers. (All of the students in the FRESH program have a computer provided to them for their training). Mr Stubbs pointed out that when the contractors attend the applicant's premises to carry out necessary maintenance, cleaning or repairs to the Club's computers, they also carry out a similar exercise for the SWS computers, without the applicant charging SWS for its proportion of the cost of this service. The Commission accept this evidence and is satisfied that the report by Matthews Steer does accurately reflect the cost to the applicant of the operation of SWS.

55. Before turning to all of the issues relating to the Whitten Oval, reference must also be made to another aspect of the evidence of Mr Stubbs, notably as to a survey conducted by the Club amongst its membership in relation to the proposed Club Edgewater. Full details of the survey were included in the witness statement of Mr Stubbs.

749 members responded to this (online) survey which was conducted as part of usual weekly surveys conducted by the applicant as to a variety of issues. Of the 720 who completed a response, 644 supported the concept of Club Edgewater, while 76 opposed it. Further, a large number of respondents indicated that if the proposal went ahead, they would frequent the Club. Most expressed interest in the restaurant, bistro and café; the Bulldogs merchandise section, or the member's lounge and sports bar. A relatively small proportion of respondents (34 per cent) indicated that they would use the gaming room. Surprisingly, almost as many (30 per cent) indicated that from time to time they would have some use for the accommodation which is proposed. A huge proportion of respondents indicated that they would be glad to attend the venue for events, including pre-season hospitality, match-day functions, functions involving the players, and end of season events. The Club therefore draws understandable encouragement from the response of its members. Those members who were, largely, identified as being residents of the six western LGAs, notably Melton, Moonee Valley, Hobson's Bay, Maribyrnong, Wyndham, and Brimbank responded that virtually none of them would fail to use the Club at all, with a large proportion indicating that they would use it once a month or more often. Mr Stubbs then went on to say that if one extrapolated the figures and applied them to the Club's membership as a whole, there would be 4,200 members visiting the venue at least one day a week. The Commission must say that it considers that Mr Stubbs would be very optimistic in believing that the figures could be extrapolated, bearing in mind that the response rate to the online survey was only approximately 3 per cent of the Club's membership, and the members who did respond would

surely be those most committed to the Club's fortunes. Nevertheless, we accept that the evidence does demonstrate that the Club would be well used by the applicant's members.

THE WHITTEN OVAL REDEVELOPMENT

56. Throughout the witness statements and the evidence of the three Club witnesses, this topic was extremely important. And the matter became more complicated by reason of the fact that in the initial cross-examination of the Club's witnesses, it appeared to be suggested by Mr Larkins, on behalf of the Council, either that there was no compelling reason why the egms should be removed from the Whitten Oval or that the Council believed that the retention of the egms at that venue would be preferable. (Ultimately, in the evidence of Ms Kerry Thompson, the CEO of the City of Maribyrnong, it was conceded that too many hurdles would have to be overcome in order that the prospect of retention of the egms at the Whitten Oval could now be seriously contemplated). But as we mention subsequently in these Reasons, it does appear that the Council is not absolutely satisfied as to the reasons which have been advanced for the need to remove the egms.
57. As set out earlier, once the Club ceased to play its home games at the Whitten Oval, as has happened with other VFL/AFL grounds which have fallen into disuse, the facilities rapidly deteriorated. Indeed, from the description of them, particularly from Mr Rose, it would appear that they may never have been particularly adequate for the Club's administrative purposes in any event.

58. There is some complexity as to this issue, due to the fact that there is not common ownership of all of the land at the Whitten Oval. Parts of it are Crown land, which has been leased to the applicant. Other parts are owned by the Council which has also leased these parts to the applicant. Ultimately, however, not much may turn on the question of the ownership of the specific portions of land.

59. Mr Rose stated that he rapidly formed the view after he started as CEO that if the Club was to move forward, it simply had to improve the physical facilities of the Football Club and that the facilities were a manifestation of the sorry state of the whole organisation. He stated:

“Firstly, there were such insufficient office amenities and space that the office I worked from was positioned in a fire exit. Secondly, the Football department was housed in what was little more than a rat and tinea infested hole under a grandstand that frankly was not fit for your worst enemy.”

60. He mentioned that there had been many reports, costing considerable sums, which postulated different future uses for the oval. Whilst all of them recognised the poor state of the facility, and the need for change, none of them had apparently dealt with the fact that any change would cost a considerable sum of money. The amount of money had never been properly costed and once it was costed it was in the order of \$20 million. As Mr Rose pointed out, the Club simply had no access to any sum such as this.

61. After listing all of the other inadequacies, Mr Rose stated that a bold and ambitious plan had been put forward to approach a range of funding sources:

“In a cascading manner, so in the event that one said yes, a domino effect would follow that all others would have to become part of the project, and thus a critical mass of funding could be achieved in order to go about re-developing the facilities master plan with the view to its future use and the new strategic direction of the Club.”

62. It was decided to first approach the Federal Government and a submission was lodged shortly prior to the election in 2004. What was proposed was to turn the Whitten Oval precinct from its derelict state into a facility including:

- A thriving community hub with improved public amenities and aesthetics
- The removal of all fences and the provision of a walking facility around the oval and precinct
- The provision of a childcare centre of 105 places, to be operated by a not-for-profit childcare organisation, Early Childhood Management Services
- The provision of an indoor netball/basketball/multi-purpose facility
- The provision of new office and administrative facilities to house the Club

- The provision of community meeting rooms for organisations such as Rotary, Lions clubs etc
 - The provision of appropriate space for education and training
 - The creation of a centre of sporting excellence providing improved playing and training facilities
 - And a number of other purposes.
63. Even at the time of the original submission it was contemplated that the re-development should involve a closer relationship with Victoria University, which has a campus close by.
64. Although Mr Rose was advised that the prospect of funding was remote, in fact the proposal was successful. In brief, the Federal Government has agreed to contribute \$8 million towards the proposal and the State Government will contribute \$4 million. Because it is to occupy two floors of the John Gent Stand as an “experiential and teaching centre”, Victoria University agreed to contribute \$6 million, and a further \$5.5 million is to be provided from philanthropic trusts. The AFL is also to contribute \$1.5 million and the City of Maribyrnong \$1 million.
65. Mr Rose stated, quite unequivocally, that at all times it had been proposed that the Club would undertake to remove its social facility and associated gaming machines to an alternative venue. This is a subject which caused considerable controversy and it may be useful if we deal with it at this stage.

66. The agreement entered into with the Federal Government was produced by the applicant. It was silent on the question of gaming machines or their continued use at the Whitten Oval. But in his addendum witness statement Mr Rose provided a letter from Mr Godwin Grech, formerly of the Department of Prime Minister and Cabinet, but now employed within the Australian Treasury. In the letter which was annexed to the second statement of Mr Rose, Mr Grech stated that from June 2003 until July 2008 he had been employed as the assistant secretary of the Industry Policy branch within the Department of Prime Minister and Cabinet and that issues relating to sports policy and sporting ground re-developments fell within the responsibilities of his branch whilst he was in the Department of Prime Minister and Cabinet. He stated that he had been the primary officer within that department that managed and facilitated the Federal Government's response to the submission by the applicant for the proposed re-development of the Whitten Oval. He stated that he had personally briefed the then Prime Minister and his office as to the size, scope and merit of the proposal.

67. In this letter Mr Grech states:

“A key component of the approval process and the Federal Government's decision to provide \$8 million towards the re-development of the Whitten Oval was the re-location of the egms that operated from that venue. I cannot emphasise this strongly enough – it was very important to the approval's process.

The fundamental reasoning behind this position was that the provision of childcare – which was a very significant feature of the project from the Federal Government’s perspective – was thought to be fundamentally inconsistent with running a gaming and licensing venue on the very same site.”

68. It is true that this letter was only written on 10 November 2008, after the commencement of the inquiry, a matter which attracted some comment from counsel for Maribyrnong and, indeed, from Ms Thompson. But nevertheless, the Commission accepts the statements of Mr Grech as being accurate. Apart from the fact that it seems implausible that a senior public servant would commit matters to writing which were not accurate, the Commission believes that it was very likely that indeed the Federal Government would have been concerned to see that gaming should not continue in juxtaposition with the childcare facility.
69. The Club’s witnesses also sought to rely upon other matters in order to prove this point. They provided evidence that Victoria University had also insisted upon the removal of gaming as a precondition to their occupancy of the space referred to above. They also pointed to the fact that when a planning permit for the redevelopment had been issued by the Council, it had been specifically stated that the gaming machines would be removed prior to the commencement of the operations of the childcare centre. Ultimately we think that little turns on this point. As we informed the parties at an early stage of the inquiry, the Commission is satisfied that the development which is proposed for the Whitten Oval is now well under way; it is absolutely

plain that the egms will have to be removed from their existing, quite unsatisfactory, position.

70. There is a further matter relating to this issue to which reference should also be made at this point. The Council is plainly aggrieved that in the eyes of the responsible officers, including Councillors, the applicant has not engaged in adequate consultation with the Council on the subject of the re-development, and particularly the proposal to relocate the egms to the proposed Club Edgewater.
71. To illustrate this, reference can be made to the witness statement of Ms Thompson where, in paragraph 14, she stated that:

“Despite the many opportunities for positive discussion afforded through both formal and informal channels, Council was not formally informed of the proposed Edgewater Club development until four weeks before the planning permit application was lodged with Council on 24 December 2007. On Christmas Eve, Council also received a copy of the application by the Club for approval of the proposed Edgewater Club as suitable for gaming with 65 egms.”

72. No doubt the Council’s response to these issues is affected by subsequent events about which Council officers plainly feel very strongly but about which the Commission can make no comment of any value. At a later point in the planning process, the Minister for Planning in the Victorian Government, the Hon Justin Madden MLC, “called in” the application for a planning permit in circumstances in

which it was claimed that the applicant was being financially prejudiced by reason of planning delays. It is plain that the Council considers that there were no delays and that all appropriate steps were being taken in the appropriate time. The issue has clearly caused an erosion of confidence between the applicant and the Council which is unfortunate.

73. In the witness statements filed by the Club's witnesses, there were many suggestions that the Council's behaviour in relation to this application, as to planning issues, and as to the re-development of the Whitten Oval was unreasonable. In turn, these were countered by Ms Thompson, and strongly attacked by Mr Larkins on behalf of the Council. It is plain, and indeed it is acknowledged, that although the Council may not have been formally advised of the proposal until November 2007, there were meetings as early as 11 September 2007 in which representatives of the applicant Club briefed the then Mayor of Maribyrnong, and Ms Thompson on the issue of gaming at the proposed Club Edgewater. Ms Thompson, in her evidence, pointed out that this meeting was stated to be confidential and was not conducted in such a manner which permitted her to brief her staff, or other members of the Council, apparently because at this time, the applicant had not concluded its negotiations with Tabcorp and Tattersall's.
74. The Commission can well understand that this placed Ms Thompson and the Mayor in a position of difficulty but the Club's position does not appear to have been unreasonable. The Commission accepts the Club's evidence that it had made extensive inquiries as to a number of

alternative venues into which the egms to be relocated from the Whitten Oval could be installed and that when it was able to do so, it informed the Council's representatives of the possibility of the Club Edgewater venue.

75. Ultimately, in any event, and as the Commission was obliged to point out to the parties on several occasions, whilst the history of the matter may be useful in understanding why such poor relations have developed, they are not of great relevance to the matters to be considered by this Commission in this inquiry.

76. We conclude this aspect of the matter by stating that in the Commission's view, the applicant's success in attracting funding for the proposed re-development must be regarded as a major coup for the applicant and which may well serve an important additional purpose of assisting to secure the applicant's position as an AFL Club in Melbourne. The training facilities already available for the applicant's playing staff appear to be excellent with "state of the art" technology to assist in the relationship between the playing staff and the physiologists from Victoria University. Further, the community as a whole will benefit greatly from the re-developed stadium and its precinct and it is hard to see that, overall, this is anything but a positive situation for the applicant, Victoria University, the Council of the City of Maribyrnong, and particularly the local community. The Commission believes that it would have been contemplated throughout the community, that the applicant would seek to move the egms to an alternative venue if possible.

THE “FRESH” EVIDENCE

77. During a site visit, when Commissioners were also taken on a tour of other venues which are proposed to lose egms, we were also able to inspect the premises occupied by FRESH.

78. In a statement prepared by Mr Chris Christoforou, who is a teacher employed at FRESH, he described the role of the FRESH program as:

“A community education service which looks to support the education and training needs of at risk youth in the western region of Melbourne.”

79. In the statement Mr Christoforou went on to say that the:

“The FRESH program involves the delivery of year 12 equivalent qualifications to young people under the age of 20 who have disconnected or who have been at risk of disconnecting from mainstream education services. The programming at FRESH is largely orientated through the Victorian Certificate of Applied Learning and other vocational programs.”

80. It appears that the program caters for the educational needs for some 36 people at any one time, but over the course of the year as many as 60 young people will be connected in some way with the FRESH program. The common feature is that they all have a history of educational failure because of issues such as family dysfunction, economic marginalisation, learning disabilities, mental health issues,

and drug and/or alcohol addiction. For any of these or other reasons, these young people drop out of the mainstream education system.

81. We were informed that demand for positions at FRESH is high and that there is always a waiting list in place. It appears that there are not many alternative programs of this kind, although there are others at Kensington Community High School, the Create Foundation in Werribee and the Salvation Army's West Care Program in Sunshine.

82. The service includes four teachers and a youth worker. Mr Christoforou informed us, and indeed we observed, that there are 20 computers at the premises with separate training rooms. The program is free and includes such things as camps, excursions and other outdoor education activities. When we visited, a group of the students was camped in Gippsland. Amongst the varied educational programs which are offered, are driver education programs or a community service revegetation project or documentary film making. Students are given the opportunity to interact with the Victoria Police, Victoria University, or the Footscray Community Arts Centre, thus indicating the goodwill which organisations such as these have towards the FRESH program.

83. Obviously, not all students who join the program follow an untrammelled route to success. There are some who drop out. But we were provided with details of a number of case studies which did include some who had deferred or dropped out, but others whose progress had been such that they were expecting to go to TAFE next year, or to re-enter other mainstream education.

84. In his very impressive evidence at the inquiry, Mr Christoforou mentioned the links between various Footscray Football Club players and the FRESH program and the fact that the FRESH students were invited to three games in 2008. Plainly Mr Christoforou thinks that the program is of more appeal to the type of young person who can benefit from it, because of its relationship to the Football Club. We accept this evidence.
85. At this point it may be appropriate to mention that two witnesses, notably Ms Thompson (Council CEO) and Ms Rutherford (Secretary of RAIDIM) whilst recognising the value of the Spirit West Services, including FRESH, made suggestions that if the applicant, through Spirit West or FRESH, would be unable to provide these services, someone else would. What they were suggesting is that the funding which comes from various government agencies for the programs offered by Spirit West and FRESH, would be offered to other organisations if the applicant became unable to fund them.
86. The Commission accepts that there may be some truth in this and that over a period of time, other organisations might be able to seek the funding which is currently earned by Spirit West and might be able to offer the programs. But as the Council CEO Ms Thompson conceded, there would be disruptive transitional periods at the very least. And, overall, the Commission is of the view that it is because of the relationship with the Footscray Football Club that the programs which are being offered have a better profile and a greater likelihood of acceptance amongst the young people who benefit from them.

THE SOCIAL AND ECONOMIC IMPACT EVIDENCE

87. As might be imagined, the evidence provided by the experts in this area has been of critical importance in this inquiry.
88. With its initial application, the applicant filed a detailed social and economic impact statement prepared by Mr Rhys Quick, of Urbis. Mr Quick has given evidence at a number of inquiries conducted by the Commission.
89. When preparing its response to the applicant's submission, the Council engaged Dr Kathryn (Kate) Kerkin of the Coomes Consulting Group. Dr Kerkin's first report was included with the Council's submission on 31 March 2008.
90. As is frequently the case, Urbis updated its report shortly prior to the inquiry and an addendum report was filed on 28 October 2008. A similar course was followed by Dr Kerkin who also prepared an addendum report dated 30 October 2008.
91. The importance of the two addendum reports, in this instance, was that in those reports the various experts were able to consider the effects of the amended application, as opposed to the original application which had been filed.
92. In the amended Urbis report Mr Quick was able to comment in some detail upon the original Coomes Consulting Report. Similarly, Dr

Kerkin had been able to comment upon the original Urbis report. And both were present during the inquiry when the other expert was giving evidence so that the Commission is confident that it was able to hear the considered views of both experts notwithstanding that their final reports were prepared without reference to one another. And the Commission should state that it has been greatly assisted by the impressive contributions made by both of the experts. In so far as we have disagreed with any of their conclusions, this should not be interpreted as a criticism of the reports or the opinions which they have expressed.

93. In his original, very detailed report, Mr Quick listed many matters regarding the applicant, its history within the VFL/AFL, and its financial struggles in recent years. He referred to the Whitten Oval redevelopment and the need for the existing egms at the venue at the Whitten Oval to be removed. Very fairly, he said the following:

“The Whitten Oval redevelopment is not dependent on the approval of 65 egms at the Edgewater Club. However, as a result of the removal of the existing machines from the Whitten Oval, there is a need to relocate the machines to an alternative venue in order to maintain the ongoing income stream from these machines and thereby continue to provide the important community services delivered through the Club, to the community.”

Mr Quick’s reference to 65 egms related to the number applied for by the club in its initial application.

94. Mr Quick then referred to the contribution made by the applicant and, particularly, Spirit West Services, stressing the fact that it had over 20 staff with 40 volunteers and an annual operating budget of over \$1 million. He listed many features of the Club’s community program initiatives which are described as being “housed within four distinct streams”:

- Healthier community
- Safer community
- Engaged community
- Sustainable community

95. Amongst the programs to which he referred are school visits which are aimed to educate children in areas such as healthy eating, life choices and goal settings and which, it is claimed, involve around 16,000 students annually. He referred also to “dog’s breakfast” whereby 320 year 11 and 12 students attend a business breakfast involving guest speakers who provide an insight into careers. Participants are particularly invited to ask questions. The various programs are too numerous to list in these Reasons, but we refer to some headings such as “Car’n the Kids” – a partnership with a major sponsor whereby 10,000 underprivileged children attend a live AFL game (the program has been in existence for 5 years), traineeships for young adults, pre-employment programs, programs for the underprivileged and multicultural programs. The Club is involved in citizenship ceremonies in conjunction with the Council. For example, in 2006 over 630 citizens were naturalised in ceremonies co-hosted by the applicant. Other matters mentioned are the progression of

recreational football at the Whitten Oval, “Woofer” camps whereby young people camp at the Whitten Oval, sleep in the changing rooms, and have the opportunity to observe AFL footballers in their training programs. The Club has also provided over 62 “work for the dole” programs which provides work experience annually for over 120 people participating. The witness also referred to the FRESH program to which we have made reference separately in these reasons.

96. As with the other witnesses called on behalf of the applicant, the thrust of Mr Quick’s evidence was to link the revenue from gaming to these community programs. As we have commented earlier, we doubt that the link is as direct as was portrayed on behalf of the applicant, but the Commission certainly accepts that the Club needs all of the revenue reasonably available to it to both engage in its core function involving an AFL football team, plus the community work to which we have referred.
97. Mr Quick included a table setting out the number of appearances undertaken by players on the applicant’s playing list for the 2007 season, whether at functions at the Club, within the community, the media, or at AFL sanctioned activities. Apparently the AFL lays down guidelines for this type of activity – a minimum of 3,624 such activities was required in 2007, whereas the applicant’s players made a total of 5,067 such appearances, an impressive additional 40 per cent.
98. Mr Quick commented that:

“The Western Bulldogs are in a position to undertake these community activities because the Club is well liked by the community. Seen by 90 per cent of AFL supporters as ‘their second team’ and the Club least disliked, this position provides enormous opportunity for the Club to reach out to the community in a way unparalleled by other organisations. As a result of the loss of revenue to the Western Bulldogs through the removal of machines from the Whitten Oval, it is likely to be difficult for the Club to maintain its current level of support to the community.”

We should stress again, that we have only referred to a relatively small number of the various community activities which are undertaken, whilst recognising that many of the remainder are equally impressive.

99. An important point made by Mr Quick was to attempt to link this applicant with the community of the western suburbs. Mr Quick worked on a membership number of 34,400, a figure some 5,600 higher than the statistics used by the football club witnesses. The difference lies in a category of membership which is extended to staff members of Victoria University, gaming and social venue members, and members classified as “baby members and senior/armchair members”. Of the total membership of the Club about 60 per cent reside in the Western region, although this percentage is reducing. The thrust of this aspect of his evidence was to suggest that the proposed location of Club Edgewater was ideal to serve that proportion of residents of the western suburbs who support the applicant and with a particular emphasis on the relationship between

the proposed venue, the Whitten Oval, and the Club's own games at the Docklands Stadium. Mr Quick stated that one of the purposes for the new venue was to cater for members and supporters at pre-match functions and also functions after home games at Docklands. No doubt it would also be a very popular venue in which supporters could watch games being played at interstate venues, with the use of large-screen televisions.

100. In dealing with the resident demographic profile of Maribyrnong, Mr Quick pointed out that after suffering a decline of population in the 1990s, the population in Maribyrnong had increased from 2001 to 2006 by approximately 5,000 residents, to a total in excess of 66,000. Whilst there is growth throughout Melbourne, the rate of growth in Maribyrnong is higher. Whilst dealing with this issue, it should be pointed out, that continued growth will come from the Edgewater development itself. This area is expected to provide the majority of Maribyrnong's population growth through to 2016 with the development projected to eventually accommodate around 1,100 homes, or at least 3,000 people when complete. This growth is in the most advantaged area within the City of Maribyrnong, which has been a significant matter for the Commission to consider in reaching its decision.
101. When dealing with the socio-economic profile of residents, Mr Quick pointed out that both in Maribyrnong generally, but particularly in Edgewater, there is a higher proportion of young people than in the average Melbourne metropolitan municipality, and conversely a much smaller number of people aged over 60. As examples, 41 per cent of

Maribyrnong residents, or 46 per cent of Edgewater residents are aged between 18 and 39, compared with a Melbourne average of 34 per cent. Average annual per capita income in Maribyrnong, in 2006, was \$30,405, or 9 per cent below the Melbourne average of \$33,400. This figure should be compared with the 2001 census figures, which showed that Maribyrnong incomes at that time were 13 per cent below the Melbourne average. Further, an assessment of the incomes in the Edgewater district showed that they were significantly higher than both the average for Melbourne or Maribyrnong. Average annual incomes in Edgewater exceed \$40,000. This imbalance also applies to per capita income. 50 per cent of Edgewater residents earn over \$40,000 per annum as opposed to the Maribyrnong figure as a whole of 30 per cent or the Melbourne metropolitan average of 33 per cent.

102. Within Maribyrnong as a whole, home ownership levels are lower than in many other municipalities (64 per cent of the population reside in dwellings which are either owned or being purchased, compared with an average of 75 per cent for Melbourne metropolitan municipalities). However, house prices in Maribyrnong have increased significantly in the past five years and are now marginally higher than the Melbourne average. This figure is affected by the prices being paid in the Edgewater development where, according to Mr Quick, house and land packages were sold at figures in excess of \$525,000. Unemployment rates in Maribyrnong continue to be well above the Melbourne average. At 8.8 per cent in June 2007 they compared with 4.6 per cent being the Melbourne average. On the other hand, as at June 2007, there had been a reduction in unemployment from 11 per cent in June 2004.

103. Between the time of the preparation of the two reports by Mr Quick, there had been far more material available as to the socio-economic index (SEIFA). The 2001 SEIFA index for Maribyrnong was 915, which rated it at number 77 out of 78 local government municipalities. The revised SEIFA released in March 2008 and based on the 2006 census, indicated that Maribyrnong is now ranked 7th lowest out of 80 LGAs, although as Mr Quick commented:

“Its current ranking still suggests that the area is experiencing a high level of socio-economic disadvantage”.

He provided a most useful map which demonstrated the 2006 SEIFA indices for the Census Collector District (CCD level) which he subsequently updated with Exhibit K¹ and because much turns on this issue, we have included this Exhibit as Annexure 2 to these Reasons.

104. One of the purposes of the production of this map was no doubt to stress a point which Mr Quick was anxious to make. He claimed that the level of disadvantage in the local area of Edgewater was no lower than the local areas of three of the venues from which it is proposed egms will be transferred and is not so great as the area around Braybrook Taverner. He suggested that of the other venues from which egms are being transferred, the Yarraville Club, was the only venue that appeared to be more isolated from the most disadvantaged areas in the City of Maribyrnong. This is, of course, a point which was contested by the witnesses for the Council.

¹ 1 Kilometre Radii & 2006 SEIFA Index by Census District

105. Mr Quick, in his second report, then adopted a further approach to the assessment of the relevant socio-economic profile. By considering the Geotech assessment of the likely trade area for the proposed Edgewater Club, it was possible to analyse the socio-economic characteristics of each catchment. By adopting this approach, Mr Quick reached the conclusion that:

“A comparison of the Edgewater Trade area and the Whitten Oval Trade area (where the majority of egms will be transferred from) reveals that there is minimal variation between the two catchments. In view of this, the transfer of 48 machines from the Whitten Oval to the Edgewater Club is highly unlikely to have a significant adverse affect on the broader Maribyrnong community.”

106. What must be stressed in our analysis of these issues is that the Whitten Oval and proposed Club Edgewater are less than 2 kilometres apart. So there is significant cross-over between the trade areas for each venue. On the other hand, in Mr Quick’s contention, a comparison between the trade areas of the proposed Club Edgewater, and the other venues from which egms are being transferred (other than the Yarraville Club) indicates, overall, a higher level of advantage at the Edgewater site because of the effect upon the number of the residents of the more advantaged Edgewater estate. And Mr Quick claimed:

“The most frequent users of egms at Edgewater are likely to be those in closer proximity to the Club, which, as is evidenced by the SEIFA rankings of CCDs close to Edgewater, is a much stronger economic area.”

107. Mr Quick’s analysis does tend to concentrate upon the newer residents of the Edgewater development. What must be admitted is that the areas to the west of the proposed development, but which would be very much within the trade area of the proposed Club Edgewater, suffer very considerable levels of disadvantage. This, essentially, is the main point advanced by Dr Kerkin, and by the Council generally. Having said this, as Mr Quick pointed out, the three lowest ranked CCDs in the Edgewater Club catchment are located closer to the Powell Hotel, which is to the south-west of the proposed venue, than they are to the proposed Club Edgewater and the two higher ranked and therefore advantaged CCDs within one kilometre of the Edgewater site represent the Edgewater estate whose residents would have the most convenient access to the relocated gaming machines. (We note also that there is an area south of the Whitten Oval exhibiting even greater disadvantage).
108. Annexure 2 also demonstrates the CCDs in the region of each of the affected venues, including the subject site.
109. Mr Quick then dealt with the issue of egm density and expenditure. As we have dealt with this subject separately, we do not see the need to refer to it further at this point. At the time of his first report the removal of 164 machines through the regional caps policy was

proposed. By the time of the second report it had taken place and the effects of the removal of those egms could be calculated (which showed overall a small reduction in egm expenditure).

110. In conclusion, Mr Quick had no doubt that the overall effect of the proposed new venue would be positive. He referred to the wide range of new facilities to be offered, and the employment of in excess of 90 people. He believed that the community would benefit from the construction phase with its additional employment opportunities and the fact that when completed the venue would also offer business opportunities for other businesses nearby such as local produce suppliers. He made the point that the gaming room area would be less than 2 per cent of the overall venue size and the fact that the largest number of egms would be relocated from the Whitten Oval with other egms to be transferred from the venues to which we have referred. By the time of his addendum report he was able to rely further upon the net reduction of egms from the municipality as a whole, as being an important consideration in support of the application. Before dealing with Dr Kerkin's evidence, we should mention an aspect of Mr Quick's evidence which attracted no cross-examination. It refers to the applicant's good repute as to the responsible service of gambling. He mentioned that the club had strong contacts with Gambler's Help Western staff and has worked with them to develop appropriate responsible gambling policies. The Club has also been used by the Victorian Government to promote responsible gambling, a matter referred to also by Mr Smorgon, who commented, somewhat bitterly, that whilst the club had been paid for this work, it had not received the same fee as the Essendon Football Club! Amongst the steps proposed

at Edgewater is the appointment of a Responsible Gambling Co-ordinator. We think that these matters reflect well upon the applicant. In addition, as part of the introduction of newly legislated provisions, the Footscray Football Club as the operator of Club Edgewater must adopt a Responsible Gambling Code of Conduct and provide for a self-exclusion program approved by the Commission.

111. The approach taken by Dr Kerkin in the witness box was to refer primarily to her addendum report, which was an appropriate approach having regard to the fact that by the time of the preparation of this report, the witness was able to comment upon the proposal in its final, rather than original form. Nevertheless, the witness also placed reliance upon her earlier report which she treated as an annexure to the final report.

112. Dr Kerkin very conveniently summarised her findings and we refer to a number of them as follows:
 - that the local community around the proposed venue shows high levels of socio-economic disadvantage and is therefore vulnerable to the negative impacts of gaming;
 - that the proposed egms would increase the opportunities for convenience gaming by being highly convenient to local shopping opportunities;
 - that the proposed Edgewater Club could not be considered a destination venue and that to the contrary, by locating a large gaming venue in a neighbourhood activity centre which is

designed to serve local needs, it increases the exposure of the community to gaming machines;

- that the Maribyrnong community already has a very high concentration of egms and easy access to existing gaming opportunities;
- that although the community benefits claimed in respect of the proposal, including the community contributions, the local employment opportunities, and the provision of social and community meeting facilities, do confer a benefit upon the community, the effect of them has been overstated by the applicant;
- that community attitude to the proposal is overwhelmingly in opposition.

113. Importantly, Dr Kerkin also referred to another issue which she perceived as a disadvantage associated with this application, notably:

“The proposal is anticipated to result in a loss to the community of more than \$1.4 million per annum. Research into problem gaming indicates that much of this loss will be borne by members of the households living within two to five kilometres of the venue, an area showing high levels of social economic disadvantage.”

114. This is an important point, because it misrepresents the proposal advanced by this applicant. As is set out in the section of these Reasons dealing with the evidence as to gaming expenditure, the anticipated effect upon gaming expenditure within Maribyrnong as a whole, is a reduction of some \$700,000 as opposed to a gain of \$1.4

million. Witnesses' misunderstanding of this issue has been an important issue for the Commission to consider. We note, however, that the amendments made to the application whereby the number of egms sought was raised from 65 to 70, but, more significantly eleven egms are to be removed from the City of Maribyrnong, appeared to generate some of this confusion.

115. In her first report Dr Kerkin analysed relevant planning law, and particularly the issue of activity centres. Clause 12.01-2 of the Victoria Planning Provisions provides for the development of a network of activity centres which are the focus for business, shopping, working, leisure, and community facilities. The purpose of such activity centres is that they should be developed in such a way that reduces the number of private motorised trips by the concentration of activities that generate high numbers of trips, in highly accessible locations.

116. Specifically, neighbourhood activity centres are to have:

- a mix of uses that meet local convenience needs
- are accessible to a viable user population by walking and cycling
- are accessible by local bus services with public transport links to Principal or Major activity centres
- are an important community focal point.

117. We have set out these matters in detail, because they do highlight an important feature of the opposition to this proposal. Whilst it is true that the proposed venue is to be located in an activity centre – a

preferred option – a point upon which Dr Kerkin and the Council relied, is that it is a neighbourhood activity centre rather than a principal or major activity centre.

118. Dr Kerkin also drew attention to the amendment to the planning provisions in 2006. One of the purposes of the amendment was to prohibit gaming machines in specified shopping complexes and strip shopping centres. Whilst these are matters of more relevance to the planning jurisdiction, another important item for a responsible authority to consider would be:

- Whether the gaming premises provide a full range of hotel facilities or services to patrons or
- A full range of club facilities or services to members and patrons
- And whether those facilities otherwise exist in the activity centre should this facility not proceed.

119. The reference to “specified shopping complexes and strip shopping centres” above indicates that a decision must be made as to what shopping complexes and strip shopping centres have been so specified.

120. In this case, the City of Maribyrnong has decreed that gaming machines are prohibited in:

- Highpoint Shopping Centre, Maribyrnong and
- Metro West Shopping Centre, Footscray

But a subsequent clause also states “a gaming machine is prohibited in all strip shopping centres or land covered by this planning scheme”.

121. Dr Kerkin made the point, with which the Commission agrees, that it has been established that areas of socio-economic disadvantage are more vulnerable to problem gambling and the negative effects of gaming and, relying upon studies such as the Tuggeranong Study (ANU 2004) she advanced the proposition that convenient access to gaming machines (through location, egm density, number of venues, number of machines and social accessibility) can make the local community more vulnerable to problem gambling and negative impacts of gaming machines.
122. In commenting on all of the policy and research which she reviewed in her first report, Dr Kerkin commented that:

“A combination of current research, legislative context and planning considerations can lead to the conclusion that in order to balance the various competing issues the gaming venue should avoid areas of disadvantage, be accessible to a major activity centre (and transport routes to address sustainable development) but not convenient to daily activities like shopping so that it is more likely that a gambler has made a pre-determined decision to gamble”.

She then set out her summary:

“In summary, a gaming venue will only be considered appropriate if it:

- demonstrably minimises harm to the residents and the community from gambling;*
- promotes community health and wellbeing and contributes positively to the quality of life in the community;*
- avoids areas of disadvantage;*
- provides accessible entertainment and recreation facilities that are a benefit to the community;*
- responds to the policy directions of the Maribyrnong Planning Scheme;*
- considers any communities within the catchment area that are vulnerable to gambling;*
- considers the impact on the local economy;*
- is supported by the local community (ascertained through community consultation);*
- is not located in areas that demonstrate housing stress (where there are working poor due to expenditure of more than 30% of income on mortgages or rental); and*
- is not located in an area that already has high accessibility to gaming machines (through EGM densities, location, number of venues and social accessibility).”*

123. After considering the various aspects of the Maribyrnong LGA and the large number of venues within a 5 kilometre radius from the proposed Edgewater Club, she reached the conclusion that the greatest impact would be felt by those within a one kilometre radius and it was upon this area that she principally concentrated. (This was the reasoning which lead to a similar approach being taken in the Metropolis community survey and the reasoning was challenged strongly by the applicant). Her assessment, therefore, was that some 9 collector districts should be considered. As this is referable to the plans produced by Mr Quick, and to which we have made reference previously, we set them out below:

<i>CD Number</i>	<i>Collection District Name</i>
1.	2300115
2.	2300111
3.	2300105
4.	2300107
5.	2300110
6.	2300104
7.	2300112
8.	2300103
9.	2300106
10.	2310807

(For reasons to which we need not refer, Dr Kerkin excluded two collector districts on varying grounds).

124. In referring to the collector districts which we have listed above, the witness conceded that CDs 2300111 and 2300115, with SEIFA ratings at 1,129 and 1066 respectively, are well above the average index of disadvantage. Indeed CD 2300111 is in the highest five per cent of rankings within Victoria. But she pointed out that a number of the other CDs are extremely low, highlighting that, in particular, CD 2300107 with an index of 788, falls within the lowest two per cent. Apart from the two CDs to which we have referred (2300111 and 2300115) and which have a high ranking, all of the other relevant CDs fall within the lowest 25 per cent.
125. Whilst referring to the question of population growth, Dr Kerkin included the usual resident population (URP) as at 2006. This demonstrated a population in that year of 687 within the Edgewater Estate. Whilst she commented that generally population growth in Maribyrnong was consistent with growth generally in the metropolitan area, she did not appear to give consideration to the projected increase in population within the Edgewater Estate to which we have referred earlier.
126. An aspect which Dr Kerkin considered and which was not dealt with in the first Urbis report was that of housing stress. This issue has been the subject of considerable controversy at a number of recent inquiries. The witness stated that 29 to 37 per cent of the households in the CDs comprising the Edgewater Estate have housing stress which she conceded was not unusual for new residential developments. (In other Inquiries the Commission has accepted that the definition of household stress requires both a finding that

expenditure upon housing assumes more than 30 per cent of available household income and that such incomes are in the bottom two quintiles of weekly earnings. In the Commission’s view the evidence relating to residents in the Edgewater Estate does not suggest that there is a high level of housing stress, although we accept that there will be exceptions. We make this finding because the evidence as to income in the area in the Edgewater Estate suggests that it is considerably higher, on average, than the range proposed for the normal test of housing stress). After noting other relevant factors, many of which we have referred to above from Mr Quick’s report, the witness made the following key finding in her first report.

“The catchment area of the proposed Edgewater Club also contains populations with high levels of unemployment, low household and family incomes and signs of social isolation or weaker community connection. The one kilometre catchment area is also demographically over-represented by all of the known at-risk groups, including financially dependent and isolated women, people with mental health issues, substance and alcohol abuse/dependency as well as unemployed people, people from a non-English speaking background and lone parents.”

127. The Commission accepts that these findings are correct, but does observe that many of the persons to whom this quotation refers, are situated in close proximity to an existing gaming venue already. What is not easy to determine is whether they are particularly likely to be attracted to a new, club, gaming venue when they have easy access to a hotel venue virtually on their doorstep.

128. An important part of the witness’s evidence related to the issue of the appropriateness of this venue for gaming and an analysis of the argument relating to convenience gaming, as opposed to accessible gaming. Dr Kerkin particularly stressed the different roles for principal and major activity centres as opposed to neighbourhood centres with the witness reaching the conclusion, based upon the available research that a gaming venue within a major activity centre is less likely to draw on local patrons and those patrons are less likely to have a heavy gambling profile.

“Ideally the location of large entertainment facilities containing gaming machines will balance these various and sometimes competing considerations, for example, by locating gaming machines towards the periphery of major activity centres, away from the retail core. Within this policy and research context, gaming will not be considered appropriate within smaller neighbourhood activity centres”.

The witness then considered the definition of strip shopping areas within clause 52.28-4 of the Victorian Planning Provisions. She concluded that the ALDI centre in Edgewater Estate could be described as a strip shopping centre, but not the former ammunitions building nor Edgewater Square.

“However, all three areas make up what is generally known as the Edgewater Estate Commercial and Retail area and attract people to this precinct to undertake business, shopping and dining. The

subject site for the proposed Edgewater Club is separated from the strip shopping centre by a local street (Case Street) but is directly adjacent to the centre and to the convenience shops located within it”.

129. In Dr Kerkin’s view, the notion of “destination venues” still has currency. As we understand her evidence, her definition of a “destination venue” is simply “one which encourages a pre-determined decision to gamble, making it less likely that problem gamblers will attend venues on impulse alone”. Thus, this definition can be distinguished from the proposal advanced by the Regional Electronic Gaming Machine Caps Review Panel which contemplated the possibility of larger than presently permitted venues in locations such as racing or golf clubs or other venues well removed from retail or even residential areas. It was conceded at this inquiry that the Victorian Government has decided not to further investigate the possibility of a higher concentration of egms in larger and more remote venues, but in Dr Kerkin’s view this does not alter the fact that some advantage may be perceived in the use of the more limited definition of destination venues, as set out above. The witness agreed that given its location, the proposed Edgewater Club does display some of the characteristics of a destination venue but suggested that it has locational attributes which would lend itself towards convenience gaming, and was thus not to be considered to be a discreet location.
130. By contrast, Dr Kerkin concluded that the Whitten Oval site could be described as a destination venue; that it is not convenient for a wider catchment area of people. She believed that people wishing to gamble

at the Whitten Oval would have to make a conscious decision to go to the Club to gamble and that the closest strip shopping centre to the Whitten Oval is at “Barkly Village”, approximately one kilometre from Whitten Oval. It was thus her contention that the proposal involves the transfer of 48 egms from a venue which is currently less convenient to members of the community than at the proposed location at Edgewater Club. After noting that the proposed redevelopment at the Whitten Oval would make it inappropriate for the egms to be retained there, she remained of the conclusion that the proposed Edgewater Club is not an appropriate venue to which the machines should be relocated, because it is proposed that they be relocated to a venue in a vulnerable residential area and within a commercial area, adjacent to a strip shopping centre.

131. In her second report, Dr Kerkin found no reason to depart from the conclusions which she had reached earlier. She again referred to her concern about “the Maribyrnong community”. This was a reference to a concern expressed in her earlier report about the effect upon the suburb of Maribyrnong (as opposed to the Maribyrnong LGA) if the application proceeds. She pointed out that within the suburb, there would be a high concentration of egms, indeed much higher than average. However, the Commission doubts the significance of this point when consideration is given to the number of gaming venues within the relatively small LGA of Maribyrnong. In the key findings contained in the second report she stated:

“The characteristics of disadvantage present in areas immediately adjacent to Edgewater Club means that there will be detrimental

impact on the local community when machines are relocated from other venues. The presence of gaming machines is also contradictory to the proposed family-friendly environment that Edgewater claims will be provided”.

132. Importantly, by the time of her second report, Dr Kerkin was also able to comment upon the question of community attitudes and the survey carried out by Mr Hubner of the Metropolis Group, to which reference is made separately. The witness commented that:

“Community attitudes to the proposal are overwhelmingly in opposition, stated reasons include the site is an inappropriate location, and the fact that there will be an over-saturation of gaming machines in the area. Community surveys identified the need for local shops, restaurants, health and medical facilities, as well as post office and bank facilities more than entertainment facilities.”

133. After quoting one of the core aims of the Act, as the fostering of responsible gambling in order to minimise harm caused by problem gambling, she concluded that:

“Since Edgewater Club will provide highly accessible and convenient gaming opportunities within a demonstrably vulnerable community, it cannot be shown that the net economic and social impact of the proposed transfer of egms from other locations

within the municipality to the Edgewater Club will not be detrimental to the wellbeing of the community”.

134. Throughout detailed cross-examination by Ms Brennan, Dr Kerkin adhered to this opinion. She was of the view that the Urbis material referred to above does not substantiate the claim that the catchments from the various locations from which egms are to be transferred, are more disadvantaged than the proposed Edgewater catchment. Indeed, she claimed that the opposite was the case, and that a number of the venues which were likely to lose egms, were more advantaged than Edgewater. Ultimately, Dr Kerkin accepted that the material did not appear to support this proposition but she maintained her position that there was no evidence that the catchment of the Whitten Oval was more disadvantaged than Club Edgewater. Finally she informed the Commission that she would be satisfied if a finding was made that the two catchments were roughly comparable, but upon careful consideration the Commission doubts this is correct, see Annexure 2.
135. In any event, we think that Dr Kerkin’s analysis may have ignored an important point. As was suggested to her in cross-examination, the catchment of the Whitten Oval includes many more collector districts than Edgewater. As we were informed that each collector district equates to approximately 200 residences, it may be stated that many more people live in the catchment of the Whitten Oval, than in the Club Edgewater catchment. A similar comment may be made in relation to a number of the other venues’ catchments – more people presently live near a number of the venues proposed to lose egms. It follows, therefore, that more disadvantaged people live near the

Whitten Oval and the catchments of the other venues which are to lose egms, than in the catchment surrounding Edgewater. And the point becomes more important when, as Dr Kerkin quite properly conceded during cross examination, the projection is for a significant increase in the population of the Edgewater Estate, thus in that part of the catchment with the highest level of advantage. We did find it slightly surprising that little attention appeared to be given originally to the projected population increases in the region of the proposed venue.

136. The witness also queried the relationship between the applicant, and the community benefits to which we have made reference. As to this we have some sympathy for Dr Kerkin because not unreasonably, she relied upon the alleged direct link between gaming and the provision of these community benefits, specifically the Spirit West Services. As we have commented separately, we do not think that a careful analysis demonstrates this link. In commenting upon the claim (by the applicant) that the value of the current community contributions exceeds \$2.5 million, Dr Kerkin commented:

“It is unclear what proportion of this \$2.5 million is distributed through community benefit programs as the gaming revenue utilised directly for community purposes is not stated”.

137. The witness did concede the value of a number of the additional facilities proposed at the venue. However, she commented that the proposed community meeting spaces were not unique to the proposed venue as they did exist in other places nearby. She commented favourably (but without much analysis as to the benefits which they

- would provide) upon the provision within the proposed development of hotel accommodation facilities. At one or two points throughout her evidence, Dr Kerkin appeared to be adverting to the possibility that the proposed venue could be constructed without the inclusion of the gaming machines. Unfortunately the evidence established that such an outcome was not possible.
138. Dr Kerkin was of the opinion that the Metropolis evidence established a very high level of community objection to this proposal. In her evidence at the inquiry she did acknowledge the survey evidence lead on behalf of the applicant which pointed to a contrary conclusion.
139. The Commission found Dr Kerkin's evidence to be of considerable value, particularly in highlighting what she, and the Council, perceived to be the disadvantages of this particular location, and the arguments in relation to convenience or accessibility in gaming venues. Regrettably, this was not a subject which had been canvassed in the first Urbis report. We must say that we are somewhat surprised that this is the case because there has been a good deal of research and literature devoted to this question in recent years.
140. As to other matters, the Commission accepts Dr Kerkin's evidence as to the high level of disadvantage suffered by a number of residents in the immediate catchment of the proposed venue, although we regard the point as of less significance having regard to the fact that these residents are already served by at least one other gaming venue in very close proximity. It might be considered far more problematic if this was not the case and if a new venue was being introduced into a

socially and economically disadvantaged area in which, hitherto, there had been no gaming venue.

141. Another comment that we might make regarding Dr Kerkin's evidence is that perhaps, both within her reports and in her evidence at the inquiry, she gave little attention to the significance of this applicant as a long term occupant, both of a historic and important facility and a significant role within the western suburbs. We think that the Urbis report did make appropriate reference to this subject as one which must be taken into consideration by the Commission. Indeed, it was conceded by Ms Rutherford of the residents group RAIDIM (Residents Against Inappropriate Development in Maribyrnong) that even amongst the group's supporters who are opposed to the proposed new venue, there would be a very serious concern if the applicant was unable to continue to function as an AFL Club in the western suburbs of Melbourne. Because the immediate effect of the closure of the Whitten Oval gaming venue would not cause such a loss to the applicant as would have been the case even two or three years ago, perhaps the point is of less significance than it would have been at that time, but overall the financial situation of the applicant is poor and we think that any reasonable observer would conclude that any reduction in its annual revenue might create increasing doubt as to its viability. Indeed it will be required to increase its income for its future to be assured.
142. Purely because of the impact that the loss of the Club would have in the western suburbs as a whole, within this LGA, or in the immediate vicinity of the Whitten Oval and the proposed Club Edgewater, we

- believe that these are issues which Dr Kerkin should have considered. And we also express some reservations about her evidence because, as stated earlier, of her apparent belief that the application involves an increase of gaming expenditure within the LGA, whereas the applicant's position is to the contrary. Indeed, Dr Kerkin asserted that the \$1.4M of new gaming expenditure was a loss which would be borne by the disadvantaged community within one kilometre of the venue. We do not think that this is correct. Any such losses would surely be borne by the broad cohort of egms users at the venue, although it is acknowledged that the effects upon the disadvantaged members of the community would be greater.
143. The applicant also called a further witness from Urbis, to give evidence as to the issues regarding the location of the property. Ms Sophie Jordan is a Director of Urbis. Her expertise is in town planning.
144. As can be seen from the evidence of Dr Kerkin, a major aspect of the Council's challenge to this proposal relates to the precise location of the proposed site. Ms Jordan provided helpful evidence as to the history of the Edgewater development and also as to various aspects of the planning law surrounding the site. Many of the matters about which she gave evidence will, no doubt, be critical to the planning appeal which is to be heard at VCAT but, nevertheless, her evidence was of considerable value to the Commission.
145. Whilst many issues were addressed in her witness statement, most related to the Victorian and Maribyrnong planning schemes. The

- witness conceded on several occasions that this Commission cannot be bound by the planning provisions. Ms Jordan did provide a great deal of evidence as to activity centres, whilst conceding that the area with which we are dealing could be categorised as a neighbourhood activity centre. Thus, to this point, her evidence was consistent with that of Dr Kerkin.
146. However, she disagreed strongly with Dr Kerkin's assertion that a gaming facility was inappropriate in a neighbourhood activity centre. As to the Edgewater site, it is affected by the Maribyrnong Retail Development and Activity Centre Policy (February 1998). The policy had recognised that the village centre of Edgewater was the preferred location for a new supermarket greater than 2000 square metres. In fact, as has now transpired, a much smaller ALDI store encompassing approximately 800 square metres has now been constructed. Because of its juxtaposition to smaller speciality shops located adjacent to the store, Ms Jordan in her witness statement commented that it was considered that this development satisfies the activity policy expectation for a supermarket based facility.
147. This then lead into a somewhat unsatisfactory discussion about proposed developments to the north of the subject site, in respect to which some background is necessary.
148. At the very conclusion of the evidence of Mr Quick, matters had been put to him by Mr Larkins on behalf of the Council relating to the proposals for the land to the north of the site in La Scala Drive, which runs north from Thomas Holmes Drive, which forms the northern

boundary of the subject site. Between the time that members of the Commission had first inspected the site, and a later inspection shortly after the inquiry commenced, a Notice had been placed on the land on Thomas Holmes Drive, indicating that a permit was sought for a partial waiver of parking requirements. Reference was made to a possible medical facility.

149. In the questions directed to Mr Quick, and based upon material which Mr Larkins had obviously obtained from his client, it was suggested to Mr Quick that another full scale supermarket could be erected on this site. The Commission must say that it found the approach to this issue somewhat curious. A central thrust of the Council's submission is to link the subject site to strip shopping, and particularly to argue that the site is unsuitable for gaming because it is too convenient for those going about their everyday business and, particularly, shopping. The Commission would have anticipated that the Council would acquaint the Commission in the normal way with whatever information it had received as to the proposed use of this land. This did not occur; rather, the Council's representatives used the material which had been lodged with the Council for the purpose of cross-examining the applicant's witnesses.
150. In any event, from questions directed to Ms Jordan, the Commission has become aware that a limited amount of information is available that does suggest that a proposal is contemplated for medical and like premises on an upper floor, but that the lower floor would be used for retail purposes. Included in the material lodged with the Council is, apparently, a suggestion that one of the retail premises is to have as

much as 500 square metres (in which case it would be approximately 60 per cent of the size of the ALDI supermarket). Ms Jordan, who had advised George Adams Prizac in relation to this matter, and as to the suggestion that that organisation should lodge an objection to the partial waiver of parking, sought by the proponent, commented that in her view these proposals for the use of this land did not alter the central thrust of her evidence. It remained her view that because of the positioning of the proposed venue and the fact that those using the retail premises on this northern site would be likely to use the ALDI car park, this further development should not lead to concerns about the possibility that users of the site would find the gaming venue so convenient as to be an attraction to them.

151. In part, Ms Jordan’s evidence was based upon her belief that the link between convenience and problem gambling is not well established. She repeated the evidence which she had given in an earlier matter before the Commission, notably that the first restrictions on gaming in strip shopping centres were introduced without empirical evidence (they pre-dated the ANU Tuggeranong study). Further, in a manner which she did not entirely satisfactorily explain, Ms Jordan was of the view that management of the venue would have some impact upon the likelihood of problem gambling. She talked about matters such as opening hours, dress codes etc, and particularly the fact that patrons would be obliged to either be members of the Club or to go through the “sign in” procedure. She thought that the likelihood that they would undertake such steps would be heavily affected by the question as to whether they were members or supporters of the Western Bulldogs.

152. The Commission must say that, whilst noting that egm expenditure at clubs is lower than at hotels, based upon the evidence which it has heard in so many inquiries, we doubt that the issues to which Ms Jordan has referred can have much impact upon the likelihood of problem gambling. Different considerations may apply to the attitude of venue management to the steps which may be taken in relation to those who may appear to be gambling to excess, but this was not the issue which Ms Jordan appeared to be addressing. In fairness to her she made it plain that her expertise did not lie in problem gambling but rather in planning.
153. The witness made the point that the State Planning Policy Framework (SPPF) provides the broad policy direction for Activity Centre Policy. Clause 17 of the SPPF encourages the concentration of major retail, commercial, administrative, entertainment and cultural developments into activity centres which provide a variety of accessible land uses to the community. State Planning Policy suggests that activity centres should be planned to:
- Provide a range of shopping facilities in locations which are readily accessible to the community
 - Incorporate and integrate a variety of land uses, including retail, office, education, human services, commercial facilities, recreation, entertainment and residential uses, where appropriate
 - Maximise opportunities for the co-location, multiple use and the sharing of facilities

- Minimise the effects of commercial development on the amenity of residential and parkland areas, for example, as a result of traffic congestion, noise or overshadowing.

154. The thrust of all of this is clear. Quite sensibly it is hoped that one car trip can be made to such an activity centre and that once the trip is undertaken, a variety of purposes can be fulfilled without the need for the car to be moved. Ideally, activity centres will have appropriate access to public transport. The witness further pointed out that to permit “out-of-centre” proposals is to defeat the purpose of activity centre policy, and to make activity centres less advantageous for potential businesses which might locate there. The Commission has referred to these issues previously in the matter of Pakenham Lakeside Hotel² and particularly by reference to the matter known as the “Tiplane Decision in VCAT”³. In that matter, VCAT allowed an appeal by an occupant of an activity centre against a planning permit which had been issued for the purpose of the Point Cook Hotel, in respect of which the Commission had granted Tiplane Pty Ltd approval of the premises as suitable for gaming (see Commission’s decision in the matter of the Point Cook Hotel⁴ (decided 16 May 2007)).

155. The various matters to which we have referred are sufficient to highlight a problem which confronts both planners and this Commission. On the one hand, the location of entertainment options

² *In the matter of Pakenham Lakeside Hotel*² (decided 26 June 2008)

³ *Tiplane Decision in VCAT- Walker Corporation Pty Ltd – v – Wyndham CC [2007] VCAT 1396 (24 July 2007)*.

⁴ *In the matter of the Point Cook Hotel* (decided 16 May 2007)

within activity centres appears sensible. On the other hand, activity centres are likely to include retail facilities and perhaps strip shopping centres. And although Ms Jordan, and indeed Mr Quick, cast some doubt about the research which has led to the reasoning which favours gaming venues being at a distance from supermarkets and other retail facilities, the fact is that this reasoning has affected both government policy, and decisions of this Commission. The Tuggeranong study previously referred to is often cited as research supporting the creation of distance between shopping and gaming, and it has been criticised by some who doubt that its findings are based upon appropriate research. But the Commission must say that in a number of matters coming before the Commission, evidence has been given, particularly by those who are working “in the field” with problem gamblers, of an often-expressed view by their clients, that if they had not been confronted by gaming venues when going about their every day activities, they would have been assisted in resisting excessive gambling.

THE EVIDENCE AS TO LIKELY GAMING EXPENDITURE

156. As is previously set out in these Reasons, gaming expenditure in Maribyrnong is already very high, considerably above the average both for metropolitan local government areas and for the State of Victoria as a whole. Any increase in expenditure would, therefore, be a matter which would cause the Commission to have significant concern. As it transpired, approximately one and a half days during the inquiry were devoted to this issue.

157. The evidence on behalf of the applicant was supplied by Mr Richard Whitehouse, a Divisions Manager of Channel Strategy for Tattersall's Gaming Pty Ltd. He made a calculation in support of the application as originally lodged with the Commission and then provided a further calculation once the amended application was lodged.
158. His calculation was that the likely annual expenditure upon egms at the new venue would be \$6,336,852. Of this sum, 77.7 per cent would be transferred expenditure, leaving a figure of \$1,415,475 as new expenditure.
159. In this case, however, this is not the end of the calculation. Not only, if this application is approved, are the 48 egms presently at the applicant's venue at the Whitten Oval, to be transferred to Club Edgewater but so also are a significant number of other egms from Tattersall's venues within the LGA. And, as Mr Whitehouse made plain during his evidence, in order that there might be a greater chance of approval of this application, it is proposed that a further eleven egms will be removed from the LGA altogether.
160. Once these movements in egms are taken into consideration, the case presented by the applicant was that there would be a net reduction in annual egm expenditure within the LGA of \$709,000.

161. Before turning to the methods by which these calculations were made, it is perhaps convenient to mention that this figure was hotly disputed by the Council. The Council engaged Ferrier Hodgson, Chartered Accountants, to conduct an investigation into the applicant's calculations. For this purpose the relevant representative from Ferrier Hodgson, Mr Colin Gill, has given evidence before the Commission in several recent cases. Mr Gill did not think it appropriate to substitute his own figure as to the likely change in egm expenditure; the thrust of his detailed reports was to suggest that in two areas the calculations made by Mr Whitehouse should not be accepted. First, he suggested that the calculation of expenditure at Club Edgewater was considerably understated, and the percentage of transfer was too high. Further, he suggested that the claimed reduction in egm expenditure caused by the transfer of 22 egms from other venues to Club Edgewater, and the removal altogether of eleven egms, was also overstated.
162. The method by which the calculations were made, and the need for those calculations to be adequately revealed to the Council's representatives was the subject of a Directions Hearing at the Commission in which it was directed that a significant amount of data should be made available to Mr Gill in order that he could adequately carry out his work. At the hearing Mr Gill was still of the view that insufficient data had been afforded to him in order that he could carry out his work properly, but ultimately the Commission was of the view that he had been sufficiently briefed in order that his report could be prepared and he could give detailed and cogent evidence at the

inquiry. We also note that the evidence of Messrs Whitehouse and Gill was taken concurrently and that in accordance with directions from the Commission, they did confer several days before the inquiry but it appears that in this case their conference did not lead to any significant bridging of the differences between them as to the correct calculations.

THE METHOD OF CALCULATION OF THE ANTICIPATED EGM EXPENDITURE

163. In reaching the figures referred to above, Tattersall’s used what has become known as the “Geotech” model. Reference to this model has been made in several recent decisions of the Commission.
164. It should be stated quite clearly that in previous matters affecting Tattersall’s venues which have come before the Commission, different methods of calculation of expenditure have been used. Most of these applications have involved what is known as “Top-up” increases, being cases in which what has been sought is an increase in the number of egms in a venue which already has them, but some have involved new venue applications. The Commission has previously stated that on the evidence available to it, there is absolutely no evidence that Tattersall’s has ever knowingly under-stated the likely egm expenditure which will arise as the result of additional or new egms following an application before the Commission. The Commission has been in the position of reviewing the results from a

significant number of cases in which projections have been made at inquiries before the Commission, and comparing those projections with the actual results achieved over a 12 month period following the installation of the additional egms. Overall, the predictions have proved to be extremely accurate. On balance they have tended to over-estimate the likely increase in expenditure rather than underestimate it. Whilst several different methods have been used for the calculations in these previous matters, the most recent method of calculation, prior to the introduction of the Geotech model, was the Spectrum analysis.

165. Most of the matters to which we have referred in the above paragraph have related to increases in the number of egms at a venue, rather than applications for egms at a venue which has not hitherto offered gaming. In previous evidence given to the Commission Tattersall's representatives have informed us that they have been concerned about the accuracy of the earlier models, including the Spectrum analysis, when dealing with new venues. Further, whilst they have been satisfied that their previous calculations have proved to be accurate as to the increases in revenue at a particular venue caused by the introduction of further egms, they have not been satisfied that their calculations of what is known as transferred expenditure, have been so accurate.
166. It will be readily appreciated that the amount of gaming expenditure earned at a venue which is transferred from other venues after the introduction of further, or new, egms is also very important. It is only

when transferred expenditure can be taken into consideration, that the Commission is able to make a judgment as to the likely new gaming expenditure within a municipality, assuming an application is granted. Much of the material contained above was put to the Commission in correspondence and witness statements leading up to the Directions Hearings to which we have referred above.

167. In order to attempt to provide greater certainty for the Commission, the applicant (and Tattersall's) elected to put before the Commission the calculation of likely expenditure at the proposed Club Edgewater, made on the basis of both the Geotech model, and the Spectrum model. Whereas the initial calculation produced by the Geotech model was that some \$6.33m would be the sum expended upon egms at the new venue, the Spectrum model calculation was that the annual expenditure would range between \$6.002m and \$6.584m. However, whilst the Geotech model had produced an estimate of transferred expenditure at 77.7 per cent, Mr Whitehouse stated that the Spectrum model was unable to evaluate the level of impact on other venues and therefore could not produce a transferred expenditure figure. The Commission accepts this aspect of the evidence but notes that the additional information provided by the use of the Spectrum model is of assistance as it tends to corroborate the figures proposed by the applicant using the Geotech approach.
168. The development of the Geotech model has been complex. In a recent decision of the Commission involving an application by Frankston

RSL⁵, we commented upon the various developments of the Geotech model, and particularly the fact that after a review by Ernst and Young, the model was refined. The Geotech model uses gravity modelling. Mr Whitehouse explained that:

“Gravity modelling aims to simulate the choices consumers make in the real world. One of the key benefits of the Geotech model is that it makes it possible to predict the impact of a new venue or an increase in machine numbers at an existing venue on all other venues within the subject venue’s trade area, rather than predicting the performance of one venue in isolation and then separately estimating the likely proportion of new expenditure that would be transferred from other venues.”

169. He went on to say:

“As a result, the Geotech model can predict the impact of an application at the trade area, LGA and local networks levels, therefore providing a more comprehensive set of expenditure figures than has previously been presented to the Commission in predictions which were made using previous techniques or models.”

170. As stated by Mr Whitehouse, after the initial development of the Geotech model and its review by Ernst and Young, some changes were incorporated into the model. Thereafter it was submitted to

⁵ In the matter of Frankston RSL Club (decided 9 December 2008)

Ernst and Young for their further comment. In their second report, prepared in October 2008, Ernst and Young had commented that:

“Our review has not identified any areas of concern that would affect our assessment of the model as presented in our September 2007 report.”

171. Thus, it was suggested, Tattersall’s were entitled to rely on the Geotech model, the accuracy of which had been (it is claimed) verified by Ernst and Young.

172. As it transpired, after Mr Whitehouse and Mr Gill had given their concurrent evidence, the next witness called by the applicant was Mr Christopher O’Hehir who is an Executive Director of Ernst and Young from their Sydney office. A witness statement was also provided by Mr O’Hehir to which he attached the two reports prepared by Ernst and Young to which we have referred above. It must be said that these reports do appear to provide the degree of security sought by Tattersall’s as to the Geotech model.

173. We do not think it is desirable or perhaps even possible to set out in these reasons even a summary of the detailed calculations presented in the two Ernst and Young reports and which were submitted to the Commission by Mr O’Hehir. After considering the earlier evidence from Tattersall’s representatives in inquiries previously conducted by the Commission and after considering the evidence of Mr Whitehouse and Mr O’Hehir in the current matter, we have concluded that the

Geotech model offers a greater degree of likelihood that the picture being presented to the Commission will be accurate. This is so, because the calculation of transferred expenditure is an integral part of the calculation of the overall expenditure to be earned at a venue, rather than a separate calculation. It is noted that the model has not been developed purely in order to provide evidence to the Commission. Its development has taken place so that Tattersall's may be more accurate in their internal calculations which, no doubt is a critical factor in dealing with all the venues with which they have an involvement.

174. But there are some limitations in the value of the Geotech model to which we must make reference.

175. The first is that it is dependent upon the material which is fed into it. Of particular relevance is something which is known as the "attractiveness score" for a venue and which can only be determined subjectively. The attractiveness score is not merely a reference to the overall appearance of a venue, but rather the calculation of a score taking into consideration a large variety of items such as ease of access, availability of parking, external and internal appearances, the number of egms at a venue and a number of other matters. As was demonstrated to the Commission, a venue consisting of very high quality, modern facilities might receive a lower attractiveness score than an older less physically attractive facility but which has the benefit of ideal positioning with high exposure to prospective patrons.

176. Another point which must be stressed is that whilst the model is considered to be generally reliable, it will not always provide a picture which turns out to be accurate. As was set out in the 2007 Ernst and Young report (No 2 – page 32):

“(a) in practice, models are never able to predict the entire variation in revenue and R^2 of 100 per cent is not achievable;

(b) an R^2 of 75 per cent of or higher is generally regarded as an excellent fit, however, these are often not achieved in practice;

(c) R^2 values above 50 per cent provide good predictive power.”

177. Mr Whitehouse stated that thus far the Geotech model has an R^2 of 85 per cent against total venue revenue for metropolitan Tattersall’s venues, including clubs and hotels. For the purposes of this decision the expression R^2 may be classified as the “reasonable” likelihood of accuracy, that is, the degree of certainty that the line of best fit in any graphical representation of the data is closely matched to the actual figures.

178. A further illustration of the care which must be exercised in considering the Geotech model is that it was acknowledged by both Mr Whitehouse and Mr O’Hehir that the model has proved less accurate in predicting expenditure within clubs, than when dealing

with hotels. The Commission was informed that there are several reasons for this but in summary it may be said that clubs appear to be more dependent upon the quality of the administration and the personnel who are carrying out that administration, than might be the case in hotels. In other words, the formula used to predict the expenditure does not include any assessment of variations in the quality of the management of the venue.

179. In his witness statement Mr Whitehouse noted several additional qualifications. They may be summarised as follows:

- The revenue at the proposed Club Edgewater would take some time to reach the predicted weekly level which would only be achieved towards the end of the first 12 months of operation
- The data fed into the Geotech model in this specific case relates to the period after December 2007 when the latest round of regional caps was implemented as a result of which 164 egms were removed from the City of Maribyrnong. But the full effect of that change in the number of egms within Maribyrnong would not be known for 12 months which would have some effect upon the data fed into the Geotech model
- On the other hand, the significant number of other venues offering gaming within Maribyrnong, and in close proximity to Club Edgewater should lead to the outcome that the result produced is reasonable because the variance would be shared across multiple venues thus minimising the impact of a single venue's variance. This is of particular relevance to the current

state of affairs at the Whitten Oval where, as a result of the reconstruction which is taking place, the gaming venue being operated by the applicant is hugely affected

180. Another matter to be considered, and which was drawn to the Commission's attention by Mr Gill, is that even allowing for the high degree of accuracy which is attributed to the Geotech model, some of the anomalies that it produces are significant. Mr Gill, as part of his investigations, sought production of a document from Tattersall's which evidenced the actual egm expenditure achieved at any particular venue, and matched it against the Geotech prediction. It must be said that the results were startling. From 86 case studies, approximately 40 per cent varied by a factor of 30 per cent or more from the Geotech prediction. (In about two thirds of these cases the Geotech model predicted a figure which proved to be too low, as to the other third, its prediction proved to be too high). And some of the variances were extremely significant. At one venue which had been predicted to earn \$50,000 per week, the actual egm expenditure at the venue had exceeded \$120,000.

181. In his evidence, Mr O'Hehir readily acknowledged that this was the case. Nevertheless he expressed the view that this did not constitute a reason for doubting the value of the model generally. This was particularly the case in this instance because of a decision which Tattersall's had made in relation to the calculations to be presented to the Commission. The predictions generated by the Geotech model will result in approximately 50 per cent of the predictions being an

under-estimate, and approximately 50 per cent being an over-estimate. On the recommendation of Ernst and Young, Tattersall's had determined to put to the Commission an alternative figure for the Commission's consideration and which would be based upon "an upper confidence level of 75 per cent". This means that in statistical terms there was a 75% chance that the actual expenditure will be equal to or below the figure and only a 25% chance that it would be greater. Using this calculation, instead of total annual expenditure within the club being predicted to be \$6.33m, the prediction would be \$6.628m. Because the transferred expenditure calculation is part of the overall calculation it will remain at 77.7 per cent. Ultimately this would lead to the calculation that new annual expenditure occasioned by the development of this new venue would be approximately \$1.48m but, after taking into consideration the other matters to which we have referred above, notably the transfer of the various egms from other venues to the applicant's premises, and the overall reduction in egms within the LGA of eleven, there would still be a reduction in expenditure overall within the City of Maribyrnong of \$582,000 if this calculation is accepted.

THE EVIDENCE OF MR GILL

182. As we have indicated earlier Mr Gill challenged the applicant's estimate. It may be useful if we set out the summary of the conclusions which he outlined in his witness statement:

- “(a) the Geotech model cannot be relied upon because certain results produced by the model do not appear reasonable in respect of the City of Maribyrnong;*
- (b) I am unable to provide an opinion on the Geotech model itself because insufficient information has been provided on the model and the way in which it has calculated the estimate for the Edgewater Club. The Geotech model as applied to the City of Maribyrnong is unsubstantiated and is largely unexplained;*
- (c) The reliability of the Geotech model to predict gross, transferred and net egm expenditure for a new venue such as the Edgewater Club is untested and has not been proven;*
- (d) The information available does not support the contention that the removal of approximately 2 per cent of egms from a municipality has the effect of reducing net expenditure within that municipality. Furthermore, the information does not show that egm expenditure at a new and attractive venue will be more than counteracted by egms being removed from comparably less attractive venues and an underperforming venue;*
- (e) The estimate of a decline in egm expenditure of \$709,000 in the City of Maribyrnong appears to understate egm expenditure.”*

183. We now deal with a number of the points made by Mr Gill. He first analysed the affect of the recent impact of regional caps commencing in December 2007 in the municipalities from which egms had been required to be removed. In the Cities of Maribyrnong and Monash the

number of egms removed was greater than 20 per cent. In the other municipalities which he considered, a smaller percentage had been removed. It was Mr Gill's conclusion that except in circumstances in which more than 20 per cent had been removed, the effect of the caps had been very small. In fact, Mr Gill was of the opinion that even within the City of Maribyrnong:

“There was not a sizeable and sustained fall in egm expenditure following the removal of the egms. However, egm expenditure appears to have declined marginally.”

184. To this point Mr Gill's evidence was countered by Mr Whitehouse who pointed out that Mr Gill's calculations did not take into consideration such matters as population increases within particular municipalities, or the fact that any true comparison must take into consideration the overall results being experienced within the Victorian community. To give an example, if expenditure within Maribyrnong dropped by 2 per cent, whereas expenditure across Victorian municipalities increased by 2 per cent, it should not be concluded that the effect of the removal of the egms within the City of Maribyrnong, was confined to a reduction of 2 per cent. As to this point we think that Mr Whitehouse was correct.

185. Mr Gill then reviewed the anticipated gross expenditure of \$6.33m for Club Edgewater. He pointed out that if the figure of \$6.33m proved to be accurate, this would equate to an average of \$90,526 per egm per annum. He then pointed out that within Maribyrnong as a whole the

- 511 egms operating between January and September 2008 were producing, on average, revenue of \$109,476 per egm (adjusted for a 12 month period). Thus, he pointed out, what was being contemplated was a new venue at which the egms would produce less revenue than average.
186. This suggestion was the subject of a great deal of evidence and is perhaps the most critical when considering the likely accuracy of the Geotech prediction. Even a small increase in the amount of expenditure per egm would produce a large variation in the overall expenditure analysis.
187. It must be said that initially the point advanced by Mr Gill appeared to have considerable merit. In its inspection of a number of venues within the City of Maribyrnong, concentrating particularly upon the venues from which a certain number of egms are to be removed, it became clear that the proposed Club Edgewater would be, in the eyes of most observers, a more attractive venue. Indeed one of the questions for the consideration of the Commission throughout this inquiry has been the extent to which the new venue would have, what may be described as “a wow factor”. Might it attract people to the premises who had never previously been attracted to any gaming venue, and even if they were attracted for the other features offered by the venue, such as the bistro, might there be a considerable spill over into the gaming area?

188. A problem confronting Mr Gill, however, is the fact that it is acknowledged that clubs do not generally produce the same level of egm expenditure as hotels. In a confidential document prepared for the Commission's use at this inquiry, and which was made available to the parties, Commission staff demonstrated the egm expenditure at each of the venues within the City of Maribyrnong. It may be summarised by saying that if the Tattersall's estimate at Club Edgewater is accurate, the expenditure per egm would be, in comparative terms, quite high for a club venue. It is true that the document demonstrated one other club at which a higher level of expenditure is being achieved, but it also demonstrated a number of other clubs at which expenditure was a great deal lower than \$90,000 per egm per annum. As we have commented earlier when dealing with the "attractiveness score" the Commission's impression as to the physical attractiveness of a proposed new venue must be tempered with an understanding of the importance of, in particular, the club's location. Whilst it is true that the proposed venue is to be situated within a neighbourhood activity centre with a modest supermarket nearby, it must be acknowledged that it is not on a major thoroughfare and will not be immediately obvious to a large volume of passing traffic. Furthermore, after a considerable amount of evidence had been given by both Mr Gill and Mr Whitehouse on this subject, Mr Whitehouse produced evidence that if the projected figure of \$90,526 per egm is achieved, the expenditure per egm would be the third highest for any club within the Tattersall's network in Victoria. When one takes into consideration that the two clubs achieving a figure of greater than \$90,000 per egm are both on major thoroughfares, the Commission has ultimately concluded that the estimate, based upon

the Geotech model (and corroborated by the Spectrum analysis), is not unreasonable.

189. Mr Gill suggested that the reliability of the Geotech model to estimate gross expenditure at new venues is untested, and in saying this he is obviously correct. But we think that the value of this point is minimised by the concession made by Tattersall's, in proposing the higher figure to achieve the 75 per cent confidence rate, to which we have referred earlier. In many respects the Commission has been content to follow Mr Gill's suggestions contained both within his report and in his oral evidence that the accuracy of the Geotech model must be considered whilst carefully taking in to consideration any matters which would appear to indicate that the result produced by the model is unrealistic.

190. We then refer to the question of transferred expenditure. It is true that the calculation of transferred expenditure at 77.7 per cent is high, when compared with other matters which have come before the Commission. This statement must, however, be viewed in the light of the acknowledged fact that the proportion of expenditure which is transferred will be higher in matters in which there are a large number of other venues in close proximity to the subject venue, and lower when there are few, or even no such alternative venues. In other words, the calculation of transferred expenditure for a new venue in a country town in which there has been no gaming previously on offer will be extremely low.

191. But in the present matter, the position could not be more different. There are a large number of venues within the LGA, and many of them are located in close proximity to the proposed venue. In his decision in the application by the Ocean Grove Bowling Club⁶, the then President of VCAT, Morris J, commented that in a mature gaming environment in which Victoria now finds itself, the extent of expenditure which is transferred from other venues may well be higher than has been previously estimated. For these reasons the Commission does not find that the estimate of 77.7 per cent is so high as to be incapable of acceptance.
192. The final matter to be considered is the accuracy or otherwise of the Geotech model calculation as to the effects of this new venue upon the trade area and, thus, the local government area.
193. Evidence was produced to the Commission as to the trade area anticipated for this venue. Whilst, as might be imagined, the primary trade area includes the areas closest to the venue, there are certain collector districts further to the north-west of the proposed venue from which it is expected that a certain number of the club's patrons will be drawn. On the other hand, to the east of the proposed venue, apart from the residents of the Edgewater Estate in the areas located between the proposed venue and the Maribyrnong River, the river itself constitutes a major barrier as a result of which it is considered

⁶ *Ocean Grove Bowling Club v Victorian Commission for Gambling Regulation (Occupational and Business Regulation) [2006]VCAT 1921 (26 September 2006)*

that virtually no patrons will be drawn to the club from east of the river.

194. The explanation for the calculations appears to lie in the fact that a number of the venues which will be suffering a loss of egms will, it is calculated, lose revenue not only to the proposed Club Edgewater but more generally because of a reduction in their attractiveness. Evidence in many previous inquiries has established that the expenditure per egm in venues which have fewer egms, tends to be much lower than in venues with more. Coming on top of the reduction in numbers of egms created by the regional caps in November of 2007, the reductions in egm numbers at some venues are regarded as significant. For example, the Braybrook Taverner is proposed to lose eight or 26 per cent of its existing 31 egms and the Powell Hotel (the venue closest to the proposed Club Edgewater) is to suffer a reduction from 30 to 23, or 23 per cent. It is the calculation of the witnesses on behalf of the applicant that reductions of this order will lead to a reduction in expenditure caused by patrons finding venues in other LGAs to be more attractive. It is to this point, that the calculations made by Mr Gill to which we have referred earlier are very pertinent. He has cast doubt on the effect upon expenditure within the LGA, of the loss of eleven egms. But we accept the evidence that, taking into consideration the reductions effected in November 2007, the overall effect upon a number of these venues will be quite significant and ultimately we accept the applicant's evidence on this subject.

195. The Commission appreciates that the intuitive view would be that the proposed expenditure figures are unlikely as it would not be in Tattersall's interest to support an application which saw a reduction in gaming expenditure. But the fact is that as a co-owner of the property Tattersall's will be entitled to receive an appropriate commercial rental, after it has ceased to be an operator providing egms.
196. In summary, therefore, the Commission has reached the conclusion that the estimate of likely egm expenditure at the proposed venue, at the higher range suggested by Tattersall's (\$6.62m) is reasonable. We accept the calculation as to the likely change in expenditure within the trade area caused by the variations in numbers of egms at a number of venues within the trade area and within the LGA as a whole.
197. The witnesses for the applicant were commendably straightforward. It is acknowledged that Geotech is not proven, at least by comparison with actual results. But ultimately, and after much consideration, the Commission believes that the evidence produced should be accepted. Despite the well-considered evidence of Mr Gill, the figures are not inherently implausible. Clubs do produce much less than pubs per egm. The proposed revenue per egm is, relatively, very high. One would anticipate that within Maribyrnong transfer percentage would be higher than in most other areas. And the removal of egms from other venues will affect their gambling offer to a significant extent – sufficient to cause some gaming patrons to use venues in other LGAs.

THE EVIDENCE OF THE COUNCIL CHIEF EXECUTIVE OFFICER

198. Another important witness called on behalf of the Council was its Chief Executive Officer, Ms Kerry Thompson. Ms Thompson has held this role since 2003 and had previously occupied significant positions in other local government authorities.
199. Ms Thompson had filed a detailed witness statement. To it she exhibited the Council's gambling policy which she conceded had been adopted some years ago and was now out of date (we do not think that much turns on this). She referred to the volume of both egms and gaming within Maribyrnong and the entirely reasonable concerns held by Councillors over many years as to this issue.
200. Much of her evidence was devoted to the issue of the relationship between the Council and the applicant. Whilst this has been a question which both parties have been anxious to ventilate, the Commission believes that it has assumed more significance than is now justified by the situation with which we are dealing.
201. To some extent this issue has turned upon a claim made by Ms Thompson in her witness statement that the Council was not formally informed of the Club Edgewater proposal until 13 November 2007. Obviously, much has then turned on the word "formally".
202. In the Commission's view Ms Thompson was justified in using this wording, having regard to the circumstances of earlier meetings which

she acknowledged had taken place, and at which the Club Edgewater proposal was canvassed. The first such meeting was on 11 September 2007 but Ms Thompson's evidence was that the applicant requested that this be a "confidential meeting" which, from the Council's viewpoint, only involved the Mayor and Ms Thompson. They were not permitted to inform other Councillors of the matters discussed at the meeting, because at that time the applicant had still not concluded its negotiations with Tabcorp and Tattersall's. Thereafter a subsequent meeting was also conducted on an informal basis. The question as to whether this was adequate consultation should not, in our view, have provoked the tension that it did. The position of the applicant was entirely understandable having regard to the negotiations in which it was then involved, but the manner in which the applicant has handled the negotiations has apparently left Ms Thompson with the view that the relationship which she believed existed between the Council and the applicant has deteriorated as a result of the absence of consultation.

203. The matter was further compounded in 2008 when the Council resolved that it must advertise an application for a planning permit in respect to two floors in the John Gent stand, to be occupied by Victoria University. According to Ms Thompson, this followed a decision by the University to upgrade its involvement in the Whitten Oval. In Ms Thompson's view the Council followed appropriate planning policy and guidelines, whereas in the eyes of the applicant, the Council was taking excessive time. This led to representations being made by the applicant to the Victorian Government, as a result of which the government "called in" the planning application. Not

surprisingly, this has left the Council, and Ms Thompson, with great dissatisfaction.

204. Having set out these matters, the Commission doubts that they are as critical to our deliberations as has been suggested by the time which has been devoted to them during the Inquiry.

205. Similarly, another issue which also attracted a great deal of attention during this witness's evidence was the move of egms from the Whitten Oval. We have previously referred to the fact that in a planning permit issued by the Council in respect of the proposed childcare facility at the redeveloped oval, there is a requirement that the gaming machines be removed from the oval prior to the opening of the childcare facility. This has been treated by the applicant as an example of the fact that the Council, in addition to several other parties, has required that gaming at the Whitten Oval should cease.

206. But Ms Thompson denied this, stating that the planning permit, and various other indications of the Council's position, were based entirely upon initiatives taken by the applicant. She was, for example, aware that in the initial correspondence from the Federal Government, following the successful application by the applicant for funding for the redevelopment, there was no reference to the removal of egms. She did not appear to accept that the negotiations with Victoria University had required such a removal. It appeared to have been her opinion, for a significant period after the funding from the Federal Government was first announced, that there was the prospect of the retention of a social facility at the Whitten Oval with gaming

machines. But nevertheless, and after a significant time was devoted to this issue, the witness conceded that the suggestion made by the Commission much earlier in this inquiry was correct, notably that whatever the history of the matter, there are now too many obstacles to permit the retention of egms at Whitten Oval.

207. The time devoted to both of these issues appears to have been excessive as it is hard to see precisely what bearing they have upon the matters critical to our inquiry. And we also doubt that they have had a significant bearing upon the final position adopted by the Council. Ms Thompson indicated that, in her view, the Council did not have a policy of opposing gaming machines at every opportunity. But having regard to the Council's gambling policy, it is hard to see circumstances in which the Council can adopt a position other than that of opposition to any proposal. And in response to a question from the Commission, Ms Thompson conceded that having regard to the circumstances existing throughout Maribyrnong, it was hard to see that there would be any site to which the Council would give approval for gaming. Given that the Council's position had been that it wanted the Footscray Football Club to have a social venue with gaming in Maribyrnong, but not at Edgewater, this was an important admission.

208. As to a number of issues, however, Ms Thompson gave very significant evidence. She is particularly concerned about the area which the Council describes as "Empire/Eldridge" to which we have referred previously, and which may be described as the areas closest to the venue with very high levels of disadvantage. While she conceded that residents in that area have the Powell Hotel in closer

proximity than the proposed Edgewater Club, she considered that there was greater ease of access for such residents to the Club.

209. It was plain from Ms Thompson's evidence that the reports by Dr Kerkin had been very significant in assisting the Council to form its position. It therefore became important to draw to her attention the fact that Dr Kerkin had suggested that an outcome of the application would be an increase in gaming expenditure in the City of Maribyrnong of \$1.4 million per annum whereas, as has been mentioned on several occasions, the application is predicated on the basis that there will be a net reduction in gaming expenditure of around \$700,000. Ms Thompson indicated that she had only become aware of this during the Inquiry, although she, and Councillors had been aware that there was a proposal which would lead to a net reduction in egms of eleven. The witness was asked whether, had the Council been aware of the projections as to gaming expenditure, its position might have changed, but she indicated that she did not believe that it would have.

210. There are several points which we should make regarding Ms Thompson's evidence which was given in a straight-forward and entirely credible manner. The first is that the Commission was greatly assisted by hearing from the Council CEO about a number of the matters which had been of significance to the Council. Secondly, notwithstanding our comments in paragraph 207 this is not a matter in which the Council's opposition to the matter has been based entirely upon its previously reached position as to gaming. The Council had obtained entirely appropriate reports from Coomes Consulting and,

based upon those reports, the Council's position has been entirely understandable. And we would also observe that the complex situation regarding the Whitten Oval, which is made more difficult by the fact that part of the land is owned by the Council, part of it is Crown land in respect to which the Council is the Manager, the proven need for the redevelopment of the facility, and the various sources from which funding is coming, would always be likely to create tension between the applicant and the Council. But, ultimately, we do not think that this has greatly affected the outcome in this matter.

THE SURVEY EVIDENCE

211. In all matters which the Commission has been involved since its formation in 2004, the Commission has taken the view that the opinions of the local community are a relevant factor to be considered when assessing the question of social detriment as required by the Act.

212. The most obvious example of the Commission's consideration of this issue was in the matter of the Romsey Hotel⁷. In that matter, which involved an application to introduce egms in the only hotel within the township of Romsey, there was overwhelming evidence of community opposition to the proposal. The Commission said the following:

⁷ In the matter of Romsey Hotel Pty Ltd (decided 21 April 2006)

The Commission believes that in considering the issue of net social and economic detriment the Commission must be influenced by its conclusion as to the effect which the granting of the application would have upon this community. No doubt there have been people within the community who have forcefully expressed their views of hostility towards EGMs and who may well have a position of such hostility to EGMs anywhere, despite the fact that gambling on EGMs is a legitimate recreational activity. But in all the material which we have considered, in the inspections of the township which we have conducted, from the oral evidence which was led before us, including demographic factors, we have gained the overwhelming impression that members of the local community find the prospect of gaming at its only hotel so disconcerting that it would have a significant effect upon that community.

213. In the Romsey matter, the Commission rejected the application; a significant matter in persuading the Commission that the application should be rejected was the extent of the community opposition.
214. In that matter the applicant appealed to the Victorian Civil and Administrative Tribunal (VCAT). The Tribunal allowed the appeal in circumstances in which an important part of the evidence relating to community opposition was never submitted to the Tribunal.
215. When the responsible local government authority, Shire of Macedon Ranges, appealed to the Court of Appeal, the appeal was allowed. The earlier decision at VCAT was set aside and the matter was

remitted to the Tribunal for further consideration. The words used by the Commission and which are referred to above appeared to find favour with the Court of the Appeal which also said the following, at paragraphs 44 and 45 of its decision⁸:

“It follows, in our view, that if the approval of gaming at particular premises is likely to cause unhappiness or discontent in that community (or any part or parts of it), that consequence is a ‘social impact of approval’ which will be detrimental to the well-being of the community’. It will be detrimental to well-being because it diminishes the citizens’ sense of happiness with, or contentment in, their community. Evidence tending to show a detriment of that kind as the likely or probable consequence of approval must, therefore be taken into account by the decision maker in determining whether the statutory ‘no net detriment’ test is satisfied. (The weight to be given to the evidence is, of course, a matter for the decision-maker, and will depend upon the nature, extent and cogency of the evidence.) It follows that the Commission was clearly correct when it said –

[In] considering the issue of net social and economic detriment the Commission must be influenced by its conclusion as to the effect which the granting of the application would have upon this community.

Further – and perhaps, in some cases, more significantly – evidence of community attitude together with other evidence as to the character of a community, may give rise to an inference as to

⁸ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd & Anor* [2008] VSCA 45 (19 March 2008)

the impact that a gaming proposal is likely to have upon the social character of that community. If satisfied that the impact would involve substantial change, the decision-maker is less likely to be satisfied that approval of the proposal will not result in net detriment. In the present case we take the Commission to have reasoned in this way, namely that the particular factors which were distinctive of the social character of Romsey, in a positive way, were at unacceptable risk of change if the gaming proposal were approved.

216. Accordingly, if there was ever any doubt previously as to the relevance of the opinion of the local community when the Commission is considering an application such as the current one, the Court of Appeal decision in the Romsey matter has put any such doubt to rest. This is not to say, of course, that the fact that a majority of residents in the affected community are opposed to the proposal must result in a decision that the application cannot be approved. Rather, the community attitude to the proposal is a matter which must be taken into consideration amongst all of the other matters which the Commission is bound to consider.
217. In this matter the Commission has been assisted by evidence submitted by both the applicant and by the Council on the issue of community opinion.
218. Reference must first be made to the opinion of members of the applicant club. We note that although only some 6 per cent of members of the Footscray Football Club are residents of

Maribyrnong, of the Club's approximately 30,000 members, the six main municipalities in the western suburbs are the areas from which 51 per cent of the Club's members are housed. As set out in paragraph 55 the applicant's football members are strongly supportive of the proposal and many have indicated that they would patronise many of the facilities including, remarkably, the accommodation.

219. Evidence was also called from Mr Philip Calwell, previously of the Navis Group. Navis had been commissioned by the applicant to conduct a telephone survey to judge community opinion as to the proposed new venue.

220. The telephone survey had been conducted in two groups of respondents, but totalling 300 in all, and between 6 and 12 October 2008. Of the respondents, 152 were residents of Maribyrnong/Edgewater. The remainder are residents of West Footscray, Maidstone, Footscray, Braybrook, and Avondale Heights. As Mr Calwell conceded, this meant that a number of respondents live quite some distance from the proposed venue, but he explained this by reference to the trade area calculated by Tattersall's to be applicable to this venue. In describing the methodology, Mr Calwell mentioned that the data was "weighted" to ensure demographic representation. For example, respondents to the survey were more likely to be women, whereas within the area being surveyed, men and women each constitute approximately 50 per cent of the total population so adjustment were made to the raw data to effectively give equal representation to men and women.

221. Respondents to the telephone survey were provided with an overview of the proposed development. The overview included the fact that the Western Bulldogs Football Club was proposing to develop a licensed club venue which would include the various features to be contained within the premises. Reference was therefore made to accommodation, function rooms, bistro and other matters, as well as the gaming lounge. The overview did make reference to the likely employment of some 49 full time equivalent jobs, and the fact that if the proposal went ahead, the gaming machines would be relocated from other venues in Maribyrnong, with eleven machines to be removed from the municipality. The overview contained a reference to the fact that if the development proceeded, it would provide the Western Bulldogs with the funds that it needed to continue community programs including Spirit West Services etc. Respondents were then asked first, whether they supported or opposed such a redevelopment in Edgewater and they were given the options ranging from strong support, through a neutral position (neither support nor oppose) to strong opposition.
222. After answering this threshold question, they were then taken through the various facilities to be offered at the venue so that respondents could express their support or otherwise for each of these facilities.
223. Then, in respect of those who had expressed opposition to the development of the gaming lounge, a further question was put. The respondent was informed that the proposal was an “all or nothing” proposal and that if the facility did not have a gaming lounge, the development would not be able to proceed. These respondents were

then asked, the extent to which they supported the proposal being approved with the gaming lounge.

224. The threshold result was that 26 per cent of respondents strongly supported the proposal overall, and 27 per cent slightly supported it. Thus, 53 per cent supported the proposal, whether strongly or otherwise. A further 15 per cent indicated that they neither supported nor opposed it. This led to the conclusion contained in the report that 68 per cent of respondents “do not oppose” the proposal. On the other hand, 9 per cent indicated that they “slightly opposed the proposal” and a further 23 per cent strongly opposed it. This led to the conclusion that approximately two thirds of respondents did not oppose the overall proposal whereas 32 per cent did oppose it

225. As might be anticipated, the large majority of respondents approved, whether strongly or otherwise, most of the features of the proposal such as the accommodation, function rooms, the restaurant (strongly) and all of the other features of the proposal with the exception of the gaming lounge. When asked as to the gaming lounge, only 28 per cent supported it (whether strongly or otherwise), whilst a further 14 per cent indicated that they neither supported nor opposed it. This was interpreted by Mr Calwell as meaning that 42 per cent did not oppose the gaming lounge. On the other hand, some 58 per cent of people indicated that they did oppose it, and of this number the great majority (about 80 per cent of opponents) opposed it strongly.

226. The further question was then put to those who had expressed opposition to the gaming lounge and who were then asked whether,

given that the proposal would not proceed if the gaming lounge was not included, they still opposed the gaming lounge. A considerable number then changed their position. The ultimate composite result was that 38 per cent strongly or slightly supported the gaming lounge, and a further 20 per cent neither supported nor opposed it. The number expressing active opposition to the gaming lounge dropped from 57 per cent to 42 per cent. In summary, from the Navis survey it could be concluded that there is broad support for the total project, and that when respondents became aware that without gaming the project would not proceed, a majority did not oppose the gaming element.

227. Mr Calwell conceded that the survey showed that those living closest to the venue, and particularly in the Edgewater Estate, were more likely to oppose the proposal than those living further away. He also conceded that a disadvantage of a telephone survey such as this is that residents for whom English is not the chosen language in the home, are likely to be under-represented in responses.
228. Mr Calwell's evidence also included a "critique" of another survey. This was conducted by the Metropolis group, upon instructions from the Council. The report as to this survey was prepared by Mr Dale Hubner, Managing Director of Metropolis Research Pty Ltd who gave extensive evidence at the inquiry.
229. The method adopted for this survey was very different to that used by Navis. The method employed was a "drop-off" and "pick-up"

- methodology similar to that used by the Australian Bureau of Statistics for the census.
230. Two separate surveys were conducted, one of 550 households relating to the original application, and a second clarifying survey of 150 households relating to the amended application. Approximately 1,722 households were approached to participate over the course of the two surveys. Some 915 homes were unattended, and those in 107 households refused to participate. This led to approximately 700 households receiving a survey form. Completed survey forms were returned from 484, constituting 69 per cent of distributed surveys. Mr Hubner explained that when the survey was delivered, in discussion with the household, the Metropolis representative would work out an appropriate time or method for the return of the survey. Some respondents wished to return it with the use of stamped and addressed envelopes, either to Metropolis or the Council. If so, they were provided with a stamped envelope for this purpose. Others preferred to hand it to a Metropolis representative at some appointed time. Others were content to leave it to be collected by the Metropolis representative. Mr Hubner regarded the response rate as very high, a point upon which his view was confirmed by Mr Calwell.
231. The questions which were submitted by Metropolis were also significantly different. Rather than being questioned about their attitude to the proposed venue as a whole, the questions which were submitted by Metropolis were all related to “the Footscray Football Club’s application for approval of 65 electronic gaming machines at the proposed Edgewater Club”. It must be pointed out that before a

respondent to the survey had to consider his or her answers, a background paper was provided. The second paragraph of the background paper was in the following terms:

“The proposed Edgewater Club, to be located at 31 Edgewater Boulevard in Maribyrnong, is estimated to cost approximately \$24.5 million. Amongst its facilities will be a member’s bar, gaming room, bistro, café, two function rooms, hotel accommodation and car parking. The Footscray Football Club has indicated that the proposed Edgewater Club will not proceed in its proposed format unless the Footscray Football Club gets approval for the installation of the 65 electronic gaming machines”.

232. Thus, it could not be said that the Metropolis survey did not furnish respondents with a background including the various parts of the proposal which might be regarded as likely to receive a positive response. But having read the background paper, respondents were not asked (as they had been in the Navis survey) to comment upon the various facilities proposed at the venue, such as the bistro, accommodation etc. Once readers had passed the “background” page they were not, thereafter, reminded of the other facilities to be provided.
233. There was a further significant difference between the methodologies used in the two surveys. In the Metropolis survey an opportunity was provided for other adult members of the household to indicate their views also. Thus, a household with four or five adult persons was

- able to make a significant contribution to the number of overall responses, a point which attracted some criticism from Mr Calwell.
234. The outcome of the survey was that overall, and taking into consideration the two surveys, some 68.7 per cent of respondents were opposed to the application outright, with a greater number expressing opposition in the later (smaller) survey.
235. Another important difference between the two surveys is that the “catchment area” for the Metropolis survey was confined to areas within one kilometre of the proposed venue. Mr Hubner stated that he followed this approach because of the adoption of the one kilometre catchment area in the social and economic impact assessment carried out by the Coomes Consulting Group (Dr Kerkin’s report). This had been commented upon by Mr Calwell. Mr Calwell stated that when he saw the results of the Metropolis survey he was somewhat surprised at the variation between the levels of opposition expressed in the Metropolis survey, compared with the opposition evidenced in the Navis report. One of the factors which he regarded as important to explain this difference was the fact the Metropolis report was confined to households with a much greater proximity to the subject venue.
236. In cross-examination by Mr Tweedie, Mr Hubner was questioned as to the choice of the narrow catchment. Mr Hubner replied that he considered that his approach was correct, bearing in mind that one of the matters sought to be investigated was that of any social detriment which might be experienced by residents. Plainly, those living closest to a venue would be more likely to experience such detriment. This

was the reason why also the amended survey included three additional questions which were not included in the original survey. In the second survey respondents were asked to comment upon their “sense of wellbeing”, their “level of happiness” and their “level of contentment” and the effect upon these matters if the application was successful. (The responses confirmed that the effects would be adverse). Mr Hubner explained that this was a reference to the Court of Appeal’s decision in Romsey. The Commission considers that it was appropriate for these issues to be investigated.

237. Some controversy was created by questions relating to the impact of the gaming application upon various issues. Respondents were asked to rate the impact that they believed the application would have on a range of socio-economic aspects of the local community. The results were presented on a scale of 0 (very negative) to 10 (very positive) and where 5 was neutral. On the issue of employment opportunities, respondents gave a slightly positive response. On all other matters, including the effect upon the local economy, social opportunities, friendliness of the area, sense of community, and a large number of other issues, respondents gave negative responses, and in respect to some issues, extremely negative.
238. Over two thirds of respondents identified at least one negative impact of the application on the local community. The issue attracting the greatest comment was “traffic issues”. Thereafter, respondents identified environmental impact (predominately noise) and crime and anti-social behaviour in the area as the next most troubling issues, before referring to “gambling/addiction issues”.

239. The Commission was impressed by the evidence of both Mr Calwell and Mr Hubner. They have adopted different approaches to their surveys, but each conceded that the other was valid. It was common ground that the number of responses for each was statistically valid.

It is plain that respondents who live closest to the proposed venue were more likely to express opposition to it. We note also that the community which has responded to the surveys is relatively well informed. The application has had a good deal of publicity, including public meetings at which the applicant has had the opportunity to present its arguments.

240. Whilst we have considered very carefully the views of those opposed to the proposal, we do not think that the level of opposition to gaming (taking into consideration all the surveys) is as great as that evidenced in the Romsey matter. Further, we consider that the potential effect upon the local community in Romsey of the town's only hotel gaining egms, is greater than in the present case, where gaming venues abound. Finally, on this subject, we note also that whilst obviously some respondents in the Metropolis surveys were primarily concerned about gaming, this was not the issue of most importance; when respondents were asked to list the "top three issues for local community to address in the next twelve months" 61% of respondents listed "traffic management" and 58% referred to "safety and policing". Some 27% referred to "rejecting application for pokies at Edgewater", just below the 28% who were concerned about street cleaning.

COMMUNITY RESPONSES TO THE PROPOSAL

241. Before the inquiry was a submission from Residents Against Inappropriate Development in Maribyrnong (RAIDIM) and a witness statement by Mr James McKenzie.
242. The RAIDIM submission had been filed independently with the Commission, although Mr McKenzie's submission had been filed on behalf of the council.
243. Turning first to the RAIDIM submission, which was tendered as evidence, counsel assisting the Commission took Ms Margaret Rutherford, Secretary, through the evidence and she was asked a number of questions by counsel for the applicant and counsel for the City of Maribyrnong.
244. Ms Rutherford said that RAIDIM had been formed in April 2008 and incorporated in July. The organization had been born out of the Edgewater Community Association but when it became apparent that the concerns of its members extended beyond the Edgewater locality and encompassed the whole of Maribyrnong, it had been considered more appropriate to adopt the name which the organization presently has.
245. There are currently fifty members of RAIDIM and one hundred and fifty website members and the evidence of Ms Rutherford was that

the organization has been active in opposing a number of planning proposals, other than the proposal in relation to Club Edgewater.

246. Ms Rutherford’s evidence was that RAIDIM was particularly concerned about the concentration of gaming venues within the Edgewater area, and the effect which that was likely to have on problem gambling in the area, the location of the proposed venue in a shopping strip and that –

“...this application is really being driven by Tattersall’s and the Bulldogs are being used as a front for the application.”

247. In terms of the location of the proposed venue in relation to the shopping strip, Ms Rutherford said that people from a range of suburbs, including those outside the City of Maribyrnong, come to the ALDI store in the Edgewater shopping strip, and that this had been evident from the addresses of the signatories to the petition objecting to the planning application. Four photographs showing the collection of petition signatures were taken into evidence.

248. In response to a question by counsel for the applicant as to whether RAIDIM has any published policies about its position in relation to gaming machines, Ms Rutherford offered to read out the organisation’s statement of purpose, which was –

“To prevent inappropriate development in the City of Maribyrnong; to give a strong voice to residents in planning and development issues in the City of Maribyrnong; to encourage genuine community consultation on planning issues;

prevent the placing of gambling venues within the City of Maribyrnong where they are likely to cause damage to the local community; prevent the placement of late night entertainment venues within the City of Maribyrnong where they are likely to cause damage to the local community; and advocate for the rights of citizens and residents in their right to quiet enjoyment of their surroundings in the City of Maribyrnong.”

249. Ms Rutherford’s evidence was that RAIDIM would ask the City of Maribyrnong to prevent the placement of any further gambling facilities in the City of Maribyrnong although she said she was not able to say what the position of RAIDIM members would be in relation to a situation where a gaming venue would close and another opened, in its place. In response to such a situation, described by the Chair, Ms Rutherford said, quite logically in our view, that it would depend upon a comparison of the two venues in question.

250. RAIDIM’s objection to the planning application for Club Edgewater constituted a number of factors, but it was Ms Rutherford’s evidence that the most significant opposition to emerge from the public meetings and from the signing of the petition, was the objection in relation to the planning permit application for gaming machines.

251. In response to a question from counsel for the applicant as to what information was available to persons signing the petition, Ms Rutherford said –

“There were two posters – flyers put together, and the flyers identified the poker – 65 poker machines, 59 hotel rooms, 70

functions in the average week, bars serving alcohol from 7 am to 3 am, and not enough parking. They were the key things that were put up and provided in a – there was also a picture of the development provided to people as flyers that they could look at, take away, make their own decisions.”

252. A witness statement was filed by the Council on behalf of Mr James McKenzie who also gave evidence.

253. Mr McKenzie, a man in his late middle-age, is a former accountant who retains an interest in a family company in the paint industry. In his evidence he described his tragic long-term gambling addiction. He believes that it was the cause of the breakdown of his first marriage.

254. He also said that he had moved from his previous home in Essendon to Edgewater to retire, and that

“One of the reasons we chose to retire in Edgewater was because it wasn’t close to pokies”.

255. He also said,

“One must try for total abstinence if you think you can have a bet or get away with it then you are kidding yourself”.

256. The Commission respects Mr McKenzie’s courage in choosing to give evidence, which was plainly an ordeal for him. But regrettably, there were many inconsistencies in his evidence. The first is that he informed us that his previous home was 3-5kms from the nearest gaming venue, whereas the home he has moved to is only a few

hundred metres from the Powell Hotel. Secondly, despite his comments about abstinence, he mentioned that he does still gamble on egms in the company of his wife, and that he had gambled as recently as a few days earlier at the Powell Hotel. We are not critical of him for gambling in the company of his wife. In fact, we consider that if this is the best way for Mr McKenzie to place limits on his gambling we commend both Mr and Mrs McKenzie for approaching his addiction in this careful manner.

257. Mr McKenzie's home is very close to the proposed venue and he said that the mere presence of the venue would create difficulty for him. We sympathise with this but, as the Commission pointed out, he can enter into a deed of exclusion from Club Edgewater if he chooses to do so. To reinforce this point, we note that every gaming venue must, by 1 June 2009, have in place a self-exclusion program approved by the Commission and meeting guidelines set by the Minister for Gaming.

ADVANTAGES AND DISADVANTAGES ASSOCIATED WITH THIS PROPOSAL

258. We now set out what we consider to be the advantages and disadvantages to be considered, when assessing the merits of this application in accordance with the Act.
259. As to the advantages, we are satisfied that what is proposed is a modern Club which will contain a number of facilities of considerable value, both to the immediate community in its vicinity, but also to the

wider community of the western suburbs. It will be valued particularly by members and supporters of the applicant. Whilst many aspects of this matter were the subject of furious disagreement, no one suggested that the provision of 59 hotel rooms would be anything other than advantageous and we think that this is a strongly positive aspect of this application. The proposed accommodation is also very consistent with one of the purposes for the development of the elite sporting facility at the Whitten Oval, at least as envisaged by the applicant. The applicant anticipates that interstate-based sporting clubs with fixtures in Melbourne, for example other AFL clubs or clubs playing in the National Rugby League, might be attracted to use the accommodation at Edgewater in combination with the training facilities at the Whitten Oval. This appears to be reasonable. So also is the suggestion that visitors to Victoria University may be attracted to the accommodation, the cost of which will be pitched at a level significantly below the city accommodation prices.

260. We also consider that the provision of the very large bistro with a concentration on family dining is likely to be of considerable benefit to the community, and we suspect that it would be heavily patronised. Similar comments may be made in respect of the proposed cafes, including the alfresco dining which could well be attractive during summer months. It is not for the Commission to comment on the height or size of the venue; these matters will, no doubt, be the subject of debate in the planning jurisdiction at VCAT, but overall, the Commission has little doubt that the facilities which are proposed will be heavily patronised. It is critical to an understanding of this matter that the proposal involves a great deal other than gaming, from which

less than 25% of the venue's revenue will be derived. We are surprised, when considering the Council's submission, that little attention has been given to the effect upon local businesses of the 59 hotel rooms in particular.

261. A purpose of the Council's responsible gambling policy has been to achieve a reduction in the number of egms within Maribyrnong. Whilst the number of egms to be removed, if this application is successful, is only eleven, this is a positive feature of the application. So also is the fact that the eleven egms to be removed from the LGA, plus the 22 egms to be transferred to Edgewater (leaving aside the 48 to be sourced from the Whitten Oval) are, in the main, being transferred from venues of lower socio economic advantage than Edgewater. This is so particularly in relation to the egms to be removed from the Braybrook Taverner and from the Powell Hotel. Different considerations apply to the egms to be removed from the Yarraville Club.
262. The transfer of egms from the Whitten Oval was claimed by the applicant to be another example of egms being transferred from an area of lower socio economic advantage, to a new area with a higher level. An examination of all the areas closest to both sites (Whitten Oval and Edgewater) would indicate that at present a similar percentage of people living in close proximity to the two sites live in areas of comparable advantage or disadvantage, although far more people live in the catchments for Whitten Oval and the other venues which are proposed to lose egms, than in the Edgewater catchment. But, as we have indicated earlier, regard must be had for the fact that

by the time Edgewater is completed, or shortly thereafter, there will be an additional cohort of residents living in the areas to the north-east of the Club in the as yet undeveloped part of the Edgewater development. The SEIFA index applicable to these areas to be developed will be much higher than the scores for surrounding collector districts, other than the collector districts for the existing Edgewater development. We are therefore satisfied that, ultimately, a higher proportion of the people living in close proximity to Edgewater will enjoy a greater level of advantage than many of the more problematic areas within the City of Maribyrnong.

263. The proposal will also confer a considerable benefit upon the applicant. The Commission must say that the projected surpluses for Edgewater are not high, considering the capital expenditure involved in the acquisition of the land and the building of the premises. Whatever the final outcome of negotiations between the applicant and the landlord, it is plain that a significant rental to Tattersall's and Prizac will be required and this is the main factor affecting the return to the applicant. On balance, however, the Commission considers that the applicant will also derive benefits other than a relatively modest boost to its financial status. At a time when the future of all of the AFL Clubs situated in Melbourne is under scrutiny, the strengthening of the applicant's position due to the redevelopment of the Whitten Oval and, if this application is approved, the social facilities at Club Edgewater, lead, in the Commission's view, to a greater likelihood that the Western Bulldogs will survive and not be forced to relocate. Similarly, the financial position of the applicant will improve if the application is approved. This inquiry was conducted at a time of a

significant economic downturn in Australia and, indeed, throughout the world, and the Commission has some concerns as to the ultimate ability of the applicant to earn the increasing revenues which will be required to maintain an AFL team against the background of a likely reduction in sponsorship and other corporate income. Although the projected revenue increase from Edgewater is not huge, the Commission can well understand the Club's representatives regarding it as extremely important for the Club's future.

264. Although the Commission is unable to conclude that Spirit West Services and the other community activities conducted by the applicant are financed directly from gaming revenue, as the witness statements appeared to suggest, nevertheless, the Commission is extremely impressed by the extent of the community activities undertaken by the applicant, particularly through Spirit West Services and, more particularly, through FRESH. While some witnesses have commented that if the services being conducted by SWS were not available through the auspices of the applicant, they would be picked up by some other organisation or instrumentality, the Commission is not able to make any such finding. Whether the community activities are, as Mr Rose suggests, unique amongst AFL clubs, the Commission cannot say, but they are certainly impressive and a very important factor to be considered by anyone inclined to be critical of the applicant. Whilst we reject the direct correlation between gaming and Spirit West Services, we accept that if the applicant does suffer a reduction in revenue, its ability to fund SWS and its other community activities will suffer if it does not have the revenue from Club Edgewater.

265. The current economic downturn, coupled with the high unemployment rate within the City of Maribyrnong must be taken into consideration when assessing the value of the employment to be offered at Edgewater. The number of full time and part time jobs to be offered has not been challenged by any of the witnesses, all of whom have conceded that this is a significant matter for consideration.
266. We turn now to the disadvantages which may accrue if this application is approved. The Commission acknowledges that the research which has led to the conclusion that, ideally, gaming should not be situated in or in close proximity to major shopping areas, is not overwhelming. Nevertheless it has gained a certain currency, and the Commission respects it. When the Victorian Government introduced planning restrictions banning new gaming venues from certain strip shopping centres, it evidenced a clear conclusion that areas in which members of the community go about their normal activities are not appropriate for gaming. In this matter, the evidence is somewhat mixed. It is true that the venue is very close to the ALDI supermarket, but that supermarket has its own car park, and persons wishing to shop at the ALDI supermarket will not come into contact with this proposed venue unless they make a decision to do so. Different considerations may apply, however, to the undeveloped site on the north side of the proposed site and about which we heard evidence as to a planning application for a mixture of a medical practice and further supermarket which could only be quite modest in dimension. These matters have given the Commission considerable cause for concern.

267. We have also given careful consideration to the evidence, particularly from Dr Kerkin as to the impact of this proposed new venue upon residents in some of the collector districts exhibiting the very low SEIFA scores. Coupled with this is the concern which Dr Kerkin highlighted about the fact that there will be a number of gaming venues in the local Maribyrnong area if this application is approved. To some extent, this may be regarded as a neutral feature of the application. Because there are existing opportunities for gaming, and some of them are closer to the poorer socio-economic areas than Club Edgewater, it creates doubts as to the number of residents who already game at these alternative venues, who will be attracted to a very different type of facility, including a requirement that one must become a member if one lives within 5 kilometres. Having said this, the Commission accepts, however, that the barriers to becoming a member are virtually non-existent.
268. Having inspected the area on several occasions, and having compared the proposed new venue with other gaming venues in the LGA, particularly those from which egms are to be removed, the Commission has had considerable reservations, at least initially, as to the likely gaming expenditure at the venue, and as to the possibility that the projections are understated. Ultimately, however, we have not been persuaded by the evidence called on behalf of the Council that the gaming expenditure is likely to be higher than that suggested by the applicant and by Tattersall's. The Commission has felt very cautious in reaching this conclusion for, as witnesses on behalf of the applicant conceded, the ultimate figures can only be established after a

venue is in operation. The possible “wow” factor is something which we have carefully considered.

269. The Commission has always considered that the opinion of the local community as to a proposed new venue is something which should be taken into consideration.

270. In these circumstances the various surveys of community opinion have been carefully considered, as also has the most eloquent evidence provided by Ms Rutherford, representing RAIDIM. It cannot be suggested that the community has not been well informed as to what is proposed. The proposal has received extensive publicity and many residents have taken the opportunity to attend meetings to discuss the matter. In the more localised survey conducted by Metropolis, it appears that community attitude has hardened towards the proposal as awareness has risen. It does seem apparent that the views expressed by quite a high proportion of the residents living in closest proximity to the venue have been heavily influenced by matters such as road congestion, parking, and traffic noise. We have, nevertheless, taken into consideration these views, although they will, no doubt, receive a great deal of attention in the planning appeal at VCAT. Overall, however, we do not believe, in this instance, that the extent of community opposition from those respondents to the surveys living in close proximity to the proposed venue is such that it can be conclusive in the outcome of this application.

CONCLUSIONS

271. In matters such as this involving the possibility of egms at new venues, the problem for the Commission in applying the test imposed in the Act [see para 3] is to weigh the negative impacts against the more obvious advantages offered by the proposal.
272. When a new venue is proposed in an area which, hitherto, has not had gaming, the risks may be more obvious. One can readily imagine a new cohort of gamblers, some of whom may have difficulty with their gambling. We can say this with some certainty because it is known that the greater the availability of egms, the more likely is it that new gaming patrons will be attracted. Of course, we cannot know which of those patrons may have problems with their gambling although we know that it is a very low percentage.
273. In a matter such as the present, it is plain that the residents of Maribyrnong, including those in close proximity to this venue, have ready access to many gaming venues. The prospect that within the Maribyrnong community there may be people who have not, hitherto, had the opportunity to play egms, seems improbable. A question arising for the Commission is the extent to which non-gamers may be attracted to this new facility, perhaps for other purposes such as the bistro, and the possibility that they may commence gaming to their ultimate detriment. The appeal of this venue may also extend to people residing in other municipalities, attracted by the Western Bulldogs' marketing efforts, although the members and supporters of the applicant have clearly indicated that their preference is for dining and other attractions rather than gaming.

274. These negative concerns are amongst the matters we have considered when, concurrently, assessing all of the advantages associated with this proposal. In several recent decisions the Commission has considered that the matters causing concern, particularly the risk of more problem gambling, have not been matched by the potential benefits and the applications have been refused. For the reasons we have set out, we have reached a different conclusion in this matter.
275. The Council has, appropriately, expressed its concerns as to the disadvantaged areas in close proximity to the subject venue. The Commission has been troubled by the evidence as to this subject but does note that the venue cannot be operational until at least late 2010 and, more likely, 2011. By this date many more residents will have moved into the Edgewater estate. On balance, at that time, we do not consider that the areas in closest proximity to the venue will be regarded as disadvantaged. There are likely, ultimately, to be several new collector districts (encompassing another 700 houses) which will have SEIFA indices amongst the highest in Maribyrnong, and within metropolitan Melbourne municipalities. The Commission recognises that the area immediately to the south of the Edgewater estate, known colloquially as the Empire/Eldridge district, is significantly disadvantaged. But while Club Edgewater will be close to these residents, it will be no closer to them than the Powell Hotel. The area will, therefore, present (on balance) as more advantaged than the areas from which egms will have been removed, with the exception of the area near the Yarraville Club. A reduction in gaming at these venues is desirable, as is a reduction of eleven egms overall.

276. We have given very careful consideration to the opinions expressed by many residents living in close proximity to the venue. We note that across the trade area for the venue there is considerable support for the venue and all of its various facilities. When faced with the fact that the desired facilities would not eventuate without gaming, a majority of the respondents to the Navis survey supported the gaming aspect of the proposal. But as Mr Calwell conceded, respondents closer to the venue were more likely to be opposed, a fact confirmed by the Metropolis survey, and by the RAIDIM evidence. Whilst, as alleged by the applicant's counsel, it is likely that there would be significant opposition to any licensed venue, even without gaming (a suggestion reinforced by the Metropolis finding that parking, traffic congestion and other matters were more important in determining respondent's attitudes than gaming) nevertheless, the Commission is satisfied that many local residents are deeply troubled by the prospect of gaming. Whilst the gaming room will only constitute 15% of the floor space, and gaming will contribute less than a quarter of the total revenue this will not persuade these residents that the proposal can be supported.

277. The Commission has also been concerned about the precise location of the venue with its proximity to the ALDI supermarket, and prospectively, other shopping facilities on the north side of the venue in La Scala Avenue. This has triggered the concerns previously expressed by the Commission in the Pakenham Lakeside decision. Whilst the evidence suggesting that the positioning of gaming in close proximity to retail outlets is undesirable, is not totally convincing, it should be respected. But there are significant differences between this

matter and Pakenham Lakeside. The ALDI supermarket does have its own car-park, and it presents only a rear wall towards the venue. In the Pakenham Lakeside decision we commented on the fact that in considering the question of net detriment we were unimpressed by the advantages accruing from the proposed hotel. By contrast, in the current matters there are a number of significant advantages or benefits to the community which will occur if this development proceeds. In effect they act as a counterveiling consideration.

278. We refer to the following matters which we regard as significant. The first is the provision of 59 good quality hotel rooms, filling a void for accommodation of this type in the area. Then, there is the provision of a variety of eating facilities and bars. And there are the function rooms. All of these are facilities which will bring a lot of revenue into this area – in total, three times more than the gaming expenditure.
279. To this, we add the considerable benefit attached to this applicant – a most important entity within Maribyrnong and the western suburbs - having a social venue of its own, in the region of its historical base. The Council also indicated its support for a social venue in the club’s “spiritual home”. We are satisfied that an alternative, potentially more suitable, location has not been found in Maribyrnong by the club, the gaming operators or the Council. We also accept that a venue where members can meet with the club’s footballers in a social setting enhances the members’ experience. To be able to do this in Maribyrnong (instead of at Docklands where it currently occurs) is better for the members, the club and the City of Maribyrnong. It is likely to be heavily supported by its members and supporters.

280. It will also provide an income stream which will be of assistance to this struggling club, which despite its financial plight, puts considerable human resources and financial backing into Spirit West Services. Whilst we reject the claim that Spirit West Services is directly funded by gaming revenue (which goes to the consolidated revenue of the club) we accept that if there is any downturn in the applicant's financial status, the funding for Spirit West Services will be affected, as will the programmes which it offers and for which the Commission has high regard.
281. If we considered that this proposal was likely to lead to an increase in gaming expenditure in Maribyrnong we would be very concerned. We are satisfied on the basis of all the evidence that this will not occur, and that, overall, there is more likely to be a net reduction of egm expenditure within Maribyrnong. In addition, we are satisfied that the Club Edgewater facility is a more appropriate location and venue than the venues from which machines will be removed as part of this package.
282. In reaching our decision the Commission has been mindful of another point to which we must refer. The Commission has reached the view early in the inquiry, that there is no prospect of the 48 egms remaining at Whitten Oval. If, therefore, the application is refused, the Whitten Oval egms might be removed in the near future. Whilst the applicant might seek to have some transferred to Club Leeds, we accept that it is likely that there would a greater reduction in egm numbers in Maribyrnong if the application is refused, than the eleven which will

- be removed if the application is granted. This is one of the matters we have taken into consideration when weighing up this matter.
283. Having given the most serious consideration to all the matters brought before us, we are satisfied, in accordance with the Act, that the net economic and social impact of approval will not be detrimental to the well being of the community of the municipal district in which the premises are located, and the application is therefore approved.
284. The Minister for Gaming made a direction on 12 October 2006 pursuant to section 3.2.4 of the Act whereby the maximum permissible number of gaming machines available for gaming was set for particular regions in Victoria. The City of Maribyrnong, where the subject premises is proposed to be built, is designated as Region 13 in the Ministerial direction. In Region 13 there is a limit of 511 gaming machines permitted by the Ministerial direction.
285. The evidence in this matter is that after re-location of egms from particular venues as discussed in these Reasons, and after removal of eleven egms from the local government area of Maribyrnong, there will be a total of 500 gaming machines there. Nonetheless, it is a condition of the granting approval of premises at Club Edgewater as suitable for gaming with 70 gaming machines that approval does not take effect until the Commission is satisfied that the grant of approval is in compliance with the direction made by the Minister for Gaming under section 3.2.4 of the Act and that, in addition, eleven gaming machines have been removed from the City of Maribyrnong.

286. It is also a condition of approval that approval does not take effect until the Commission has notified the applicant in writing that the premises have been inspected for the purposes of section 3.3.7(1)(b) and the Commission is satisfied that the premises are suitable for the management and operation of gaming machines.

287. It is a further condition of approval that approval does not take effect until the applicant satisfies the Commission that the applicant has obtained a permit under the *Planning and Environment Act 1987* permitting the premises to be used for gaming on gaming machines, or that use of the premises for gaming on gaming machines would not contravene the planning scheme that applies under the *Planning and Environment Act 1987*.

The preceding 287 paragraphs are a true copy of the reasons of decision herein of:-

Mr I. Dunn, Chair

Mrs J. King, Deputy Chair

Mr. P. Cohen, Executive Commissioner

Dates of Hearing: 10,12,13,14,19,20,27,28 November and 15 December 2008

Date of Decision: 24 December 2008

Counsel for the Applicant: Mr Nick Tweedie and Ms Susan Brennan

Instructing Solicitor : Ms Alison Elverd, Bazzani Scully Brand

Counsel for the City of Maribyrnong: Mr John Larkins and Mr Henry Jackson

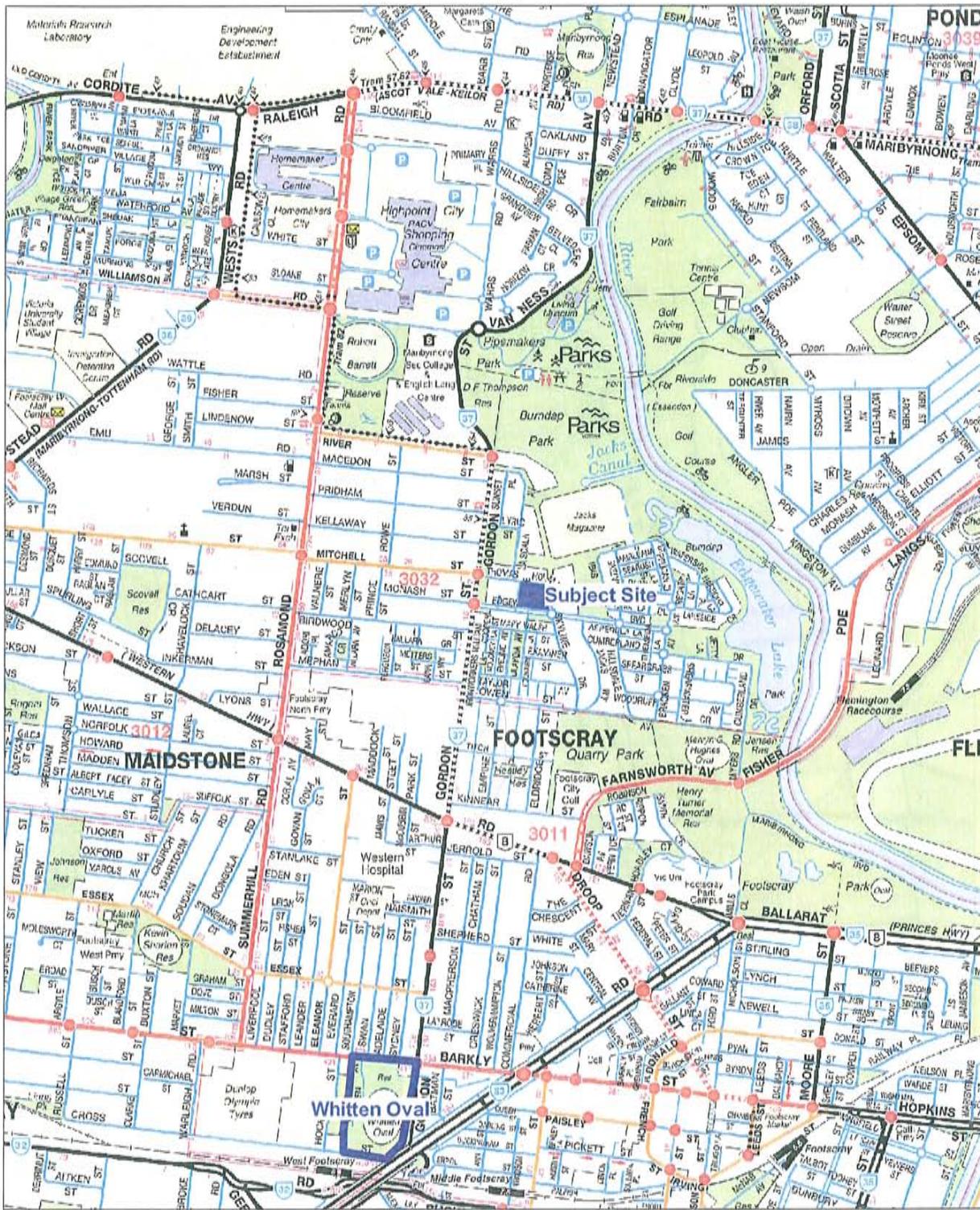
Instructing Solicitor: Ms Yvonne Maglitto, Maddocks

Counsel Assisting the Commission: Mr Stephen Moloney

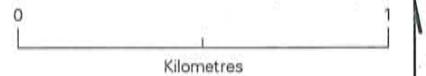
Instructing Solicitor:

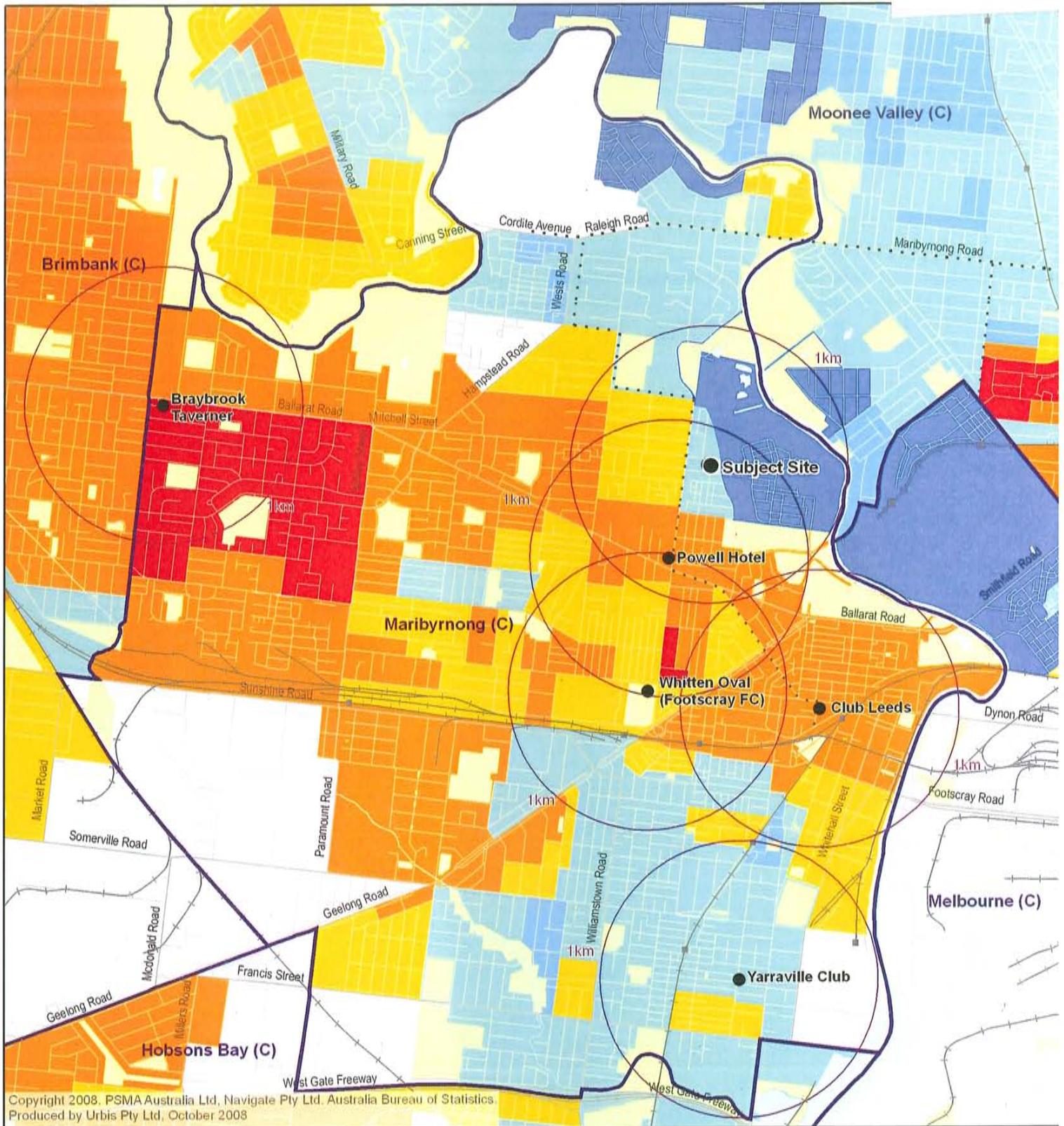
*Ms Lyn Corneliusen, Victorian Commission
for Gambling Regulation*

Map 2.2 – Site Location



Source: Melbourne UBD 2006
Produced by: Urbis Pty Ltd





Copyright 2008. PSMA Australia Ltd, Navigate Pty Ltd. Australia Bureau of Statistics. Produced by Urbis Pty Ltd, October 2008

Victorian SEIFA Index of Disadvantage 2006, by Census District (Melbourne Metropolitan Average: 1079.89)

- Less than 780
- 780 to 950
- 950 to 1000
- 1000 to 1080
- 1080 to 1100
- Greater than 1100

LGA Boundary (2006)

