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Dear Mr Hatzis,

<b>Application No.</b>	1-64566880482
<b>Applicant</b>	Mr Viet Do
<b>Application for</b>	Gaming Machine Threshold Increase
<b>Licence name</b>	Fairfield Hotel
<b>Premises</b>	1 Hamilton Road Fairfield NSW 2165

**Decision of the Independent Liquor and Gaming Authority with Reasons on Application under Section 34 of the Gaming Machines Act 2001 (NSW) for an Increase in Gaming Machine Threshold for Fairfield Hotel**

**INTRODUCTION**

1. Division 1 of Part 4 of the *Gaming Machines Act 2001* (NSW) (“Act”) concerns the “gaming machine threshold” (“GMT”) for hotels and clubs in New South Wales (“NSW”). Section 32(1) of the Act provides that the Independent Liquor and Gaming Authority (“Authority”) may set the GMT for each hotel and club premises, while sections 32(3) and 11 provide that the maximum threshold that may be granted in respect of any hotel licensed premises is 30.
2. With effect from 3 April 2018 the *Gaming Machines Amendment (Leasing and Assessment) Act 2018* (NSW) introduced certain amendments to the Act and *Gaming Machines Regulation 2010* (NSW) (“Regulation”) governing the assessment of applications to increase the GMT of a venue. However, transitional provisions in clause 62(1) of Schedule 1 to the Act provide that any GMT application received by the Authority prior to the introduction of the amending bill into Parliament will be considered under the provisions of the Act in force immediately prior to 3 April 2018.
3. Since the amending bill was introduced to Parliament on 6 March 2018, this Application is to be assessed pursuant to the Act and Regulation in force prior to these amendments. Below references to the “Act” and “Regulation” mean the pre-3 April 2018 Act and Regulation, unless specified to the contrary.
4. On 16 November 2017 the Authority received an application (“Application”) under section 34 of the Act to increase the GMT of the Fairfield Hotel, a licensed premises located at 1 Hamilton Road, Fairfield, NSW, 2165 (“Hotel”) within the Fairfield City Council Local Government Area (“Fairfield LGA”). The Application was lodged by Mr Daniel O’Hara of O’Hara’s Fairfield Hotel Pty Limited (the premises owner and business owner of the Hotel) (“the O’Hara Group”) on behalf of the licensee Mr Viet Phuc Andrew Do (“Applicant”) and seeks to increase the GMT for the Hotel from its current 23 to a proposed 30, or an increase of 7.

5. Section 34 of the Act provides:

**34 Application to increase gaming machine threshold**

- (1) A hotelier or club may apply to the Authority to increase the gaming machine threshold for the hotel or the premises of the club (**a threshold increase application**).
- (2) The hotel or club premises to which a threshold increase application relates is referred to in this Division as the **relevant venue**.
- (3) A threshold increase application must comply with the requirements of this Division and the regulations.
- (4) The Authority may approve a threshold increase application only if the Authority is satisfied that the requirements of this Division and the regulations have been complied with in relation to the application.
- (5) If the application is approved, the Authority may increase the gaming machine threshold for the relevant venue in accordance with the Authority's approval.
- (6) Nothing in this Division requires the Authority, if it approves a threshold increase application, to increase the relevant venue's gaming machine threshold by the number to which the application relates.
- (7) Without limiting subsection (1), a threshold increase application may be made by a person in relation to premises that are the subject of an application for a licence under the *Liquor Act 2007* that has not yet been granted.

6. An extract from the "OneGov" licensing database before the Authority records that the Hotel operates with the benefit of a "full" hotel licence, number LIQH400102240. The Applicant has an extended trading authorisation issued under the *Liquor Act 2007* (NSW). The venue is licensed to sell liquor for consumption on the premises from 5:00 am to 5:00 am Monday to Saturday and 10:00 am to 10:00 pm Sunday in respect of the whole of the ground floor excluding the bottle shop and between 12:00 noon and 10:00 pm Monday to Sunday in the outdoor dining area. The licence record notes that the venue has a GMT of 23, 16 gaming machine entitlements, 7 poker machine permits and with 23 approved gaming machines authorised to be kept on the Premises.

7. Notwithstanding the *licensed* trading hours, section 39 of the Act requires that the Hotel observe a general 6-hour gaming machine shutdown period between 4:00 am and 10:00 am Monday to Friday and Sunday while pursuant to section 40, the Hotel enjoys a reduced 3-hour shutdown period between 6:00 am and 9:00 am on Saturday and public holidays.

**Banding of Local Government Areas under the Act**

8. Section 33 of the Act provided for the classification, by the Authority, of all local government areas ("LGAs") across NSW into Band 1, 2, or 3 areas. As recorded by a NSW Department of Industry Fact Sheet dated 14 June 2017, published at relevant times, the Authority had determined, with effect from that date, that Fairfield LGA was a "Band 3" LGA.

9. "Band 1" LGAs (representing approximately 50% of LGAs) were considered to pose the lowest level of gaming machine impact – by reference to lower gaming machine density, lower per capita expenditure on gaming machines and a higher Socio Economic Index for Areas ("SEIFA") score, as determined by the Australian Bureau of Statistics ("ABS"), indicating higher socio-economic advantage.

10. "Band 2" LGAs (representing approximately the next 25% of LGAs) were considered to pose an intermediate level of social impact, by reference to moderate gaming machine density, moderate per capita gaming machine expenditure and a moderate SEIFA score, indicating moderate socio-economic advantage.

11. "Band 3" LGAs (representing approximately the next 25% of LGAs) concern areas where gaming machines were considered to pose a high level of social impact, by reference to the high gaming machine density, high per capita gaming machine expenditure and a low SEIFA score, indicating socio-economic disadvantage.

### **Requirement for Class 2 Local Impact Assessment**

12. Section 35 of the Act and clauses 38 and 39 of the Regulation require that certain types of GMT increase applications be accompanied by a Local Impact Assessment ("LIA").
13. Those GMT applications that pose a relatively greater level of social impact must be accompanied by a "class 2" LIA. Applications that potentially pose a lower level of social impact will require a class 1 LIA. Applications requiring a class 2 LIA are considerably more exacting with respect to both pre-application community consultation and a more stringent legal test than those requiring a class 1 LIA. Certain applications are exempt from any requirement to provide an LIA, and must only satisfy minimum requirements of the legislation, with limited consultation.
14. Section 35 of the Act provides that a GMT increase application in respect of a venue situated in a Band 3 LGA must be accompanied by a class 2 LIA. Section 36(1) of the Act provides that the Application cannot be approved unless the Authority approves the LIA.

### **Requirements for Approval of LIA – Section 36(3)**

15. Section 36(3) of the Act states:
  - (3) The Authority may approve a LIA only if it is satisfied that:
    - (a) the LIA complies with the requirements of this Division and the regulations in relation to the LIA, and
    - (b) the LIA has demonstrated that gambling activities in the relevant venue will be conducted in a responsible manner, and
    - (c) in the case of a class 1 LIA:  
...
    - (d) in the case of a class 2 LIA:
      - (i) the proposed increase in the gaming machine threshold for the relevant venue will have an overall positive impact on the local community where the venue is situated, and
      - (ii) the relevant venue is not, if the venue is a new hotel or comprises new club premises, situated in the immediate vicinity of a school, hospital or place of public worship, and
      - (iii) the LIA has adequately addressed any community concerns arising out of the consultation process under the regulations.

## **FINDINGS**

### **Pre and Post Application Notification Requirements – Clauses 37 and 41**

16. Section 36(3)(a) of the Act requires that an LIA comply with the requirements of Part 4, Division 1 of the Act and the Regulations. Section 36(3)(d)(iii) requires the LIA accompanying an application to adequately address any community concerns arising out of the consultation process under the regulations.
17. The Regulation specifies two phases of notification if a GMT application is required to be accompanied by an LIA. First, clause 37(2) of the Regulation requires an applicant to provide a notice, in the form prescribed by clause 37(3) identifying the nature of the Application, to the local council, local Police, the NSW Council of Social Service ("NCOSS"), the local health

district and any organisation in the LGA receiving funding from the NSW Responsible Gambling Fund (“RGF”) established under the *Casino Control Act 1992* (NSW) for the specific purpose of providing gambling-related counselling or treatment services.

18. Parts 3 to 5 of KJA Engaging Solutions’ *Community and Stakeholder Consultation Summary Report* dated February 2017 (“KJA Report”) satisfy the Authority that a pre-Application notice, in the form provided at Appendix 1 to this Report, was provided to Fairfield City Council (“Council”) on 28 November 2016. Appendix 3 to the KJA Report is a written response from Council dated 23 December 2016 where Council advises that its policy is to reduce the costs and impact of problem gambling, while retaining as much of the benefits for recreational gamblers as possible. Council does not support any increase in the number of gaming machines in the Fairfield LGA. This material satisfies the requirement of clause 37(4) of the Regulation that a class 2 LIA applicant include, in the LIA, details of any meetings or discussions held in relation to the proposed application, and their outcome.
19. The Authority is also satisfied that local Police, NCOSS, the Local Health District and all RGF funded organisations were provided with the required pre-Application notification on 29 November 2016. This finding is made on the copies of the relevant notices that Mr O’Hara provided to Liquor and Gaming New South Wales (“LGNSW”) staff via email on 15 November 2017.
20. Second, clause 41(2) of the Regulation requires that an applicant for a GMT increase provide a copy of the entire application and LIA to the local Council and Police within two working days after making the application. The applicant is also required, within this time, to notify NCOSS, the local health district and all RGF funded agencies in the LGA informing them that the Application has been made and the material is available on the LGNSW website. It is a requirement of clause 41(3) that any person or body referred to in clause 41(2) must be advised that written submissions may be made to the Authority within 30 days of notification.
21. The Authority is satisfied, on the basis of Application records, that after purporting to file the Application material at the office of LGNSW on 8 November 2017 and receiving preliminary feedback from licensing staff, the *completed* Application and LIA was filed on 16 November 2017.
22. The Authority is further satisfied, on the basis of advice from the Applicant’s consultant KJA as to the Applicant’s plans for post application consultation of the same stakeholders given pre Application notification, advice from Council to the case manager confirming receipt of the LIA on 14 November 2017 and an email from Police acknowledging receipt of the Application and LIA, that the Applicant complied with the post Application notification requirements of clause 41(2) not later than two days after 16 November 2017.
23. Clauses 41(4) and (5) of the Regulation further require that, no later than two working days after filing, a GMT applicant place an advertisement in a local newspaper circulating in the area where the venue operates, and display a notice outside the venue in a conspicuous area, stating that the application and LIA have been made, explaining the nature of the application, advising the material may be inspected on the LGNSW website and that submissions may be made to the Authority within 30 days following publication of the notice and the displaying of the advertisement.

24. The Authority is satisfied that the minimum notification requirements were met on the basis of the copies of the proposed notices provided at Appendices 11 and 12 of the KJA Report. Mr O'Hara's statutory declaration dated 11 October 2018 indicates that a local news media advertisement was published in the Fairfield Advance on 15 November 2017, with a copy of the required site notice dated 8 November 2017 posted near the main entry to the Hotel.

**Requirement to Address Community Concerns in the LIA – Section 36(3)(d)(iii)**

25. Section 36(3)(d)(iii) of the Act requires the Authority to be satisfied that the LIA has adequately addressed any community concerns arising out of the consultation process under the regulations.
26. The Authority interprets this requirement to mean that the LIA documentation must actually identify any community concerns raised during the (pre-Application) consultation process and address those concerns.
27. A GMT applicant may potentially address community concerns in a number of ways – by reducing the scope of a proposal, enhancing harm minimisation measures, proposing that an application be granted subject to conditions, or providing greater specificity with regard to verification or timing of the community benefits when the LIA is filed.
28. Alternatively, an applicant may not accept that community concerns are relevant or substantiated, but the applicant should at least engage with the issues raised during consultation and explain its position in the LIA.
29. The Authority is satisfied, on the account of pre-Application consultation provided in the KJA Report at Appendix 7 to the LIA (including the Appendices to that report) that the Applicant has made a meaningful attempt to identify any pre-Application community concerns in the LIA material.
30. The Applicant has explained, at pages 4-29 of the LIA, its contentions as to why the package of charitable donations and harm minimisation costs outlined in the LIA will provide an overall positive benefit to the local community. The Applicant's more specific responses to (pre-Application) community concerns are provided in the Applicant's notes on the community consultation meeting that was held at the Hotel on 13 December 2016 (Appendix 6 to the KJA Report) and its further meeting with Council at Council Chambers on 19 December 2016 (Appendix 2 to the KJA Report).
31. While it is clear that the Applicant and Council are at odds over whether the Applicant satisfies the overall positive benefit test, there is sufficient information in the LIA to meet the minimum content requirements of section 36(3)(d)(iii) of the Act.

**General Information Requirements for Class 2 LIA – Clause 39(1)**

32. Clause 39(1) of the Regulation provides that a class 2 LIA must specify certain general information about the Application.
33. The requirement of clause 39(1)(a) to specify the GMT increase (from 23 to 30) is met by page 4 of the LIA. The requirement to provide the name, address, licence number of the premises (clause 39(1)(b)) is met at page 10 of the LIA, as is the requirement to specify the local government area (per clause 39(1)(c)). The required map of a 1km radius around the

venue required by clause 39(1)(d) is provided at Appendix 1 to the LIA, with information about schools, hospitals, places of worship, licensed premises and community/sporting facilities dealt with at pages 10 and 11 of the LIA. The requirements in clauses 39(1)(e) and (f) to specify the name and address of the licensed business owner and details of any representative respectively are met by page 10 of the LIA.

### **Specific Information Requirements for Class 2 LIA - Clause 39(2)**

34. Clause 39(2) of the Regulation provides that a class 2 LIA must specify certain specific information about the venue.
35. The requirement of clause 39(2)(a) of the Regulation that a class 2 LIA provide a description of the facilities provided by and activities conducted at the venue is met by the information at page 13 of the LIA.
36. The clause 39(2)(b) requirement to specify *actual* trading hours (as distinct from licensed hours) is met at page 14 of the LIA - from 10:00 am to 4:00 am Monday to Thursday, 10:00 am to 6:00 am Friday, 9:00 am to 4:00 am Saturday and 10:00 am to 10:00pm Sunday.
37. The clause 39(2)(c) requirement for a floor plan of the gaming area at the venue is provided by the diagram at Appendix 3 to the LIA.
38. Clause 39(2)(e) requires there to be an outline of the “expected increase in patronage” should the application be approved. An issue arises as to whether the Applicant has satisfactorily addressed this requirement in the LIA.
39. At page 16 of the LIA, the Applicant “interpreted” patronage to mean both the numbers of patrons and an assessment of expected gaming machine expenditure should the Application be granted. While the Applicant has engaged an economic consultant to estimate the likely increase in gaming machine revenue from the operation of 7 new machines, there is no clear statement or even an estimate as to what the current patron *numbers* of the Hotel are and whether they will increase, decrease or not change should an additional 7 gaming machines commence operating in the gaming area.
40. It may be implied that were the gaming room operating at peak capacity, increasing the number of machines in accordance with this Application will *potentially* accommodate an additional seven players. However, the actual increase in patronage will turn upon when and for what duration the gaming room operates at peak capacity, and whether players are unaccompanied by others who may be in the gaming room - drinking or socialising, but not playing the machines.
41. In Appendix 8 to the KJA Report, the Applicant’s survey consultant, KJA Engaging Solutions (discussed below) advises that since the purchase of the Hotel by the O’Hara Group in 2011, the owner has invested over \$2.5 million dollars in renovation of the venue and patronage has increased by “approximately 400%” - but no numbers are specified.
42. Clearly, it would have assisted an assessment of the overall benefit posed by increasing the GMT by 7 had the LIA provided details of the *actual patron numbers* in the gaming machine area across the course of an average week, with some indication or estimate as to what *change in patron numbers* is expected from the availability of 7 more machines in the gaming

room. By not providing clear statements on patronage, the Applicant has introduced an element of uncertainty into this aspect of the proposal.

43. It was not until the Applicant's later legal submissions dated 29 March 2019 that the Applicant projects that the additional machines would attract another 104 gaming patrons to the venue each year, but even that submission does not indicate what the current patron numbers actually are.
44. While there are shortcomings as to the *quality* of information provided in respect of patron numbers, taking into account the specified GMT increase of 7 machines and the Applicant's specification of the Hotel patron capacity in various areas of the venue (at page 13 of the LIA) combined with the revenue estimates provided by the Applicant's consultant (at pages 16-19 of the LIA), the Authority finds, on balance, that the LIA meets the minimum requirements of clause 39(2)(e).
45. Clause 39(2)(d) requires that a class 2 LIA include a current "patron profile" (based on a survey conducted in accordance with the LIA Guidelines) showing the places of residence, gender, occupation and age of patrons and other relevant information such as cultural or ethnic background.
46. The Authority finds that this requirement was satisfied through the provision of a Survey Report from KJA Engaging Solutions ("KJA Survey Report") dated February 2017 at Appendix 9 to the LIA. Briefly, the consultant obtained **182** completed surveys during January 2017. 40% of surveys were taken at the Hotel, 34% taken at the nearby Fairfield Forum Shopping Centre, 21% were taken at the Fairfield Railway Station and 6% taken at "other" locations in the Fairfield CBD - including the Neeta City Shopping Centre, Smart Street and (one) at the Green Peppercorn restaurant which the Authority notes is part of the Hotel.
47. The Applicant's survey responses yielded the following information:
  - Of the **181** respondents who answered to their area of residence, 80% lived in the Fairfield LGA with 20% outside the LGA. Of the **141** respondents who specified a suburb, 52 lived in Fairfield, 12 in Bonnyrigg, 11 in Cabramatta, 8 in Smithfield, 7 in Fairfield East, 7 in Fairfield West, 6 in Fairfield Heights, 5 in Bonnyrigg Heights, 4 in Cabramatta West, 4 in Edensor Park, 3 in Bossley Park, 3 in Carramar, 3 in Cecil Park, 2 in Canley Vale, 2 in Lansvale, 2 in Prairiewood, 2 in Villawood, 2 in Wetherill Park and 1 a piece in Canley Heights, Greenfield Park, Horsley Park, Old Guildford, Wakeley and Yennora.
  - Of the **180** respondents who answered questions about their role, 59% identified themselves as "Community member", 23% as "Gaming customer", 7% as "Hotel/restaurant staff", 6% as "Restaurant patron", 3% as "Bar customer" and 1% comprising one "Worker" and one "Keno player". Of the 174 patrons who answered a question about gender, 61% were male and 39% were female. Of the 180 patrons who answered a question about employment, 59% of those respondents stated that they were currently employed, while 38% were not (with the consultant noting that most surveys was performed within business hours, with 17 respondents of retirement age, above 65).
  - Of the **106** respondents who said they were employed, the description of occupations included trade (6), hospitality (5), retail (4), builders (3), charity or fundraising (3), cleaning (3),

construction (3), nurses (3), sales (3), teaching (3), truck driver (3), carpenter (2), duty manager/manager (2), recruitment (2), real estate (2), repairs (2), accounting (1), area manager (1), ATO (1), bank (1), CBA (1), coffee shop (1), Coles (1), social work (1), consultant (1), driver (1), educator (1), factory worker (1), forklift driver (1), funeral director (1), Green Peppercorn restaurant (1), Greenpeace (1), gyprock worker (1), hotel staff (1), logistics (1), meat industry (1), Navy (1), newsagency (1), own business (1), telephone retail (1), Police (1), "Receiving" (1), receptionist (1), roofing (1), security/chef (1), steel fixing (1), street fixing (1), tiler (1) and youth worker (1).

- Of the **179** respondents who addressed their age, 17% were in the 18-24 age bracket, 21% between 25 and 34, 20% between 35 and 44, 21% between 45 and 54, 11% between 55 and 64, 10% between 65 and 74, with 2% aged over 75.
- Of the **181** respondents who answered questions about English language, 14% or 25 persons indicated that they do not speak English with 86% speaking English. Of those who do not speak English, 10 indicated that their preferred language was Vietnamese, 10 indicated Arabic, 2 indicated Assyrian, 2 indicated Thai, 1 indicated Cantonese, 1 indicated "Chinese" and 1 indicated Italian.
- Of the **180** respondents who gave their place of Birth, 85 were not born in Australia and 76 of those specified places of birth including Iraq (20), Vietnam (11), New Zealand (5), Chile (4), Lebanon (4), England (3), Syria (3), Croatia (2), Malaysia (2), Tonga (2) Thailand (2) with 19 other countries mostly from Europe, Asia and the South Pacific recording one respondent a piece.
- Of the **176** respondents who answered this question, 50% advised that they had visited the Hotel since it was renovated by the current owner, while 50% had not. Of the 97 who answered whether they visited in company, 46% said they visited with friends, 38% said they visited alone, 9% visited with colleagues and 4% with family. Of the 2% who gave other answers, one stated "Friends and family and alone" while one worked at the Hotel.
- Of the **102** respondents who answered to their reason for visiting (being able to specify more than one reason), 73% stated "TAB/Keno/Poker machines", 61% indicated food and drinks, 11% indicated a function or event while 2% said accommodation. The remainder of responses were either work or business related, with one person identifying "dancing" and one other "watching sport".
- Of the **178** respondents who answered whether they have used gaming machines (described in the survey as "poker machine") before, 72% had while 28% had not.
- Of the **177** respondents who answered whether they had concerns with the proposal to increase the number of machines at the Hotel, 38 had concerns while 139 did not. However, some 43 respondents went on to state specified areas of concern (being able to mention more than one). Of that 43, 67% identified "Financial loss", 58% identified "Impacts on families and children", 54% identified "Gambling addiction", 37% stated there were already enough machines in the local area, 35% identified health problems, including drug and alcohol abuse, with 5% providing other responses.
- Of the **177** respondents who addressed the Hotel's proposal to fund \$2 million in donations to a specified list of potential local organisations (being able to indicate more than one), 73% supported funding the Fairfield Hospital Children's Ward, 49% supported Fairfield-Cabramatta Police Citizens Youth Club ("Fairfield PCYC"), 46% supported White Ribbon (domestic violence charity) while 36% supported funding the Fairfield Youth Service.

48. The Authority is also satisfied, as required by clause 39(2)(f) of the Regulation, that the LIA provides details of appropriate harm minimisation and responsible gambling measures (in addition to those required by law) on the basis of the *Fairfield Hotel Responsible Gambling Policies and Procedures Manual* dated February 2017 at Appendix 8 to the LIA (Hotel RCG Manual).

#### **Authority Must Be Satisfied as to Responsible Conduct of Gambling – Section 36(3)(b)**

49. While clause 39(2)(f) of the Regulation provides that an LIA must include specific minimum information requirements about responsible gambling, section 36(3)(b) of the Act requires that an LIA may only be approved if the Applicant has satisfied the Authority that gambling will be conducted in a responsible manner. The Authority has reached this satisfaction on the basis of the Hotel RCG Manual at Appendix 8 to the LIA and a statement from the Applicant's compliance consultant, Mr Leigh Barrett, with his observations on his work for the Hotel dated 8 February 2017.

#### **Prohibition on GMT Increase for Venue in Retail Shopping Centre – Section 37B**

50. Section 37B of the Act provides that a gaming machine threshold for a hotel or club cannot be increased if the premises are part of a "retail shopping centre". The Authority is satisfied on the address information provided at page 10 of the LIA, the diagram of the premises at Appendix 3 and assorted images of the exterior of the Hotel at Appendix 11 that the venue is a freestanding two storey street facing hotel situated on Hamilton Road, in a commercial part of the Fairfield Central Business District. There is no information before the Authority indicating that the premises are part of a retail shopping centre or proposed retail shopping centre.

#### **Internal floor space – Clauses 36(1)(a) and 43**

51. Clause 36(1)(a) of the Regulation requires a GMT application to specify the internal floor space (in square metres) of the venue. Page 1 of the GMT Application form sets out that the internal floor space is approximately 2,931 sqm.
52. Since this document establishes that the internal floor space of the venue is larger than 400 square metres, the restriction in clause 43 of the Regulation does not apply.

#### **Gaming Machine Data and Social Profile Information – Clause 39(3)**

53. Clause 39(3) of the Regulation requires a class 2 LIA to include information relating to gaming machines and gaming machine entitlements in the relevant area for the venue and demographic and other social and economic information relating to the relevant area for the venue.
54. Page 30 of the LIA and appendix 5 to the LIA provide information about the number of gaming machines and entitlements there are in the LGA. The Applicant refers to LGNSW data, indicating that:
- in the Fairfield LGA, as of the first quarter of 2016, there were 3,830 gaming machines, with 3,351 in clubs and 479 in hotels, or 0.03 machines per adult;
  - as at 18 January 2017 Fairfield LGA had 3,674 gaming machine entitlements with 168 poker machine permits;
  - over 2016 in the Fairfield LGA, annual gaming machine expenditure per adult was \$3,105.15 , with annual gaming expenditure per machine at \$126,917.00.

55. Page 30 of the LIA and Appendix 6 the Applicant provides ABS social and economic information about the Fairfield LGA. For reasons that are not entirely clear, some of this data is out of date and pertains to 2011, while some data was derived from the latest 2016 ABS Census.
56. While the Applicant has provided more up to date ABS data in later submissions, there was sufficient information provided in the LIA to meet the minimum requirements of clause 39(3) of the Regulation.

#### **The Overall Positive Benefit Requirement - Section 36(3)(d)(i)**

57. Section 36(3)(d)(i) of the Act requires that the Authority may only approve a class 2 LIA if satisfied that the proposed increase in the GMT for the relevant venue will have an overall positive impact on the local community where the venue is situated.
58. Clause 39(5) of the Regulation provides that a class 2 LIA must specify the positive impact (social and economic) that the proposed GMT increase at the venue will have upon the local community and specify any negative social or economic impact, and the action that will be taken to address that impact. The Applicant has primarily presented its case on this legal test at pages 4-29 and 31-40 of the LIA, which is sufficient to satisfy the minimum content requirements of clause 39(5).
59. The Applicant's case is also based upon further submissions in support of the Application among the community submissions in response to the LIA that are summarised below. The Applicant places particular reliance upon the submissions from its compliance consultant, Mr Leigh Barrett dated 8 February 2017 regarding the harm minimisation measures in place at the venue and the gaming machine expenditure analysis performed by the Applicant's economic consultant, Mr Bruce Waddington of Geotech Information Services ("GIS") dated 1 March 2017, both of which form part of the LIA.
60. Aside from a number of letters in support of the Application, mostly from Hotel staff, contractors, service providers or other persons with a longstanding professional or personal association with the Applicant's family business, the Application has received implicit support in letters from the 4 charitable organisations that were specified in the LIA to receive cash donations should the Application be granted. These charities briefly disclose how the Applicant's proposed cash donations would be used to benefit the local community.
61. While there has been no judicial interpretation of what section 36(3)(d)(i) of the Act requires, case law arising from the former "Social Impact Assessment" provisions of the (pre-31 January 2009) Act indicate that the Authority's task is to make findings, to the extent practicable, on what the likely benefits to the relevant local community will be from increasing the gaming machine threshold at the venue in question and what the likely detriments will be, then make a judgment as to whether those factors, considered together, satisfy the Authority of an overall positive benefit for that community. See *McHugh Holdings Pty Ltd v Peter Ashton and Anor* [2007] NSWSC 118 and *Moorebank Sportsclub Ltd v Liquor Administration Board* [2008] NSWSC 864.

#### **Potential Benefits and Detriments from Gaming Machines for the Australian Community**

62. The Productivity Commission's 2010 Report on Gambling ("PC Report") provided a comprehensive overview of the potential benefits and detriments of gambling for the Australian community, as identified by the then available empirical research.
63. The PC Report included a particular focus on gaming machines. Gaming machines were found to pose particular concern, by reason that they account for the dominant source of total gambling revenue, are accessible, have design features that induce operant conditioning effects among users, facilitate high intensity gambling and offer the capacity for players to lose large sums in a relatively constrained timeframe (see in particular pages 7, 13, 14, 24, 25, 26 of the Overview; pages 1.4 and 1.5 of the Introduction; page 2.17 of The Gambling Industry; and pages 11.1, 11.44 and 11.45 of Game and Machine Design).
64. At pages 16 and 17 of the "Overview" and sections 5.1 and 5.36 of the "Prevalence" section of the PC Report, the Commission estimates that problem gamblers' share of total Australian gaming machine losses range around 40 per cent. Some estimates raise the possibility that the share could be as high as 60 per cent or, in the most conservative case, as low as a (still significant) 22 per cent. This means that, at a minimum, the 'small' group of problem gamblers currently account for \$2.6 billion of gaming machine losses. Although there are substantial difficulties in calculating gambling expenditure, it is estimated that problem gamblers account for 22 to 60 per cent of total gaming machine spending (average of 41). The likely range for moderate risk and problem gamblers together is 42 to 75 per cent. It is estimated that problem gamblers account for around 40 per cent of total gaming machine spending (the average of a range of estimates as high as 60 per cent and, most conservatively, as low as 20 per cent). Moderate risk gamblers account for a further significant share.
65. As summarised in the *Overview*, the Commission identifies the *benefits* of gambling as the provision of recreation and entertainment for up to 70% of Australians (when taking into account all forms of gambling, from scratch cards, to lotteries, to gaming machines, wagering, sports betting and casino gambling). The industry is an attractor and source of profit for the broader hospitality industry, a source of community support for certain sporting and other community organisations, a provider of secure places for the community to socialise, a source of employment and a source of revenue. In Chapter 6 of the PC Report the Commission noted that the potential benefits were substantially reduced, particularly in NSW, by reason of tax concessions for registered clubs, that the Commission recommended be phased out. Nevertheless, the Commission projected the value to the Australian community from tax revenue and recreation for 2008-9 at between \$12.1 and \$15.8 Billion, while the costs to problem gamblers ranged from \$4.7 and \$8.4 Billion.
66. In the *Overview* to the PC Report, the Commission identified the potential social harms associated with problem gambling as including suicide, depression, relationship breakdown, lowered work productivity, job loss, bankruptcy and crime, with gambling the most common motivation for fraud. The Commission noted the ripple effects of the conduct of problem gamblers upon family members, friends, employers and colleagues. At Chapter 6 the Commission finds that on the most conservative assumption, a 10% reduction in problem gambling is estimated to produce benefits of \$450 million per year in 2008-9 prices, with long term benefits running to several billion dollars per year. This implies that even modest harm minimisation measures may produce worthwhile net benefits so long as they do not involve disproportionate costs.

67. At sections 4.5 to 4.6 of the PC Report, the Commission finds that a central tenet is that public health is not just to assist those currently suffering harm, but to assess the extent to which a population is at risk of future harm. The Commission concludes that an appropriate focus of regulatory concern is not only problem gamblers, but at-risk gamblers in the community.

### **Authority's Previous Approach to Assessing Overall Positive Benefit**

68. Since the legislation provides little guidance as to how to apply the overall positive impact test, the Authority devised a policy approach, applied in two of its previous decisions on threshold increase applications regarding the Mount Pritchard Community Club Ltd dated 9 August 2013 ("Mounties Decision") and the Fairfield Hotel dated 14 November 2013 ("2013 Fairfield Hotel Decision"). Both of those matters concerned venues located within the Fairfield LGA.

69. Briefly, the Mounties Decision concerned an application by a registered club in Casula for a GMT increase from 561 to 621. As noted at paragraphs 172-246 of the decision, the Authority assessed overall social impact pursuant to the following approach, which it had developed from a proposal made by the club's economic consultants:

- i. First, ascertain the average annual revenue derived by gaming machines operating on the venue over the last two years. The Authority assumes that the additional machines enabled by increasing the gaming machine threshold will derive revenue at the same level as the current average takings per machine.
- ii. Consider the proportion of revenue that the findings of the PC Report identified as likely to flow from *problem gamblers* in the community. The Commission identified a range of between 22 and 60 percent at any given venue.
- iii. The Authority will usually apply the mid-point of the PC Report range (41%), but if a venue has a strong regime of problem gambling controls in place, over and above the minimum requirements of the legislation, the Authority *may* apply the lower end of the range (as it saw fit to do with Mounties)
- iv. Apply that share of problem gambling revenue over a period of 5 years. While 5 years is somewhat arbitrary, it was considered a reasonable balance between the risks of underestimating impact (if too short a time is considered), without projecting too far into the future in case market conditions change.
- v. Consider the monetary value of the charitable proposal for community benefit that is proposed by the applicant in the LIA, against the quantifiable detriment to the community represented by problem gambling expenditure over 5 years on the additional machines, while acknowledging there are other benefits and detriments at play than the financial impact upon problem gamblers alone.
- vi. If the value of the applicant's community benefit proposal does not at least exceed this quantifiable detriment, the application must be refused.

70. The purpose of this approach was to provide a relatively simple, user-friendly framework for assessing overall positive benefit, to provide guidance for prospective applicants when formulating their proposal for community benefit in a class 2 LIA.

71. While this simple approach did not purport to make allowances for additional gaming machine expenditure that a venue may derive at the expense of competing local venues (given the complex and resource intensive task of making those projections), the approach

was somewhat conservative, and beneficial for applicants in two important respects. First, it only considered the expected additional gaming machine revenue to be received by the venue *over a period of five years* into the future. Second, it focussed upon gaming machine expenditure to be derived from “problem” gamblers.

72. That is, the Authority did not attempt to quantify the adverse impacts upon “at risk” gamblers, who are accepted by the Authority, on the analysis provided in the PC Report, as an appropriate source of regulatory concern. Nor did the Authority’s approach reflect the reality that, once an increase in the GMT for a venue is granted, the additional machines that will fulfil that higher threshold may continue to derive substantial amounts of gaming machine expenditure beyond five years into the future.
73. The 2013 Fairfield Hotel Decision concerned an application made by the same licensed business owner who is the Applicant in the present matter, seeking the same level of GMT increase for the same venue - from 23 to 30. At paragraphs 95-185 of its decision, the Authority applied its policy approach to assessing overall positive benefit, albeit finding that the 41% Productivity Commission midpoint on the likely share of revenue to be derived from problem gamblers was appropriate for this Hotel. The Authority refused that application for want of satisfaction as to the overall positive benefit to the community. That decision was the subject of an unsuccessful judicial review application in *O’Hara v Independent Liquor and Gaming Authority* [2014] NSWSC 880.

#### **Applicant’s LIA Proposal for Overall Positive Benefit**

74. The Applicant’s proposal for community benefit has changed substantially from the proposal that was specified in the LIA that was put to the community for comment during the legislative consultation process.
75. In the LIA document accompanying the Application the Applicant proposes that, should the GMT increase be granted, the Applicant will make the following donations to organisations serving the local community within the Fairfield LGA:
- Donation to Fairfield PCYC of **\$1,000,000.00**
  - Donation to Fairfield Hospital Children’s Ward Charitable Trust (“Fairfield Hospital”) of **\$503,000.00**
  - Donation to White Ribbon Australia, a domestic violence charity, of **\$50,000.00**
  - Donation to Assyrian Migrant Resource Centre of **\$113,000.00** (comprising a \$100,000.00 donation and \$13,000.00 value in kind use of function room)
  - Employment of four additional full-time equivalent staff to work on the Hotel premises, to be sourced from newly arrived migrants, with the assistance of the Assyrian Migrant Resource Centre and Vietnamese Community of Australia organisations, valued at **\$200,000.00** per year or **\$1,000,000.00** over five years.
76. The Applicant also proposes to incur the following harm minimisation related business costs which, he contends, exceed the minimum requirements of legislation and will provide a further benefit to the local community at the following values:
- A “voluntary” pre-commitment has been installed on all existing 23 gaming machines at the Hotel at a cost of **\$140,000.00**
  - Install a “voluntary” pre-commitment scheme for the additional seven gaming machines at a cost to the business of **\$25,000.00**

- Engaging responsible service of alcohol (“RSA”) and Responsible Conduct of Gambling (“RCG”) training for all *new* staff at a cost of \$2,500.00 per annum, or **\$12,500.00** over five years, including cost of staff time for participating
- Install a plasma TV in the gaming room displaying harm minimisation measures at a cost of **\$3,250.00** (including installation and an IT consultant for program messaging)
- Paying for the placement of responsible gambling themed print media advertisements in the Fairfield Advance and Fairfield Champion, local newspapers, once per month at a cost of \$12,000.00 per annum or **\$60,000.00** over five years
- Distribution of letterbox leaflets and newspaper advertisements in the local community promoting RSA and RCG themed Hotel advertising at a cost of \$2,000.00 per annum or **\$10,000.00** over five years
- Placement of external signs promoting the NSW Government Gambling Help Line outside the Hotel at a cost of **\$14,000.00** (which has already occurred)
- Payment to the NSW RGF of **\$60,000.00** per annum or **\$300,000.00** over five years with a view to that funding going to RGF funded gambling counselling services (Wesley Mission, Uniting Care Mental Health, Arab Council of Australia, Vietnamese Community Service of Australia)
- Installing additional clocks in the Hotel gaming room, above the automatic teller machine and the men’s and women’s toilets close to the Gaming Room, at a cost of **\$1,000.00**
- Engaging RCG training for all *existing* Hotel staff twice per year, at a cost of \$3,000.00 per annum or **\$15,000.00** over 5 years.
- Printing Gambling Help cards to be made available in Hotel toilets, at a cost of \$1,000.00 per annum or **\$5,000.00** over 5 years.
- Gambling Help signage at entrance to gaming room additional to what is required by law, at a cost of \$300 per annum or **\$1,500.00** over 5 years
- Amendment of Hotel website to include the Gambling Help logo, at a cost of **\$500.00**
- Devotion of management and staff time to implementing the above initiatives, at a cost of \$25,000.00 per annum, or **\$125,000.00** over 5 years
- Production of an Annual Report to Authority on compliance with this proposal, verified by Chartered Accountant, at a cost of \$3,000.00 per annum, or **\$15,000.00 (this detail is noted at page 9 of the LIA).**

77. As summarised at Appendix 10 to the LIA, the Applicant values the benefits on offer to the local community at a total of **\$3,390,750.00** over five years, comprising **\$2,666,000.00** in direct financial contributions and **\$724,750.00** worth of harm minimisation measures.

78. At Appendix 14, the Applicant lists a number of further benefits that he claims should be taken into account when assessing the overall benefit to the local community from increasing the GMT for the venue. The Authority notes that these payments have apparently already occurred. They include a donation to a Fairfield short film “Hit Girls” on an unspecified date of \$1,000.00 in addition to providing the venue, food and drinks at a cost of approximately \$1,000.00; raising \$1,000.00 for the Fairfield PCYC in raffles, silent auctions and cash donations during the Melbourne Cup Day 2012; providing a \$6000 donation to the Catholic Education Foundation and Kevin Greene enabling two children to attend catholic schools; providing food staff and cooking facilities to a stated value of \$2,500.00 for the Powerhouse Youth Theatre’s 25<sup>th</sup> anniversary in November 2012; supporting the Fairfield PCYC “Get out of Jail” fundraiser (value not specified) each year since acquiring the Hotel; sponsoring Council’s Lunar New Year events during 2015 and 2017 (value not specified); sponsoring Council’s Latin Festival (value not specified) during 2016 and 2017; providing food and drinks to Fairfield Chamber of Commerce Christmas party (value not specified) during the last five years; raising \$5000.00 for the White Ribbon charity during November 2016.

79. At Appendix 14, the Applicant also makes contentions about positive benefits that he says will flow to the community from the Hotel's payment of gaming machine tax to the NSW government since its acquisition of the venue and significant amounts of taxes to the Commonwealth including company tax, GST, excises, PAYG and withholding tax for employees. At page 19 of the LIA submission, the Applicant contends that, referring to his consultant-projected additional revenue over five years for the seven machines at \$4,634,465.20, he will pay 50% of the revenue in gaming machine tax or \$2,317,232.60 and \$421,315.02 per annum in GST.
80. Finally, the Applicant refers to the (unspecified) cost of *training his own staff* which, he claims, will provide "lifelong employment benefits" to those persons.

### **Applicant's Approach to Quantifying Local Community Detriment**

81. In this case, the Applicant invites the Authority to depart from its previous approach to assessing overall community benefit. In summary, the Applicant contends that the additional 7 gaming machines that would be facilitated by granting this Application *should not be expected to derive the same levels of average machine profit that the Hotel currently derives* from its existing 23 machines. Furthermore, the Authority should only have regard to *that proportion of additional gaming machine revenue that is expected to be new to the industry*, not revenue that may come at the expense of gaming machine revenue derived by the Hotel's competitors in the local community.
82. At pages 16 to 18 of the LIA, the Applicant sets out how they have estimated the approximate dollars of (pre-gaming machine tax) profit which would be attributable to problem gamblers. In reaching this estimate of net detriment to the local community, the Applicant refers to a finding of a report prepared by Mr Bruce Waddington of GIS, titled "Estimating the Expenditure Implications Resulting from the Proposed Increase in EGMs at the Fairfield Hotel, Fairfield NSW" dated 1 March 2017 which is Appendix 9 to the LIA ("GIS Report"), and the average gaming net profit before tax over the last five years and three years respectively.
83. Mr Waddington provides in the GIS Report:
- An estimate of additional gaming expenditure at the Hotel as a result of adding an additional 7 machines;
  - An estimate of the proportion of this additional expenditure that will be new to industry vs transferred from other surrounding venues;
  - An overview of the general principles of the Geotech Model as it relates to Top Up Applications in Victoria, and commentary regarding the application of this model to the NSW gaming environment;
  - A summary of Transferred Expenditure Case Studies from Victoria.
84. Mr Waddington's curriculum vitae states that he has "significant experience" in the "preparation and presentation of expert reports with respect to venue electronic gaming machine applications within Victoria" and that for almost 20 years he has provided "network planning advice and consultancy services to Australian business and government, including the gaming industry".

85. In the GIS Report, Mr Waddington has applied the “Geotech Retail Gravity Model” which was developed for the gaming machine market in Victoria. Mr Waddington explains that the model centres upon the theory that a consumer’s choice of gaming venue will be based upon two fundamental considerations - *convenience* (assessed by reference to drive time) and *relative venue attractiveness*.
86. Mr Waddington notes that when applying this model in Victoria the “venue attractiveness” factor is measured using a range of venue characteristics (including gaming machine numbers, whether the venue is a club or hotel, dining capacity, trading hours and the quality of fixtures and fittings). However, in the analysis performed for this Application, GIS have reduced the measure of “attractiveness” to two factors only – the *number* of gaming machines on offer and the *type* of venue (hotel vs club) in the community.
87. Briefly, GIS provide the following findings at pages 2 and 3 of the GIS Report:
- Each of the proposed additional **7** gaming machines will generate gaming machine expenditure at a level that is equivalent to **42.5%** of the *current* per gaming machine expenditure at the Hotel. This equates to an increase of total *venue expenditure* of **12.9%** (or **\$927,000.00** p.a.) over current venue gaming machine expenditure levels.
  - Expenditure *per gaming machine* across this venue will *drop* by **13.4%** following the introduction of **7** additional machines.
  - The proportion of the additional **\$927,000.00** that will be *new to the industry* is estimated at **26.2%** (or **\$243,000.00** p.a). The proportion of additional expenditure that will be *transferred from surrounding venues* in the local community is estimated at **73.8%** (or **\$684,000.00** p.a.).
88. The GIS figures on expected *additional gaming machine expenditure* from the 7 new machines was estimated by reference to:
- (a) the venue’s own recorded pre-tax gaming profit averaged over the **last 5 years** (as at the time of their assessment) and
  - (b) a number of Victorian “case studies” looking at pre and post “top up” average profit when new gaming machines are introduced to a venue.
89. At page 6 of the GIS Report, Mr Waddington explains that the retail gravity theory “generates a probability of patronage from any area (street block) to any venue” and that this can be used to “generate a probability contour map defining a trade area for any venue of interest”. Page 7 of the GIS Report contains the contour map depicting the “Fairfield Hotel Trade Area” which represents the “anticipated trade area contour for the Fairfield Hotel”.
90. At page 16 of the GIS Report, Mr Waddington takes into consideration the *total number of machines* (including the proposed 7 new machines) at each of the hotel and clubs located within the “Fairfield Trade Area” as defined by the gravity model - being the area the consultant identifies as the anticipated trade area for this Hotel.
91. However, GIS then *cap* the number of gaming machines available at any club venue to only **105** - by reason that this is the approach they take in Victoria. Mr Waddington explains at page 16 of the GIS Report that:

“It should be noted that I have used a 105 EGM cap as part of this calculation, as this is the cap used in the Victorian model. I am [aware] that the Fairfield RSL has more than 105 EGMs. Running the model using 332 EGMs at the Fairfield RSL reduced the proportion of new revenue in the following calculation, so using the Victorian model cap of 105 EGMs per venue actually produces a more conservative estimate of transferred expenditure”.

92. That is, the consultant counts all the available machines in the Fairfield Hotel Trade Area, but discounts *club-based machines* so they only “count” at **0.5** per machine, with the total registered club score capped at **52.5**.

93. As noted above, the proportion of “New Expenditure” that is expected by GIS to result from the “Top Up” of the gaming machines at the Hotel is assessed at **12.9%**. This is derived by taking **30** machines (the proposed new total at the venue should the Application be granted) as a proportion of **233.5** machines (being the total of *all gaming machines in hotels in the Fairfield Hotel Trade Area plus half of the gaming machines in clubs in the Fairfield Hotel Trade Area*). The balance of 87.1% is “Transferred Expenditure”.

94. At page 16 the GIS Report continues:

“As this analysis relates to a top up rather than an entire new gaming venue, we need to factor out expenditure transfer to the 7 new machines occurring from existing Fairfield Hotel EGMs”.

95. GIS calculates the expenditure generated by the 7 new gaming machines to be compiled of the following:

- Expenditure transferred from the other 23 existing gaming machines at the Fairfield Hotel - **50.7%**
- Expenditure Transferred from surrounding venues - **36.4%**
- Expenditure New to Industry – **12.9%**.

96. GIS then calculates the *percentage of new expenditure* at the Hotel as **26.2%**. This is derived from the estimated *new to industry expenditure* divided by the combined percentage for transferred and new expenditure (**12.9/(36.4 + 12.9)**).

97. GIS conclude that the remaining **73.8%** of *new expenditure* at the Hotel will be *transferred from neighbouring venues*. In arriving at these figures, the consultant disregards the transfer from existing Fairfield Hotel gaming machines.

98. The Applicant, when measuring net detriment, submits in the LIA at page 17 that in respect of the Hotel, the proportion of additional revenue that can be expected to be derived from problem gamblers is likely to be at the lower end of the range because problem gambling prevalence rates in south-west Sydney are “demonstrably lower” than in other regions and due to the particularly rigorous harm minimisation initiatives of the Hotel. For the purpose of “impact analysis”, the Applicant outlines that they have “adopted the Productivity Commission’s midpoint estimate of 40%”. However, the Applicant states that it is a “conservative over-estimate of the likely proportion of additional revenue referable to problem gamblers”.

99. At pages 17 and 18 of the LIA, the Applicant refers to the following information about expenditure at the venue:

***Pre-tax (gaming tax and GST) gaming profit for Fairfield Hotel over last five years:***

<i>Average gaming profit before gaming tax per year for last five years at Fairfield Hotel</i>	<i>\$7,185,217.44</i>
<i>Average gaming tax paid per year for last five years for Fairfield Hotel</i>	<i>\$2,808,422.50</i>
<i>Average GST tax payable on gaming profit before gaming tax per year over last five years</i>	<i>\$653,201.585</i>

***Projected additional annual revenue from the additional 7 gaming machines if approved:***

- = \$7,185,217.44 (average pre-tax gaming profit over last five years) x 12.9% (Geo tech expert predicted increase of revenue if application is approved)*
- = \$926,893.05 Predicted increase in pre-tax (gaming and GST tax) profit from additional 7 machines*
- = \$926,893.05 x 26.2% ("new to industry" gaming expenditure as per Geo Tech Report. This is the additional expenditure that can be expected to be generated from the addition of the 7 GMEs and which has not simply transferred from other venues).*
- = \$242,845.97 pre-tax (gaming tax and GST) which is "new to industry".*
- = \$242,845.97 x 40% (Productivity Commission estimate of profit derived from problem gamblers).*
- = \$97,138.39 pre-tax (gaming tax and GST) profit derived from problem gamblers which is "new to industry" [and not merely drawn from other venues] in the Fairfield Local Government Area.*

100. The Applicant concludes that the "best estimate" of quantifiable net detriment to the local community in the Fairfield LGA is **\$97,138.39** per annum (not including gaming machine tax and GST paid to State and Federal Governments). Over five years, this will amount to **\$485,691.96**. Since this figure is below the value of the Applicant's proposed community contributions, the Applicant contends that the Authority may be satisfied that granting the Application will provide an overall benefit for the local community.

**Community Submissions in Relation to LIA – Section 36(5)**

101. Section 36(5) of the Act provides that if submissions are made in relation to an LIA, the Authority must take those submissions into consideration when deciding whether to approve the LIA.
102. In a letter to Council dated 28 November 2016 the Applicant advised that he intended to lodge the Application "on after Tuesday 28<sup>th</sup> January 2017". As noted above, the Application was not actually filed for 12 months after this pre-Application notice was given to stakeholders.

103. On 24 November 2017, Council sent an email to the Authority raising concerns that it had not been given a probable date of lodgement and would face difficulties engaging appropriate expert advice to address the Application and LIA by reason of the pending Christmas shut down period. Council sought an extension of time to 31 January 2018 to make submissions.
104. On 5 December 2017 the Authority notified the Applicant, Council and other interested parties that the community would have until 31 January 2018 to respond to the Application, with the Applicant having a right of reply by 28 February 2018.
105. Without purporting to reproduce all the community submissions in detail, the community submissions to the Authority during the post Application consultation period may be summarised as follows:
- **Ms Carmen Lazar, Manager, Assyrian Resource Centre dated 16 November 2017** provides a submission that the proposed donation will be used to provide support to newly arrived migrants in the Fairfield LGA area.
  - **Mr Viet Phuc Andrew Do (Applicant) dated 22 November 2017**, in a standard form submission similar to the submissions noted below from Samantha Prom, Sarah Hanania, Ruby Mose, Kevin Luu, Tona Inthavong, Fox Sports, Van Do, Steven Hoang, My Nguyen, Huy Nguyen and Thi Pham, supports the Application, emphasising the excess of calculated benefit over detriment in the LIA. The writer notes the objects of the Act (without specifying which object is advanced and how) and contends that since its refurbishment in 2001, the Hotel has attracted proportionate increased patronage. Mr Do submits that the Hotel has become more attractive to families and has won several Australian Hotels Association awards for its services during 2017. The writer contends that the current density of gaming machines per capita will reduce over the next 20 years through population growth in the Fairfield LGA and that the Hotel's community engagement and harm minimisation measures will ensure that maximum benefit is achieved from the proposal. The excess of calculated benefit over detriment in the LIA is emphasised.
  - **Mr Dominic Teakle, Chief Executive Officer ("CEO"), Fairfield PCYC dated 22 November 2017** advises that the proposed \$1,000,000.00 donation will be used for PCYC infrastructure, equipment replacement and acquisition. PCYC look forward to a favourable outcome on the Application.
  - **Ms Chantel Plum, White Ribbon Australia dated 23 November 2017** advises that the proposed \$10,000.00 donation per year for five years to this organisation will be used to deliver prevention work in schools and workplaces in the Fairfield community.
  - **Mr Phil Nakkan, NSW Commercial Sales Manager, Fox Sports dated 28 November 2017** provides a submission emphasising the excess of calculated benefit over detriment in the LIA.
  - **Mr Sam Elg, National Business Manager Carlton & United Breweries (partner of the O'Hara Group – preferred supplier of beer and cider products) dated 29 November 2017** provides a general statement in support of the Application.
  - **Mr Andrew Clement, Trade Relations Manager, Independent Liquor Group Distribution Co-operative Ltd (provides liquor products to the Hotel) dated 1 December 2017** supports the Application emphasising the excess of calculated benefit

over detriment in the LIA and noting the projected population increase for the local community.

- **Mr Troy Primmer, General Manager, Sales and Marketing, Ainsworth Game Technology Ltd (supplier of gaming machines to the O’Hara family hotels) dated 4 December 2017** provides a submission endorsing their hotel operations.
- **Senior Constable Matt Green, Crime Prevention Officer, Fairfield Local Area Command, NSW Police dated 5 December 2017** opposes the Application on the following bases: Fairfield LGA is one of the highest ranked communities for gambling, yet is one of the lowest on a socio economic basis, including a “vast” number of refugees; there is a correlation between gambling and domestic violence, with Police in Fairfield Command attending incidents directly linked to problem gambling. Police accept that granting the Application will include a substantial donation of funds back into the community.
- **Ms Amanda Larkin, Chief Executive, South Western Sydney Local Health District dated 10 December 2017** opposes the Application on the basis that Fairfield LGA has a SEIFA score on the index of relative socio economic disadvantage of 854, placing it in the bottom decile of local government areas across Australia and the third most disadvantaged LGA in NSW. The LGA has a large proportion of people from culturally and linguistically diverse (“CALD”) backgrounds, including refugees - with unemployment almost double the national average. This submission refers to the Australian Medical Association Position Statement on Problem Gambling (2013) and submits that the impact of problem gambling is most pronounced with socio economically disadvantaged individuals, including those with poor literacy, those with pre-existing health problems, among certain CALD communities and among people living in regions with high unemployment and economic hardship.
- **Ms Sarah Hanania (Hotel staff member) dated 15 January 2018** supports the Application emphasising the excess of calculated benefit over detriment in the LIA.
- **Mr Kevin Luu (Hotel Staff member) dated 17 January 2018** supports the Application emphasising the excess of calculated benefit over detriment in the LIA.
- **Mr Van Son Do (Hotel staff member) dated 17 January 2018** supports the Application emphasising the excess of calculated benefit over detriment in the LIA.
- **Mr Keith McDonald, CEO, South Western Sydney Primary Health Network dated 19 January 2018** opposes the Application on the basis of the “clear negative health and psychosocial impacts” associated with gambling that “presents regularly to our local general practices”.
- **Ms Tona Inthavong, owner, Green Peppercorn Restaurant (located within the Hotel) dated 24 January 2018** provides a submission emphasising the calculated benefit over detriment in the LIA.
- **Mr Matthew Comensoli, licensee Mr Tippy’s Hotel Sydney CBD dated 25 January 2018** states that he has known the O’Hara family for over 25 years, supports the Application on the basis that the O’Hara family has a high level of integrity and sense of community, and the Hotel takes its licensing obligations seriously.
- **Mr Gordon Fromhold, licensee, The Berkeley Hotel, Berkeley (part of the O’Hara Group) dated 25 January 2018** states that he has known the O’Hara family in a professional and personal capacity for over 9 years and commends their loyalty and integrity as hoteliers. The writer states that they have supported many organisations and charities in the areas they operate hotels and live in and that they take their

licensing obligations seriously. The writer contends that granting this Application will result in a significant positive benefit to the Fairfield community.

- **Mr Bakari Issa, Bakari Issa Cleaning Services (contractor to the Hotel) dated 25 January 2018** provides a submission endorsing the O'Hara family's good character.
- **Mr Graeme Neely, licensee, Central Hotel Blacktown (part of the O'Hara Group) dated 26 January 2018** states that he has known the O'Hara family in a professional and personal capacity for over 3 years as general manager of the Central Hotel Blacktown. He commends their integrity and honesty which is "rare in the business sector". The writer states that the O'Hara Group has supported many charities in Blacktown and Fairfield and they take their licensing obligations seriously. The writer states that granting this Application will result in a significant positive benefit to the Fairfield community.
- **Mr Dan O'Hara (Director of the Hotel) dated 26 January 2018** makes a submission in support of the Application discussing the positive effect the refurbishment of the Hotel had on the Fairfield LGA, the excellent reputation of Green Peppercorn Restaurant and the industry awards won by the Hotel. Mr O'Hara discusses key points that critics of the application fail to consider, the excess of calculated benefit over detriment in the LIA, hotel investment and refurbishment and the Hotel's proposal.
- **Mr Andrew Glaister, Group General Manager, O'Hara Group dated 26 January 2018** states that he has known the O'Hara family in a professional and personal capacity for over 16 years. He commends their integrity and honesty which is "rare in the business sector". The writer states that the O'Hara Group has supported many charities across greater Sydney and the Illawarra and they take their licensing obligations seriously. The writer states that granting this Application will result in a significant positive benefit to the Fairfield community.
- **Mr Steven Minh Hoang (Hotel staff member) dated 27 January 2018** supports the Application emphasising the excess of calculated benefit over detriment in the LIA.
- **Mr My Chau Thi Nguyen (Hotel staff member) dated 27 January 2018** supports the Application emphasising the excess of calculated benefit over detriment in the LIA.
- **Mr Huy Hoang Nguyen (possibly a Hotel staff member) dated 27 January 2018** supports the Application emphasising the excess of calculated benefit over detriment in the LIA.
- **Mr Thi Chuyen Pham (Hotel staff member) dated 27 January 2018** supports the Application emphasising the excess of calculated benefit over detriment in the LIA.
- **Mr Leigh Barrett, Managing Director and Principal Consultant, Leigh Barrett and Associates Pty Ltd (Applicant's RCG consultant) dated 29 January 2018**, in a submission supported by a signed statement dated 8 February 2017, describes the terms of his engagement by the Hotel including his development of the Hotel's responsible gambling manual; disagrees with the Authority's finding in the 2013 Fairfield Hotel Decision that the venue is conveniently located; contends that it is "highly unlikely" that the venue will attract impulse gamblers; notes the variety of services on offer at the Hotel and layout of the gaming room vis a vis the rest of the Hotel. He submits that the small number of machines at this Hotel will enhance the ability of staff to intervene "at the first sign" of problematic behaviour. He acknowledges that Fairfield has a high level of social disadvantage but contends that the Hotel is well placed to mitigate the potential for harm.
- **Mr David Johnston, CEO, United Resource Management Group dated 29 January 2018** states that he has known the O'Hara family professionally and personally for over

20 years and supports the Application on the basis of Mr O'Hara's support for local community groups and his submission that the venue provides a "great community hotel".

- **Mr Andrew Glaister, Director, SAFA Services Pty Ltd dated 29 January 2018** states that he has had a business and personal relationship with the O'Hara family for over twelve years and supports the Application on the basis that the O'Hara family operates hotels with integrity and supports charities across greater Sydney and the Illawarra.
- **Mr Nox Tauakipulu, Group Operations Manager, ISEC Pty Ltd dated 29 January 2018** states that they have had a business relationship with the O'Hara Group for over ten years and specifically with the Hotel for six years during which time they found the O'Hara Group to be exemplary operators with impeccable integrity. The writer acknowledges the support that the O'Hara Group provides to local community and charity initiatives.
- **Mr Daniel McGirr, McGirr Lawyers Pty Ltd dated 29 January 2018** advises that he has known the O'Hara family for 25 years in a professional and non-professional capacity. The writer socialises at the Hotel and submits the Hotel has well trained staff and exercises best practice with respect to compliance. Referring to the Hotel's current community engagement and the proposed financial donations to local organisations the writer submits that grant of an additional "6" (sic) gaming machines has the potential to "touch thousands" in the local community through the work of those organisations.
- **Mr Vic Shipley, Business Manager, Powersmart Electrical Services dated 29 January 2018** states that he has had a business and personal relationship with the O'Hara Group for over 5 years, notes the growth of the Hotel and submits that, should the Application be granted, it will provide further benefits to the Fairfield community and local charities.
- **Mr Joe Rodrigues, Key Account Manager – On Premises, Asahi Premium Beverages (supplier to the Hotel) dated 29 January 2018** provides a submission endorsing the good character of the O'Hara family.
- **Mr James Lipman, Managing Director, B.E Clean (contractor to hotels that form part of the O'Hara Group) dated 29 January 2018** provides a submission endorsing the good character of the O'Hara family.
- **Mr Cameron Davis, General Manager and licensee, Collector Hotel, Parramatta (part of the O'Hara Group) dated 29 January 2018** provides a submission endorsing Mr O'Hara's good character.
- **Ms Danielle Rayner, Director, GSL Solutions dated 29 January 2018** provides a general statement in support of the Application.
- **Mr David Jack, Aristocrat Technologies Australia Pty Limited (supplier of gaming machine services to the Hotel) dated 30 January 2018** notes the proposed increase in gaming machines and confirmed that the voluntary pre-commitment function on the "Aristocrat 7000" system, which is currently operating on the Hotel's gaming machines, would be available for the additional machines, unless the Hotel disabled it.
- **Mr Ricky Raisa, Ricmar Commercial Furniture and Upholstery dated 30 January 2018.** The writer advises that his business has supplied furniture to the O'Hara family for some 11 years, commends the professionalism of the Hotel business and its Green Peppercorn restaurant and submits that granting the Application will result in a significant community benefit.

- **Mr Juana Reinoso, CEO, CORE Community Services dated 30 January 2018** opposes the Application emphasising the large number of gaming machines in the local community and their role in family breakdown.
- **Mr Rory O'Brien, Owner, Arcon Australia (NSW) Pty Ltd (hospitality industry construction business) dated 30 January 2018.** The writer states that he has known the O'Hara family for over 25 years and is personally aware of their upgrading licensed venues in Western Sydney. The writer favourably refers to the Green Peppercorn Restaurant and the Hotel's involvement with local community groups and contends that granting the Application will result in a positive community benefit.
- **Council dated 31 January 2018** in a detailed submission discussed below, supported by economic analysis from Council's consultant Judith Stubbs and Associates, Council opposes the Application on the basis that the social harm has been understated and the benefits overstated in the LIA.
- **Ms Pamela Batkin, Woodville Alliance Ltd dated 31 January 2018** opposes the Application submitting that the Applicant has not demonstrated that a net community benefit flows from the Application and that the proposal will increase community disadvantage and social harm.
- **Ms Kate De Costa and Mr Tony Mohr, Executive Director, Alliance for Gambling Reform dated 31 January 2018** oppose the Application, contending, inter alia, that: Fairfield LGA has 3836 gaming machines across 20 clubs and 18 hotels, which took \$827 million from the community during 2015-16, or \$2.26 million per day - the highest figure for any local council area in Australia. Fairfield LGA has twice as many machines per person than the State average. The LIA underestimates adverse social impact by focussing upon problem gambling but not low and moderate risk gambling, which the writer contends, on the basis of Victorian research from Browne et al (2016), accounts for a majority of harm. The writer submits that the GIS model has come under criticism from the Victorian Regulator and the Victorian Civil and Administrative Tribunal ("VCAT") (quoting commentary from several VCAT cases) and that the empirical gaming machine data has diverged substantially (in both directions) from predictions on expected transfer expenditure derived by the GIS model. The writer submits that the LIA fails to address the relationship between gambling and family violence and the presence of Bureau of Crime Statistics and Research ("BOCSAR") recorded domestic violence hotspots in areas around the venue. The writer refers to the research of Dowling (2014) on the link between gambling problems and family violence and Markham et al (2016) on the association between family violence and gaming machine accessibility. The writer submits that the social harms generated by the proposed new machines will continue for as long as these machines operate at the Hotel and harm should be assessed over a much longer period than the 5 years selected by the Applicant. The writer contends that for every person directly affected by gaming machines there are 5-10 indirectly affected and across NSW there are from 199,200 to 399,400 people affected at any one time. The writer submits that the LIA does not provide a methodology to quantify how the proposed expenditures made by the Hotel will in fact yield *benefit* to the local community at the values claimed and that while some of the proposed harm minimisation costs are voluntary, many of those costs are mandated. The writer submits that no calculation has been made in the LIA of the "known social impacts" of family violence, theft, incarceration, homelessness, ill health and suicide. The writer further submits that Community First Step and White Ribbon have declined proposed donations on social impact grounds and the

Applicant's proposed establishment of a trust is problematic in that the Applicant does not specify how this trust will be administered. There is an apparent conflict posed by the Applicant and a friend of the Applicant from the local Chamber of Commerce sitting on the proposed board of this trust.

- **Ms Ruby Mose (Hotel staff member) undated but received via the Applicant on 31 January 2018** provides a submission emphasising the excess of calculated benefit over detriment in the LIA.
- **Ms Samantha Prom (Hotel staff member), undated but received via the Applicant on 31 January 2018**, supports the Application emphasising the excess of calculated benefit over detriment in the LIA.
- **Mr Bruce Waddington, GIS (Applicant's economic consultant) undated but received on 31 January 2018** summarises the analysis described in the GIS Report above.

### **Council's Submission on the LIA - 31 January 2018**

106. On 31 January 2018 the Authority received a submission in response to the Application and LIA from Council, comprising a 28-page cover submission addressing the merits of the Application, supported by a 38-page report, *Review of Local Impact Assessment*, prepared by Judith Stubbs and Associates ("JSA"), a consultant engaged by Council, dated January 2017 (assumed to be a typographical error and possibly should be dated January 2018) ("JSA Report").
107. In summary, Council oppose the Application and state that its policy is to not support the addition of any more electronic gaming machines into Fairfield LGA, by reason of the current density of machines, the level of gaming machine expenditure and their impact upon the local community.
108. The key points raised by Council in response to the LIA are as follows:
  - Council accepts that the Hotel business owners have redeveloped the Hotel from its previous state since acquiring the business – having upgraded the venue, expanded the 'offer' and are actively engaged in the Chamber of Commerce and community events.
  - The Hotel returns the fifth highest average return per gaming machine in NSW and Fairfield LGA has the highest average net profit in NSW at \$280,732 per machine in June 2017. This is despite Sydney LGA and the merged Councils of Canterbury and Bankstown both having larger overall profit and higher number of machines.
  - Even with increased population and a constant number of gaming machines in Fairfield, the density of gaming machines in Fairfield will be significantly higher than the rest of NSW.
  - Council does not consider that the proposal for seven additional machines at the Hotel will result in an overall positive impact on the community by reason of the Applicant: underestimating the harm that the additional machines will cause in the local community; overestimating the level of community benefit from the proposal specified in the LIA; not adjusting the expected income from the additional gaming machines over time; not adjusting the value of the proposed community donations over time; not acknowledging the issues raised by the CEO of Community First Step during the pre-Application consultation period.
  - Council accepts that the Applicant has increased their offer in respect of community benefit compared to its previous application to increase the GMT threshold made by the Applicant
  - Council accepts that the Applicant's business is engaged with the local community and has hosted Chamber of Commerce events

- The claim that only 12.9% of the expected expenditure on the gaming machines will be “new to industry” is not supported by data.
- The LIA relies on proposed expenditure by the Hotel on harm minimisation strategies that have either already been undertaken (and therefore not related to the approval of the GMT increase) or actions that have not been proven to result in any community benefit.
- The proposed voluntary pre-commitment scheme for the gaming machines is *already in place* at the Hotel, but the Applicant has advised at a community consultation meeting that, as of the time of that meeting (November 2017), *no patron had utilised this service*. While Council supports such schemes, the efficacy of *voluntary* schemes has been criticised at Chapter 10 of the PC Report.
- At Chapter 12 of the PC Report, the Commission found that responsible gambling training for venue staff is of only limited effectiveness. Council submits that the proposed four additional full time Hotel staff do not constitute an actual benefit to the community.
- Council contests the estimate provided by GIS on the level of additional expenditure that the 7 additional machines may be expected to derive at this venue. Council also contests GIS’ estimate of the proportion of that additional expenditure that will be *transferred from other venues* in the community, as distinct from revenue that is new to the industry. The Applicant’s contention that the additional 7 machines will not derive the same level of profit per machine as that currently derived by the Hotel’s existing machines is not supported by comparable data pertaining to venues that have introduced additional gaming machines.
- The LIA has not correctly identified the community facilities, including schools, in the “immediate area” of the venue.
- The Applicant has minimised the social disadvantage in the area immediately surrounding the Hotel, through the use of LGA- wide statistics; has not referenced the level of malicious damage and assault recorded in the immediate vicinity of the Hotel; and has under stated the level of domestic violence occurring in the suburb of Fairfield. Each of these matters are relevant to the relative risk profile of the community with respect to potential gambling harm.
- The Applicant has overstated the benefits to the community in the proposal specified in the LIA through its reliance upon the size of proposed charitable donations and the retention of donations in 2016 dollar amounts in its projections, with no adjustment for consumer price index impacts on the present day value of money over 5 years.
- The Applicant has included certain calculations on expenditure that cannot be claimed as benefits that will flow from the grant of this Application.
- On the proposed transfer of gaming machine entitlements from another Band 3 Area, Council accepts that there would be an overall decrease in the number of gaming machines across NSW but there would be an increase in gaming machine expenditure at this Hotel. This would increase payment of gaming tax at this Hotel but would increase the detriment to the community of Fairfield LGA.

109. With respect to the Hotel’s proposed harm minimisation measures, Council makes the following contentions:

- On the proposed \$25,000.00 commitment to the installation of voluntary pre-commitment technology, since these measures are already installed and no one was using them as of November 2017, it is difficult for the Applicant to claim this as an actual community benefit or effective harm minimisation strategy.
- On the proposed \$2,500.00 p.a. over 5 years for the training of new staff, Council submits that induction and training of staff who work in the gaming room is a requirement of the legislation, not an additional benefit.
- On the stated \$3,250.00 cost of a plasma screen TV with harm minimisation messages, this cost has *already been incurred* and the Applicant does not provide samples of the proposed messages to assess their utility.

- On the proposed \$60,000.00 to be spent on half page advertisements in the local print media over 5 years, these are essentially *advertisements for the licensed business*. Samples have not been provided to assess their content.
- On the proposed \$10,000.00 to be spent on letterbox leaflet drops over 5 years, these are also essentially advertisements for the licensed business. Samples have not been provided to assess their content.
- On the \$14,000.00 to be spent on external billboards with harm minimisation messages, this expenditure has already been incurred and will not be a consequence of granting the Application.
- On the proposed \$12,000.00 for local billboards at the Fairfield PCYC, this proposal will require development consent and while the content is unknown, they could also amount to an advertisement for the Hotel.
- On the proposed \$300,000.00 contribution to the RGF over 5 years, there is no legal requirement for the RGF to devote these funds to any particular use within the local community.
- On the proposed \$1000.00 to be spent on additional clocks in the Hotel, these are basic harm minimisation requirements that are consistent with the Applicant's responsible gambling obligations. Any provision of clocks above the minimum standard "should be expected" from a venue that claims to have a high established standard of harm minimisation and not contingent upon the approval of the GMT increase.
- On the proposed \$15,000.00 in RCG training for existing staff over 5 years, this reflects a minimum requirement of the legislation and is "unlikely" to be linked to the approval of the GMT increase.
- On the proposed \$5000.00 spent on gambling help cards in the toilets over 5 years, this should be considered a normal practice for venues that have a high stated commitment to the reduction of harm and should not be linked to approval of the GMT increase.
- On the proposed \$1500.00 for additional harm minimisation signage at the Hotel entrance over 5 years, this is also "unlikely" to be linked to approval of the GMT increase.
- On the proposed \$500 cost of imposing the Gambling Help logo on the Hotel's website, the claimed cost for this simple action is "inflated".
- On the claimed \$125,000.00 cost to management and staff of *implementing* harm minimisation measures over 5 years, this is part of the ongoing responsibilities of the licensee. The cost of observing these requirements is not the same as an additional community benefit.
- On the proposed \$15,000.00 for a chartered accountant to report annually to the Authority over 5 years on the above initiatives, while this will be a cost to the Applicant, reporting to regulators is not the same as an actual community benefit.

110. By reason of the complexity of gaming machine expenditure projections relied upon by the Applicant, Council have engaged its own consultant, JSA who provided the JSA Report. Briefly, the consultant makes the following contentions in response to the Applicant's estimate of social cost:

- The Applicant's contention that 74% of the expected expenditure on the new machines will be transferred from other venues is not supported by empirical evidence identified by JSA from selected western Sydney NSW LGAs (Fairfield, Holroyd, Parramatta, Bankstown and Liverpool) for 2012-2016. On JSA's analysis, increases in gaming machine numbers are *associated with increases in gaming machine expenditures* recorded in those areas, even when adjusted for population increase and inflation. JSA contend that there was an overall increase in gaming machine takings in the Fairfield LGA between 2012 and 2016 of 11%.
- Gaming machine research supports the proposition that, after some period of time (in the order of two years), an *initial depression of gaming machine expenditure* following an increase in the number of gaming machines is *followed by a recovery* in expenditure, and takings per machine

for a venue will return, at a minimum, to the level of pre-increase takings. JSA submit that there is no evidence to support the conclusions advanced in the LIA as to a significant portion of transferred expenditure in takings from the new machines and a reduced level of takings from new machines compared to existing machines.

- The GIS Retail Gravity Model is not suitable for measuring a good like gambling, where the ability to consume is *limited only by the availability of money* to gamble and consumption of the good can be subject to a form of *psychological addiction*.
- The method set out in the LIA to calculate the level of expected new versus transferred expenditure leads to the “illogical” conclusion that new demand can be generated in an area where all demand is currently met.
- Furthermore, despite extensive discussion of the GIS model in the LIA, the *gaming gravity model is not actually used* in the calculation of gaming machine expenditure or transferred expenditure discussed in this LIA. Rather, the Applicant *appears to use his own model* with no detail on or support for the assumptions and the underlying rationale of the model.
- The basis of the Applicant’s *estimate of increased expenditure from the proposed new machines* is questionable in that:
  - the sample used to derive the estimate is too small to have confidence in the results, due to the low level of statistical reliability;
  - the results of the data analysis are at odds with the empirical data for NSW;
  - the estimate of increased expenditure does not include the ramp up of takings over time that is evident from the empirical data;
  - the data may suffer from selection bias and
  - the data is from Victoria and reflects a different regulatory context.
- JSA submit that the method of calculating both expected takings per new machine and the proportion of expected transferred expenditure is “convoluted” and there appear to be “errors of calculation”.
- The Applicant’s estimate of gaming machine expenditure has not been adjusted for inflation.

111. JSA make the following further contentions, as summarised in the Executive Summary, regarding the Applicant’s approach to calculating positive community benefit:

- The Applicant’s proposals to incur business costs on harm minimisation and responsible gambling measures are likely to include measures that are *already implemented*, which should not be claimed as an additional benefit flowing from the grant of the Application.
- Business *costs* are not the same as a community *benefit*. The Applicant needs to demonstrate *positive outcomes* from any measures that are claimed as a cost to the business. The extent of community benefits should be quantified for any benefit to be claimed. There is limited evidence in the literature supporting the efficacy of most of the proposed harm minimisation measures that are claimed as community benefits.
- The Applicant uses a five-year time period for assessing overall community benefit rather than the effective life of the machines that will be permitted by granting the Application.
- The Applicant’s approach involves a “simple summation” of contended benefits, rather than using a discount cash flow analysis, which is at odds with best practice, as set out in the

Treasury policy and guidelines paper *NSW Government Guide to Cost-Benefit Analysis* dated March 2017.

112. On JSA's analysis, the expected increased gaming machine expenditure to be derived from the operation of these 7 additional gaming machines should be assessed by reference to a range that runs from *the average takings per gaming machine across this LGA* (at the lower bound) and the *average takings per machine at this venue* (at the upper bound). In accordance with best practice for cost-benefit analyses in NSW, JSA contend that gaming machine expenditure should be *converted to a Net Present Value* and assessed over a *period of 20 years*.
113. JSA submit that the cost of problem gamblers at the Hotel is taken as 40% of the gaming machine expenditure *plus* the social cost of problem gambling as estimated by the Productivity Commission.
114. JSA estimate that the total additional problem gambling expenditure impact upon the local community, over twenty years, is in a range from **\$4,202,000.00** to **\$10,673,000.00**.
115. On JSA's view, the proposed benefit to the community should be confined to the Applicant's charitable donations only – which amount to **\$2,666,000.00**. This means that there will be *no overall positive benefit* to the community, because the *costs will exceed the benefits* in a range from \$1,536,000.00 to \$8,007,000.00.
116. Alternatively, JSA assess the costs and benefits on an annual basis and submit that the *annual negative economic impact to the community* will range from \$428,000.00 to \$1,084,000.00.
117. On their analysis, the *benefit* to the community is the *value of donations annualised at 7%* or \$187,000.00. The estimated annual costs will exceed the benefits from between \$241,000.00 and \$897,000.00.
118. Council make several observations in response to the submission from the Applicant's compliance consultant, Leigh Barrett and Associates. First, the PC Report refers with approval to the Victorian Government's *Problem Gambling Community Awareness and Education Strategy* (2009), which identifies groups who are at risk of developing a gambling problem as including:
  - persons with health issues (such as mental health and co-morbid conditions);
  - persons who are socio economically vulnerable;
  - persons who are socially isolated;
  - persons who have intellectual and cognitive impairments;
  - persons of Aboriginal and Torres Strait Islander or CALD backgrounds;
  - persons who are seniors;
  - persons on community services or corrective orders
  - persons who are young.
119. Council also refers to the most recent *Household, Income and Labour Dynamics in Australia* survey (2017) indicating that older people are vulnerable to problems with gambling, but

gambling is a risk for numerous social groups whether defined by age, cultural background, low income or disadvantage.

120. Council disputes the Applicant's submission that, of the 60 persons who responded to questions about their age, 75% were over 35 and this is significant because research shows that an older age profile is a "strongly mitigating" factor in relation to problem gambling. Council notes that in making this statement the LIA itself refers to gambling research prepared by Ogilvy Illumination in their April 2012 report titled *Prevalence of Gambling and Problem Gambling in New South Wales* ("2012 Ogilvy Report"). Council states that this is an "interesting conclusion" for the Applicant to make in the LIA seeing as the Abstract to the 2012 Ogilvy Report states that problem gamblers were "significantly more likely to be male, younger (18-24 years and 35-54 years), be single, be divorced/separated/widowed, unemployed, have low educational attainment and be a regular gambler on gaming machines".
121. Council also takes issue with the treatment of domestic violence in the LIA, referring to the relationship between gaming machine accessibility and domestic violence rates identified in the Victorian research of Markham et al (2016). Postcodes with no machines were associated with 20% fewer family violence incidents per 10,000 person and 30% fewer family violence assaults, when compared with postcodes with 75 gaming machines per 10,000 persons. Council contends that a large part of the Fairfield suburb is a domestic violence hotspot (according to BOCSAR crime data). While domestic violence rates across the Fairfield LGA were lower than State-wide rates in the year to June 2017, they were higher within the State suburb of Fairfield in which the venue is located.
122. Furthermore, Council notes the *extended licensed hours* of the Hotel and identifies the interaction between gambling and extended trading hours, noting the observation at page 14.29 of the PC Report that: "moderate risk and problem gamblers are over-represented among players of gaming machines after midnight". Council further notes the conclusion at page 14.35 of the PC Report that:
- "The Commission considers there is satisfactory evidence to support modifying requirements for **mandatory shutdowns of gaming machines** in clubs and hotels to improve their effectiveness in addressing gambling harms. In particular, shutdowns should involve a more extended period (at least six hours) and commence much earlier than now applies (no later than 2 am)".*
123. Council disputes Mr Barrett's observation that the Hotel is located "adjacent" to the Fairfield Town Centre rather than in the Town Centre. Council submits that this venue is located at the end of The Crescent, about 300 metres from Fairfield Railway Station, or a four-minute walk away. Council contends that this street is busy by day, with a range of community services nearby and a range of "well patronised" restaurants and cafes located on The Crescent that trade into the evening. The Hotel enjoys "excellent visibility" from The Crescent, is situated "adjacent" to a school for young people and children at risk, "next door" to an employment and training centre, only 400 metres away from a Department of Corrections office with parole officers and some 240 metres away from Medicare and Centrelink offices. Council rejects Mr Barrett's contention that it is "highly unlikely" that this Hotel would attract "impulse" gamblers by reason of its location.

124. Council submits that the socio demographic data for the Fairfield LGA regarding unemployment, relationship status and educational attainment are risk factors for problem gambling, with the community comparing unfavourably with NSW as a whole.
125. Council contends that the prevailing very high levels of gaming machine expenditure is a factor that of itself demonstrates relative vulnerability among this local community to adverse gambling impacts. Expenditure per adult is three times the NSW average and expenditure per EGM is twice the NSW average. Council refers to LGNSW data for the 12 months to June 2017 which records that average profit (which the Authority notes means all revenue less payouts) was **\$393,812.72** per hotel-based gaming machine in the Fairfield LGA. Council submits that this elevated expenditure occurs in a local government area that is the most disadvantaged in the Sydney Metropolitan Area and the third most disadvantaged in New South Wales.
126. Council refers to the gambling prevalence study of Sprosten et al (2012) (which is the 2012 Ogilvy Report) on the association between problem gambling and a person who is single (2.6 times the risk of problem gambling than married); having a sub -Year 10 education level (2.7 times the risk than persons with higher levels of education) and being unemployed (2.5 times the risk than person who are employed) as a relative risk factor given the prevalence of persons in those categories in this community.
127. Finally, referring to the research of Goodwin et al (2017), Council estimates that the number of people directly affected by gambling harm in the Fairfield LGA is 20,000, with an additional 41,114 indirectly affected.

**Applicant Change to Proposed Community Benefit / Further Submissions – 17 March 2018**

128. Following completion of the 30 days post application consultation period contemplated by clause 41 of the Regulation, extended by the Authority to 31 January 2018, the Applicant was granted an extension of time to respond. The Applicant provided a legal submission comprising three parts from Hatzis Cusack solicitors dated 19 March 2018 attaching the additional material listed below.
129. In its legal submission, the Applicant advises of a departure from its proposal to provide an overall benefit for the local community that was specified in the LIA, by reason that two community organisations (Fairfield PCYC and White Ribbon) have withdrawn their acceptance of the proposed cash donations should the Application be approved.
130. The Applicant now proposes the following “adjusted” program of charitable donations, should the Application be granted:

<b>Organisation</b>	<b>Proposal Specified in LIA</b>	<b>“Adjusted” Proposal as at 19 March 2018</b>
Fairfield PCYC	\$1,000,000.00	NIL
Fairfield Hospital Children’s Ward	\$503,000.00	\$1,500,000.00
White Ribbon	\$50,000.00	NIL
Assyrian Resource Centre	\$100,000.00	\$1,150,000.00

Assyrian Resource Centre (use of Hotel function room)	\$13,000.00	\$13,000.00
Employment of staff from Fairfield LGA residents, with preference given to newly arrived migrants	\$1,000,000.00	\$1,000,000.00
<b>Total</b>	<b>\$2,666,000.00</b>	<b>\$3,663,000.00</b>

131. The Applicant reiterates the proposed cost of harm minimisation measures for the Hotel, which he values at **\$724,750.00** and contends that the cost of “preventing dis-benefits” is as good as providing direct benefits through charitable donations.
132. The Applicant contends that the value of these harm reduction measures is far more substantial than the quantum of new to industry problem gambling revenue that the Hotel will derive from the 7 new machines, as assessed by Mr Bruce Waddington at GIS – whereby the machines are expected to attract incremental revenue of **\$243,000.00** per annum or **\$1,215,000.00** over a five-year period.
133. In summary, the Applicant’s key contentions in the legal submission are as follows:
- The latest ABS demographic data (from the 2016 Census) establishes that the Fairfield LGA is in the lowest decile on the Index of Relative Socio-Economic Advantage and Disadvantage.
  - Those who oppose the Application, including Council, make much of the relative disadvantage of the local community, combined with relatively high gaming machine density and expenditure.
  - However, the Applicant contends that the empirical data apparent from the 2012 Ogilvy Report, indicated *relatively low levels* of problem gambling in the “South-West Sydney” Region (0.3% compared to a State average of 0.8%).
  - Furthermore, on the basis of the last published data sets for 2014/15, neither Fairfield Suburb, nor Fairfield East, Fairfield West or Fairfield Heights has appeared on the lists of *most prevalent suburbs* for place of residence of those problem gamblers receiving treatment from RGF funded facilities – except during 2010/11 when Fairfield ranked 17<sup>th</sup>.
  - Analysis from the Applicant’s planning consultant, Mr George Smith, indicates that Fairfield LGA is characterised by a large number of migrants, and the first place of arrival for many humanitarian migrants and this explains the relative disadvantage.
  - Mr Smith contends that around 20% of the population of Fairfield Suburb are of Assyrian background, whose community organisations encourage social cohesion and kinship among that group.
  - Mr Smith submits that there is research indicating that persons of CALD backgrounds are at *no greater risk of problem gambling* and this is likely to be a “protective” factor.
  - Mr Smith notes that the Hotel’s patron profile indicates that the patrons are skewed towards an “older” demographic. The Ogilvy Report suggests lower problem gambling prevalence in older than younger age groups.
  - Mr Smith attributes the higher gaming machine expenditure in Fairfield LGA to the presence of a large number of clubs that draw persons from outside the LGA and the dearth of other entertainment options in the LGA which turn people to hotels and clubs, including gaming machine play.
  - Mr Smith also contends there is an under provision of hotels and clubs in Fairfield LGA and this drives higher gaming machine expenditure at the venues.
  - The Applicant submits that the “popularity” of “recreational gambling” in Fairfield LGA means there will also be greater positive benefits of the kind recognised by the Productivity Commission by way of pleasure for gamblers, employment, infrastructure and revenue.

- There is some academic literature that supports the proposition that communities with high density of gaming machines adapt to their presence.

134. The Applicant makes the following further submissions in reply to the Fairfield Council response to the LIA:

- Council's policy of no further machines is at odds with the legislation;
- Band 3 designation of the LGA does not prevent an increase in GMT;
- Council accepts that this Hotel engages with the local community;
- low SEIFA scores, high gaming machine density and expenditure do not disqualify the Applicant from increasing its GMT;
- Council's projection of a "linear" increase in gaming machine expenditure is contested in Mr Waddington's submission in reply;
- Council's proposed use of a 20-year timeframe, based upon State Government policy, is inappropriate in this context;
- The Authority's previous use of a 5-year timeframe should apply;
- Mr Barrett's assessment of this venue's accessibility should be preferred, the location of the venue in Fairfield and its proximity to social services and other sensitive sites should not disqualify a GMT increase;
- The 2012 Ogilvy Report indicates that problem gambling in the south western region is lower than NSW wide rates. The "older" demographic of Hotel patrons suggests a protective factor against problem gambling;
- The Applicant reiterates analysis from its consultant, Mr Smith, on socio-demographic data;
- On the question of machine density, there are 56 fewer gaming machines in the LGA than in 2006 and the high utilisation of gaming machines may be a function of the existing supply not servicing demand from recreational gamblers;
- There is anecdotal evidence of the Hotel patrons facing "difficulty" accessing machines on the premises;
- The PC Report noted a reduction in problem gambling rates from the 1990s to 2009;
- There is some research (Abbott, 2006) indicating that, at a certain point, the relationship between problem gambling and availability may break down, where communities have adapted to the presence of gaming machines. Fairfield LGA is likely to have "adapted" to gaming machines;
- It is unsafe for Council to refer to the Victorian "Browne" model that links low, moderate and problem gambling to "years lost" due to "disability", in that this is a "theoretical construct" that runs contrary to accepted medical notions of "disability" and common experience. The Applicant contends that many "low risk" gamblers enjoy recreational gambling with few, if any, problems;
- On the relationship between problem gambling and domestic violence, the Applicant submits that BOCSAR data shows a decline in domestic violence rates in the Fairfield LGA and Fairfield suburb from 2013 to 2017, and the presence of hotspots for domestic violence in Fairfield suburb does not mean that the population of that suburb is of any greater risk of domestic assault;
- On the relationship between gaming machine accessibility and domestic violence, the Victorian research from 2016 is of limited application to Fairfield LGA because that area has experienced only (NSW) average levels of assault;
- Fairfield LGA and the suburb have lower than State average rates of malicious damage, to the extent that Council relies on this crime factor;
- The Applicant does not propose to source gaming machine entitlements from the O'Hara Group owned Berkeley and will source them on the open market on conditions that they be sourced from a Band 3 LGA;

- Council has overstated the average profit per gaming machine in the Fairfield LGA. LGNSW data from the fourth quarter of 2017 shows average profit was \$289,322.00, not close to \$400,000.00 as suggested in Council's submission.
135. On the issue of harm minimisation, the Applicant reiterates that this venue will have harm minimisation measures “over and above” those required by the legislation, including voluntary pre-commitment technology in its gaming machines. He contends that the “small” size of the Hotel, relatively high patron to staff ratio and location of the Hotel away from any “ant trail” are protective factors for this venue from being patronised by problem gamblers.
136. The Applicant concludes that its harm minimisation measures are best practice, in furtherance of the statutory object in section 3(1)(a) to minimise harm associated with the abuse of gambling and section 3(1)(b) to foster responsible conduct in relation to gambling. Enabling greater choice of machines for recreational gamblers will advance the balanced development, in the public interest, of the industry per section 3(1)(c) of the Act. This development will facilitate four new full-time jobs for the community. Furthermore, by sourcing the gaming machine entitlements to operate the proposed new machines from other Band 3 statistical areas, this will ensure forfeiture of machines from other higher impact areas in NSW.
137. The Applicant also proposes a list of conditions to which approval of the LIA may be subject, including:
- a requirement that any gaming machine entitlements to operate the new machines facilitated through the GMT increase is to be sourced from only Band 3 statistical areas and not involve the forfeiture of gaming machine entitlements upon transfer;
  - specified deadlines for the payment of the proposed community donations and confirmation of such to the Authority;
  - specified time period in which the proposed 4 additional staff will be employed; and
  - specified timeframe for the provision of an auditor's report confirming the Hotel's compliance with the Applicant's amended proposal for community benefit.
138. The Hatzis Cusack submissions were accompanied by the following supporting material:
- Further legal submissions distinguishing the present Application from the previous application that was the subject of the 2013 Fairfield Hotel Decision
  - The Authority's 2013 Fairfield Hotel Decision
  - A further submission from Mr Bruce Waddington, GIS, in reply to the JSA Report dated 20 February 2018 (“Second GIS Report”) including a copy of Mr Waddington's document titled “Using Retail Gravity Theory to Model Gaming Venue Expenditure and Transfer in Victoria, Model Upgrade 2013/14 – An Overview of Background, Methods and Results” dated June 2014.
  - Submission in relation to the LIA (and responding to submissions) from the Applicant's consultant, Mr George Smith, dated March 2018 on socio-demographic information pertaining to Fairfield LGA, contentions regarding the high presence of migrants, contentions on whether additional machines will mean increased expenditure, the location of the hotel, relative risks posed by the local community, comparisons to state wide data, gambling by seniors, domestic violence and rental stress.
  - Copy of (undated) Constitution from Kids of Cumberland Health Foundation Ltd (Fairfield Children's Hospital) under a letter from the Foundation dated 12 March 2018.

- Supplementary statement of Mr Leigh Barrett of Leigh Barrett and Associates Pty Ltd dated 8 March 2018 providing a response to Council’s submission.
- Information about the services provided by Warakirri College from its website.
- 22 letters from various Hotel gaming machine users dated either 15 or 21 February 2018, provided under a statutory declaration from Darcy Plowman, Paralegal at Hatzis Cusack Lawyers, dated 13 March 2018. The letters very briefly describing each person’s attendance at the venue and use of gaming machines. They all make positive statements about the hotel, with some complaining of difficulties accessing machines when they attend.
- Results of a survey conducted on average gaming machine play occupancy at the Fairfield Hotel over 3 weeks from Wednesday the 7<sup>th</sup> February to Wednesday 28<sup>th</sup> February 2018 provided under an unsigned and undated statutory declaration from Mr O’Hara.
- Letter from Ms Carmen Lazar, Assyrian Australian Association dated 26 February 2018 discussing the community benefit offered to the resource centre.
- Letter from Hatzis Cusack Lawyers to the CEO of CORE Community Services dated 6 February 2018 requesting copies of information that verifies a statement made in their submission dated 25 January 2018.
- Submission from Ms Juana Reinoso, CEO, CORE Community Services dated 21 February 2018 responding to Mr Hatzis’ letter dated 6 February 2018.
- Australian Medical Association Position Statement dated 2013 on “The Health Effects of Problem Gambling”.

#### **Advice from Authority on Proposed Changes to the LIA Proposal – May to August 2018**

139. On 23 May 2018 the licensing case manager with carriage of the Application, Mr Charles Rivers, sent an email to the Applicant via Hatzis Cusack lawyers noting the change in the Applicant’s proposal advised in the Applicant’s submission dated 17 March 2018.
140. Mr Rivers advised that the Authority’s preliminary view was that it was not open to the Authority to consider the Applicant’s significant and substantive amendments to the LIA because the local community has not had the opportunity to consider those amendments. The Authority proposes to restrict its consideration of the positive social and economic impacts to those relied upon by the Applicant in the LIA that accompanied the Application. The Authority will only consider the Applicant’s further submissions, received with Hatzis Cusack’s letter dated 19 March 2018, to the extent that they respond to matters raised by the local community during consultation.
141. The Applicant responded via Hatzis Cusack lawyers in a letter dated 7 June 2018. In summary, the Applicant submits that:
- The Applicant “has not amended” its LIA lodged in November 2017
  - The LIA speaks at a particular date – that is, the date the Application is made
  - Under the legislative scheme, after an application is made, “any person” may make a submission to the Authority about the threshold increase and LIA
  - It is clear from section 36 of the Act that the Authority has a very wide discretion to ultimately approve an application, which may be partly approved or granted on conditions
  - Section 36(3)(d)(iii) requires that an LIA has adequately addressed any community concerns arising out of the consultation process under the Regulations. Given that the LIA must accompany the Application at the time of lodgement, this requirement must refer to pre lodgement consultation under clause 37(2) of the Regulation, not the post lodgement consultation under clause 41.
  - The Authority must decide whether the proposed increase in the GMT will result in an “overall positive impact” for the local community. This language indicates that the Authority is not

constrained to the costs or benefits known at the point of lodgement but the costs and benefits that may arise from the exercise of the Authority's ultimate decision making power to grant the application.

- The Applicant refers to 7 previous cases (the Authority notes all concerning class 1 LIA matters) where the final decision made by the Authority required a different form or quantum of community benefit to that initially proposed by the Applicant.

142. On 23 August 2018, Mr Rivers, sent another email to the Applicant's solicitor responding to the Applicant's submissions dated 17 March 2018 and 7 June 2018 in respect of the Applicant's changes to the initially proposed community benefit:

*Dear Mr Hatzis*

*I refer to my email sent on 14 August 2018 (copy below) and confirm that the Authority considered your client's application to increase the gaming machine threshold that applies to the Fairfield Hotel ("the Application") at its meeting on 15 August 2018.*

*The Authority is of the view that, when considering whether to approve a class 2 LIA under s. 36(3)(d) of the Gaming Machines Act 2001, it is not open to it to take into account any substantive additional or different benefits to the local community proposed by the applicant in response to community concerns arising out of the consultation process.*

*The Authority considers that it may only consider the social and economic impacts specified in the LIA that accompanies the application.*

*Accordingly, in the context of the Application, the Authority considers that it is not open to it to consider the substantial restructure of payments to local charitable causes proposed in the Applicant's submissions dated 19 March 2018.*

*In light of the above, the Authority invites the Applicant to provide any further submissions that he wishes to make, confined to addressing the community concerns raised about the social and economic impacts proposed in the LIA that accompanied the Application. The Authority requests that the further submissions be provided within 21 days.*

*As matters presently stand, the Authority intends to determine the merits of the Application at its Board meeting on 17 October 2018.*

*Please don't hesitate to contact me if you have any further questions.*

143. On 13 September 2018 Hatzis Cusack responded with a four-page submission on behalf of the Applicant. In summary, the key points were:

- For the reasons set out in their letter dated 7 June 2018, the Authority is obliged to consider, assess and weigh the full range of benefits and "dis-benefits" likely to flow from the exercise of the Authority's discretion to grant the Application. The Authority is not limited to considering, assessing and weighing only those benefits and dis-benefits known and specified at an early, fixed, point in the community consultation process.
- Even if the Authority were to confine itself to a consideration of the benefits and dis-benefits that were specified in the LIA, the likely quantifiable and unquantifiable benefits from granting the threshold application still well outweigh the likely costs and dis-benefits of granting the threshold application; such that the Authority would approve the LIA and would grant the threshold application now before it.

144. The Applicant submits that there have been no new or additional recipients of funds from those outlined in the LIA. All that has happened is that some proposed recipients (who are engaged in highly worthwhile community causes) will receive more funds than was otherwise anticipated in the LIA, because some other recipients elected not to accept contributions. The funds that were to be provided to one recipient (White Ribbon) were to be applied in domestic violence services in the local community but have since been re-allocated to the Assyrian Resource Centre, which has agreed to expend those funds for the very same purpose.
145. The Applicant contends that whilst \$1 million has been re-allocated from the Fairfield PCYC to the Fairfield Hospital, there can be no question that the re-allocated sum of \$1 million will provide a highly worthwhile community benefit which is supported by an article dated 12 March 2018 published online in the Sydney Morning Herald titled "*Fairfield Hospital nurses 'understaffed' the night baby died, inquest hears*" which Mr Hatzis has attached to this submission. Mr Hatzis contends that this evidences the need for more paediatric and obstetric services at Fairfield Hospital.
146. The Applicant refers to their previous submissions on findings in the PC Report and submits that at a societal level, gaming machine gambling provides a net positive social and economic benefit because gaming machines provide a substantial "consumer surplus", representing the utility or enjoyment that gaming machine gamblers derive from engaging in this activity in a responsible manner.
147. The Applicant contends that the objective evidence suggests that the social and economic benefits of recreational gambling are "even more pronounced" in Fairfield LGA by reason of the high gaming machine spends, a dearth of other entertainment options and a demonstrably low prevalence rate of problem gambling, in a community which shows strong signs of a cohesive social fabric. When drilling down to the Hotel, there is evidence of survey counts showing that gaming machines are popular and well-used. Before the Authority are letters from 22 gaming patrons of the Hotel speaking of their particular enjoyment of recreational gambling and of their desire for a greater degree of gaming machine choice at this Hotel. Hatzis submits that this evidence suggests that the unquantifiable benefits of recreational gambling will be particularly pronounced in this local community and will be particularly enjoyed by patrons of this local Hotel.
148. Mr Hatzis contends that on the other hand, the objective evidence suggests that any unquantifiable detriments which may flow (over and above the quantifiable losses incurred by problem gamblers) are likely to be ameliorated and mitigated substantially by the "best practice" harm minimisation measures adopted by the Hotel and referred to by Mr Leigh Barrett in his report filed with their earlier submission.
149. Mr Hatzis concludes by reiterating that the statutory scheme requires the Authority to consider, assess and weigh all of the likely benefits and detriments from granting the Application, including benefits in the form of community donations, which are higher than the amounts initially specified in the LIA. He submits that the correct and preferable conclusion, in all of the circumstances of the case, is that the proposed increase in the gaming machine threshold for the Hotel will have an overall positive impact on the local community where the Hotel is situated.

## The BIS Oxford Report – 24 January 2019

150. The Authority gave preliminary consideration to the merits of the Application at its meeting of 17 October 2018. In light of the Applicant's departure from the Authority's previous approach to quantifying social detriment and the considerable divergence in analysis between the experts engaged by the Applicant and Council, the Authority considered it appropriate to seek independent economic advice on those analyses and assessment of whether the Applicant's proposal amounts to an overall social benefit for the Fairfield LGA.
151. On 6 December 2018 the Authority engaged BIS Oxford Economics ("BIS") to critically appraise the approaches taken by the Applicant and JSA to the assessment of overall positive benefit to the community and to advise on its recommended approach to performing that assessment. BIS delivered its advice in a report provided to the Authority on 24 January 2019 ("BIS Report").
152. The Authority notes, for the sake of completeness, that on 19 February 2019 an updated version of the BIS Report with calculations reflecting the latest LGNSW gaming machine data was provided to the Authority Secretariat. However, since the Authority Secretariat had consulted with the Applicant and Council on the original edition of the Report, this revised edition was not placed before the Authority when it determined the Application.

### *Issues and challenges in measuring net detriment*

153. BIS identify a number of challenges that arise when measuring net detriment. BIS outline that any net detriment test needs to be devised such that an applicant has the potential to demonstrate that the expected value of the benefits they propose would exceed the expected costs of their expanded operation. The BIS report states that:
- For most people who participate, gambling is a recreational activity for which the benefits outweigh the costs and the industry creates significant consumer surplus. However, for some gamblers there is an irrational compulsion to gamble which results in substantially larger expenditures – and losses – than those experienced by recreational gamblers.
  - The Productivity Commission found that the consumer surplus experienced by problem gamblers was comparable to that experienced by recreational gamblers. The difference in the expenditure levels between the two cohorts therefore represented a financial cost as the problem gamblers were assumed not to obtain full value for money for the excess spending.
  - In its 1999 inquiry into Australia's Gambling Industries ("1999 PC Report"), the Productivity Commission estimated that the share of expenditure by problem gamblers on gaming machines at any given venue ranged from 22% to 60%.
  - In the 2010 PC Report, the Commission found no evidence that the share of problem gambling expenditure on gaming machines had fallen but, in its estimation, the Commission opted for a "conservative" estimate of 25%. BIS note that the expenditure value itself is an overestimation of the cost, since the estimated expenditure of a recreational gambler should be netted out.
  - In addition to this *financial cost* identified by the Commission, the experience of potential gamblers also carries *social costs* - primarily relating to the impact upon their health and productivity, and that of their families, as well as any crime and legal costs associated with their gambling. The (2008-09) estimate for the range of annual social costs attributable to a problem gambler ranged from \$10,000 to \$30,000. These costs are estimated on an annual rather than a lifetime basis. Adjusting for movements in consumer price index and real household disposable income provides an estimate of \$12,370 to \$37,109 in 2015-16 prices.
  - The Productivity Commission acknowledged that there were likely to be additional costs associated with moderate gamblers – both in terms of financial losses and social costs. The

problems associated with gambling run along a continuum, but there is considerably less confidence with respect to the estimated costs for moderate and 'at risk' gamblers.

- BIS note that although the Productivity Commission estimates have limitations, they are generally considered to represent the most comprehensive estimates of the prevalence and costs and benefits of gambling activities within Australia.
- The PC Report has examined the potential benefits of some harm minimisation programs including voluntary pre-commitment on gaming machines, advertising the risks and avenues for seeking help, and the provision of counselling. BIS note that while it was expected that these measures would likely reduce the costs of problem gamblers, the extent to which this would impact on the financial and/or social losses of problem gamblers, or the prevalence of problem gamblers, was not estimated.
- BIS observe that the *choice of share* used for problem gamblers could potentially decide whether an application meets the "no net detriment" test. It is therefore important to be consistent and transparent in the approach used.
- Some of the studies referenced in the Productivity Commission's inquiry found strong apparent links between accessibility across regions and harm (and between accessibility and gaming expenditure), with even small changes to already high levels of accessibility apparently still having effects. However, the Commission noted that these findings probably reflected the difficulties in distinguishing between the relative strengths of the two causal links between accessibility and harm: on the one hand, greater accessibility stimulates demand, with the result that some gamblers are exposed to risks that were originally muted or not present; on the other hand, a population that already includes problem gamblers will be typified by higher expenditure levels, encouraging greater supply of gaming machines in those areas. In that case, reducing accessibility in that area will result in greater utilisation of existing machines or shifts in the location of demand, without reducing harm.
- The Productivity Commission concluded that both effects are likely to be present, and their relative size will depend on the pre-existing level of accessibility and the nature of the host communities. They suggested that 'It is likely that the second effect is dominant once accessibility rises above a certain threshold.'
- If an applicant's economic assessment argues that the market is largely saturated and the revenue from the additional gaming machines would primarily come from transfers from other machines within the venue, or from machines in competing venues, then this implies a low level of 'new' gaming expenditure and therefore 'new problem gaming' expenditure. This is important because using a cost-benefit approach we are only interested in the net increase in costs in the area of standing (in this case Fairfield LGA) associated with the additional gaming machines. Therefore, existing costs transferred from other venues are not included. However, if the additional supply is linked to an expansion in gambling expenditure by existing gamers then this would be a net cost.
- The other key factor that needs to be considered in assessing both the costs and benefits is the *appropriate timeframe*.
- At the state level, real per capita expenditure on gaming machines has trended down over the last decade. Traditional gaming is experiencing disruption from online betting, while changes in social attitudes and increasingly sophisticated harm minimisation strategies could also be a contributory factor to diminishing returns to traditional gaming going forward. However, the Fairfield LGA to date has bucked the state and national trend and has continued to see robust growth in demand for gaming and, as a Band 3 LGA, the Fairfield community disproportionately experience the costs associated with problem gambling.
- Therefore, if the GMT at a venue is to be raised, the no net detriment test requires the community to be compensated and this raises the issue of what expected value of benefits would be required to sufficiently offset the expected value of costs (financial and social) associated with additional problem gambling.

#### *Application of Retail Gravity Model to Fairfield LGA*

154. BIS identify a number of concerns with the Applicant's use of the "retail gravity" approach, being a *spatial model* that *calculates the probabilities of consumers at different origin locations patronising a given venue* over a set of alternatives. These include:

- When the Retail Gravity Model is applied to Victorian gaming venues, GIS use a *separate expenditure model* that estimates *spend propensities* based on *demographic variables*, but there is no such separate model set up for NSW.
- In this case, GIS *estimated* that the *additional expenditure* to be derived by the new gaming machines to be **42.5%** of the expenditure on the existing machines at the Hotel. Their estimate is based upon 7 case studies of increases in gaming machines at venues located in Victoria, most in regional areas.
- BIS consider 42.5% to be a "low" share that *does not reflect the experience of NSW and, in particular the Fairfield LGA*, where additional machines have *achieved comparable levels of expenditure to existing machines* within 12 months of operation.
- BIS submit that even when the GIS model is applied in the Victorian context, the model is *not capable of estimating the impact on demand* from an *increase in the supply of gaming machines*. Rather, in order to estimate additional demand, a "simple formula" is used by GIS whereby the *percentage of new to transferred expenditure* is derived by reference to the *proportion of gaming machine expenditure at the new/expanded venue to the total gaming machine expenditure in the expected trade area*.
- BIS submit that this aspect of the GIS model has "no mathematical foundation" and is *biased* as it automatically tends *towards finding a low share of "new to industry" expenditure* for a market where there is more competition – regardless of the size of the market and how satiated the demand may actually be in that market.
- BIS considers the Hotel to fall within this category with the model used by GIS suggesting that only **12.9%** of the expected additional gaming machine expenditure will be from "new to industry" gaming with the rest coming from transfers.
- The GIS methodology *implies a large internal transfer* in expenditure, but this *does not reflect the reality of what new gaming machines have achieved at Fairfield LGA venues* after a top up in machine numbers occurs.
- Furthermore, since the "new to industry" share of additional expenditure is *fixed* under the GIS methodology, raising the assumed *share of new to existing gaming machine expenditure* for this Hotel would result in the *transfer shares from other venues in the trade area rising sharply*. BIS submit that this *does not reflect the actual experience for venues that are situated in the Fairfield LGA* after top-ups to their gaming machine holdings have occurred.

#### *The BIS Cost-Benefit Approach*

155. Having identified the above concerns, BIS advises that while there are some useful aspects of the approaches taken by both GIS and JSA, a "cost benefit" approach is the most appropriate means of assessing whether the Applicant's proposals are likely to achieve an overall positive benefit, or no net detriment, to the community. BIS posit the following principles:

- A decision maker should only be interested in *new problem gambling expenditure* and not transfers, whether they be internal transfers or transfers from other venues.
- Consideration should be given to the prospect of an *initial supply driven drop in average expenditure* earned by gaming machines across the venue where a change has taken place. The *extent* to which this occurs will *depend on the pull of the venue* in attracting new gamblers and gamblers from other venues as well as the extent to which the market is saturated.

- Assessing cost benefit over a period of only five years as proposed by the Applicant *may not be sufficient to reflect the ongoing costs to the community* from the operation of the additional gaming machines, given that there *will be costs associated with problem gambling arising from their operation for so long as they are operational*.
- There are also difficulties with the JSA proposal that a 20-year time period would better align with The Treasury policy and guidelines paper NSW Government Guidelines to Cost- Benefit Analysis. On the one hand, Fairfield LGA has seen strong revenue growth from 2012 to 2016 and this indicates an apparent *increasing propensity to spend* on gambling. However, gaming machine expenditure movements are volatile and at a broad level may be affected by economic conditions as well as changing attitudes towards gambling and increased recognition of the cost of problem gambling. There is also some disruption underway in the gambling industry from online gambling, which is increasing in popularity.
- Both costs and benefits should be discounted using the social discount rate of 7%. (The Authority notes that the social discount rate of 7% (in real terms) is recommended by the NSW Treasury policy and guidelines paper “NSW Government Guidelines to Cost- Benefit Analysis”).
- The *social costs* as well as the costs associated with problem gamblers not getting value for their excess expenditure should be included. It is these *social costs* which will primarily impact the community.
- The midpoint of the range of expected contribution by problem gamblers to gaming machine expenditure at a given venue was found in the PC Report to be from 22% to 60%, with a midpoint of 40%. However for “consistency”, BIS recommend 22% in this case – as this was found to be acceptable by the Authority in the Mounties Decision and the Hotel has proposed to implement similar harm minimisation measures to those implemented by Mounties that moved the Authority to apply the lower end of the range in the Mounties Decision.

#### *BIS Parameters for Cost-Benefit Assessment*

156. BIS has considered the following parameters when assessing the circumstances in which the Applicant may potentially achieve a “no net detriment” result:

- First, on the *value* of community benefits, BIS has considered both a “low” benefit scenario (including the charitable donations proposed in the LIA, less those that have since been disavowed) or **\$1,108,299.00** and a “high” benefit scenario (accepting the Applicant’s proposal of 17 March 2018 to vary and increase its package of charitable donations) or **\$3,012,999.00**.
- Further with respect to the benefits, BIS accept most of the Applicant’s claimed harm minimisation costs, with the exception of the proposal to engage four full time equivalent staff at a cost over five years of \$1,000,000.00. BIS advise that this measure would only be included in a cost-benefit approach if the persons would be unable to get jobs elsewhere.
- Second, on the share of additional gaming machine expenditure expected from problem gamblers at the venue, BIS has considered both 40% (which the Authority notes is close to the midpoint of the range identified by the Productivity Commission) and the 22% lower end of that range.
- BIS discerned the *quantum of current gaming machine expenditure* using LGNSW Central Monitoring System (“CMS”) data on the average pre-duty gaming machine “profit” (meaning all money inputted, less payouts) at the Hotel *over three years 2013/14, 2014/15 and 2015/16*. BIS did not use the five-year average selected by GIS, by reason that the Fairfield LGA market has

experienced strong growth over the five-year period and continued to over the following two years. This amounted to **\$340,037.00** per machine per annum.

- Third, BIS note that the maximum value of “new to industry” expenditure that could be achieved without exceeding the discounted benefit stream could then be calculated as a ratio of total gaming machine expenditure, depending on whether 42.5%, 80%, 90% or 100% are assumed. BIS provide a table showing the maximum new to industry share that can be achieved with the costs still below the benefits under a range of scenarios.
- Fourth, BIS has considered the *timeframe over which the costs and benefits to the community are assessed* – 5 years (proposed by the Applicant), 20 years (Council’s proposal) and 10 years – being a midpoint selected by BIS on its own initiative.

157. BIS characterise their approach as the “opposite” to that undertaken by GIS - in that rather than *assuming* what the share of “new to industry” gaming expenditure will be as GIS have done, BIS *estimate* what the *maximum new to expenditure could be*, under a range of scenarios, such that the proposed community benefits would exceed the costs.

158. In summary, BIS has calculated an *annual cost equivalent stream* that would *equal the discounted benefit stream* over the selected time period (5, 10 or 20 years) using the “PMT” function in *Microsoft Excel* software. (The Authority notes that this is a financial function used to calculate the monthly payment amount against a simple loan amount).

159. BIS has then applied a Social Discount Rate of 7%. Then, they have discounted this figure by 51% - being the *estimated share of social costs from total costs*, leaving the 49% of *problem gambling costs* that are *associated with expenditure losses*.

160. The total value of *new additional expenditure* (including that derived from recreational gamblers) may then be calculated, based upon whether a 22% or 40% share is assigned to problem gamblers.

### **BIS Conclusion on Overall Positive Benefit**

161. BIS conclude that over a 10 year time horizon and assuming a 22% problem gambling share of expenditure and 100% share of new to existing gaming machine expenditure, the share of ‘new to industry’ expenditure would *have to be less than 15%* to exceed the benefits under a “low benefit” scenario (including what is left of the initial LIA proposed cash donations) or *less than 40%* under a “high benefit” scenario (including the Applicant’s varied proposal for cash donations).

162. Based on the strength of growth in gaming expenditure in the Fairfield LGA, BIS expect that the no net detriment test could not be met under the low benefit scenario but, if a 5-year timeframe were adopted, could possibly be met under the high benefit scenario.

163. BIS also estimated the expected profit over a 5-year horizon, where they assumed there is a two-year ramp up period, the problem gambling share of expenditure is 22% and the share of new expenditure is 50%. Using this approach, the Applicant would be borderline on passing the no net detriment test using the low expected value of benefits but would comfortably pass with the higher figure.

### **SUBMISSIONS IN REPLY TO BIS REPORT**

164. On 15 February 2019, the Authority released the BIS Report (with very minor redactions to anonymise references to the gaming profits of several named NSW venues) and the briefing material provided by the Authority to BIS, inviting the Applicant and Council to make any further submissions in reply to the BIS Report, which included a critique of both of their economic analyses.
165. On 18 February 2019, the Applicant sought access to certain additional material that formed part of the Authority's brief to BIS and was referred to in the BIS Report. On 22 February 2019, Council also sought access to further material noted in the Authority's brief to BIS. On 4 March 2019, the Applicant made a follow up request for access to certain NSW gaming machine profit data to which BIS had referred at page 12 and Figure 4 of the BIS Report. This is gaming machine "profit" data that is routinely available to LGNSW through its real time access through the CMS.
166. On 11 March 2019, the Authority advised that it was prepared to release data to which BIS had referred to the respective economic consultants for the Applicant and Council, on a confidential basis, provided that Messrs Waddington and Storer gave undertakings to treat the data as confidential. Following receipt of those undertakings by 13 March 2019, the additional gaming machine data was provided to the parties.

#### **Council Submission on BIS Report – 1 March 2019**

167. In a short email submission from Ms Susan Gibbeson dated 1 March 2019, Council:

- note that BIS support Council's use of cost-benefit analysis
- note that BIS support a longer period of time for assessment than the approach adopted by the Authority in previous decisions
- refers to the length of time (20 years) accepted by The Treasury in the policy and guidelines paper *NSW Government Guide to Cost-Benefit Analysis* dated March 2017
- does not accept the proposition that the lower end of the Productivity Commission range on the likely share of problem gambling contribution to any given venue's takings (22%) should be applied in this case. In a high gaming machine density, high expenditure and socially disadvantaged environment, the Authority should apply the midpoint of the Commission's range – 40%.
- notes that when considering whether the Applicant's harm minimisation measures should be accepted as an additional positive contribution, that this Application is *not* being considered under the current (post 3 April 2018) Act, which makes express provision for such matters
- while BIS has modelled the "high" benefit scenario, incorporating the Applicant's varied proposal for charitable donations, it would not be reasonable for the Authority to accept increased offerings to new or additional recipients without a new LIA being required for community consultation.

#### **Judith Stubbs Response to BIS Report - February 2019**

168. Council's 1 March 2019 submission was accompanied by a ten-page submission from Mr John Storer of JSA dated February 2019 ("Second JSA Report"). Briefly, the key points were as follows:

- BIS agree with JSA that a cost-benefit approach should be used, with five broad parameters (life of the proposal, value of proposed benefits, takings of new machines, proportion of expenditure transferred from existing machines and the share of new revenue attributed to problem gambling). Like JSA, BIS do not support the Authority's previous use of a 5-year timeframe and have proposed a 10-year timeframe.

- BIS has provided the Authority with a range of scenarios for its consideration, as a form of “sensitivity analysis”. Their ultimate conclusion is that under most scenarios modelled, based upon the strength of growth in gaming expenditure in the Fairfield LGA, the “no net detriment” test would *not* be met under the “low benefit” scenario, but it could possibly be met under the “high benefit” scenario.
- While BIS appear to have left it to the Authority to decide which of the scenarios in Figure 8 of the BIS Report are most plausible, BIS has highlighted in the Executive Summary that a cost-benefit assessment based on a ten-year time period, with the new average gaming machine expenditure expected to be 100% of current average expenditure and with problem gambling accounting for 22% of the new expenditure.
- BIS were unable to form a view as to the impact of additional machines upon other venues but have observed that “the sheer strength of growth in gaming activity makes it hard to identify transfer losses when they are often wiped out by organic growth”. JSA understand this to mean that growth in gaming in this community is such that the new machines will pick up expenditure that is “new to industry”.
- JSA submit that on their analysis, the empirical data does not support the view that takings from new machines will be transferred from the existing machines. In four cases where the number of gaming machines have increased (Fairfield LGA, Holroyd LGA, Parramatta LGA and Liverpool LGA), average expenditure per machine has *increased* rather than *decreased* despite the increase in machines.
- This empirical data is supported by a range of published studies indicating a strong linear relationship between gaming machine density and expenditure, including Livingstone (2001), Marshall and Baker (2002), Delfabbro (2002), Productivity Commission (2010), Stubbs and Storer (2003, 2005 and 2007) and SACES (2006).
- JSA reject the BIS proposal of a ten years period of assessment on the basis that this is inconsistent with NSW Government policy. It would be the equivalent of finding that there will be no problem gambling (i.e. no ongoing cost to the community) from the operation of these new machines in ten years’ time.
- JSA reject the Authority’s previous use, and BIS’s suggested use, of the 22% lower end of the Productivity Commission range when estimating the likely contribution of problem gambling to this venue’s gaming machine expenditure. Table B.2 of the PC Report provided 23 data points for potential problem gambling expenditure derived from a number of sources. A statistical analysis gives an average contribution of 40.5% and a standard deviation of 10.3%. Selecting 22% on the range would place this venue in the bottom 4% of values, which JSA submit is “highly favourable” to the Applicant given the very high machine density in this LGA and uncertainty surrounding the effectiveness of the proposed harm minimisation measures.
- JSA note that BIS has not conducted analysis of the 60% upper range of problem gambling contribution identified in the PC Report, which they submit would have been appropriate.
- On the issue of valuing the package of harm minimisation measures proposed in the LIA, JSA submit that *expenditure on harm minimisation measures* should not be conflated with *community benefit*. Identifying the actual benefit would require some evaluation of outcomes. Harm minimisation measures are already in place at this venue and their effectiveness should *already be reflected in the takings of gaming machines* used to estimate expected expenditure from problem gamblers. If that is the case, then counting proposed business expenditure on harm minimisation means that these measures are effectively being “counted twice”.
- JSA submit that the BIS data shows that for NSW as a whole, the 12 months 50th percentile takings for new machines was 81.4% of existing machines. For Fairfield and surrounding areas the 12 months 50th percentile takings for new machines was 115.4% of existing machines. JSA submit that this analysis does not consider whether new machine takings “ramped up” over a longer period. They submit that there is no evidence to support the Authority adopting a value for expected new machine expenditure at this venue other than the expenditure currently enjoyed by existing machines and there is some evidence to expect a higher value, arising from the available data for Fairfield LGA and surrounding areas.

- Applying the BIS analysis, the one scenario where benefits go anywhere near offsetting costs involves all of the parameters set at the most favourable to the Applicant. That is, the “high” benefit scenario, which has a five-year time horizon, new machines are assumed to take only 43% of expenditure of existing machines, and only 22% of the additional gaming expenditure is attributable to problem gamblers. JSA submits that this scenario should be rejected on the basis that neither BIS nor JSA accept that a five year time period is appropriate and there is no evidence in support of the GIS assumption that the new machines will take only take 43% of the current expenditure, and this is rejected by both BIS and JSA.

169. On the research into problem gambling and gaming machine density, JSA submit there is some evidence that the rate of problem gambling decreases with time, with Storer et al finding a 0.09% annual decrease in rates of problem gambling when adjusted for other factors. This is equivalent to a 2% decrease in the number of problem gamblers over a twenty-year period, in the absence of growth in EGM numbers. (Storer et al found that each additional gaming machine in an area could be expected to increase the number of problem gamblers by 0.6-1.0). JSA submit that this effect is “minor” and will not have any substantive impact on the outcomes of a cost-benefit analysis.
170. On the Applicant’s package of harm minimisation measures, JSA refer to the literature review conducted by Delfabbro (2011), which indicates only limited efficacy for voluntary pre-commitment. While results vary, findings have included take up rates in the order of 1-2% for gaming machine players using smart cards. JSA question the efficacy of the Applicant’s proposed harm minimisation advertising, citing Delfabbro (2011) to the effect that problem gamblers are aware of the risks and the odds of success but choose to ignore them.

#### **Fairfield Hospital Disavowal of Proposed Donation – 18 March 2019**

171. On 18 March 2019, the Authority received a letter dated 12 March 2019 from Dr Laurence McCleary, Head of Paediatrics and Neonatology, Director of Prevocational Education and Training at Fairfield Hospital. The letter gave notice that the Fairfield Hospital Children’s Ward Charitable Trust rescinds its agreement with the Hotel to accept the proposed donation of \$100,000.00 per year for five years. The Hospital wishes to make “abundantly clear” that the Hospital and staff do “not condone” the “promotion for use of gaming machines”.
172. A copy of this submission was forwarded to the Applicant and Council on 19 March 2019 inviting written submissions.

#### **Council’s Supplementary Response to BIS – 19 March 2019**

173. In an email submission from Ms Susan Gibbeson dated 19 March 2019, Council refer to the gaming machine data made available for review and respond to the Authority’s correspondence of 11 March 2019. Council submit that, on the analysis of their expert, this data indicates that for venues in “South West Sydney” (Council shorthand for an area combining the Fairfield, Cumberland, Parramatta, Blacktown and Liverpool LGAs) an increase in gaming machines produced an increase in revenue for all gaming machines. The analysis indicated that an increase in gaming machines results in all gaming machines returning 104% of revenue initially, with revenue increasing to 124% in the third year.
174. In the accompanying three-page submission, JSA also refer to the additional gaming machine profit data provided by the Authority for hotels in Band 2 and 3 areas where there has been a change in the number of gaming machines for the period 30 June 2009 to 30 June 2018.

175. The consultant submits that this data shows that, on average, the “profit” per gaming machine *increases* with the addition of new machines and there is no evidence for the Applicant’s “conjecture” that average profit per machine at this Hotel will decrease with the addition of new machines.
176. JSA submit that the modelling that it performed for its January 2017 Report (the Authority assumes this to be a reference to the January 2018 JSA Report) was in the Applicant’s favour, since JSA had assumed a “ramp up” period whereby the average machine takings would reach the pre-increase position after a period of two years.
177. On JSA’s statistical analysis, using the available data for “South West Sydney” (combining Fairfield, Cumberland, Parramatta, Blacktown and Liverpool LGAs), the probability that average gaming machine takings per machine at this Hotel will *increase* after the addition of new machines is assessed at 89% in the first year. The probability that average takings will increase in the second year is 99.9%.
178. JSA submit that the GIS Report presented their projected change in average gaming machine earnings at the Hotel (post introduction of new machines) as a combination of the historical takings for the existing machines and a decreased taking for the new machines. They submit that Table 4 of the BIS Report adopts a similar approach, presumably in response to the GIS Report.
179. On JSA’s analysis, this approach to assessing the impact of new machines does not reflect the likely impact of additional machines upon gaming machine profit for this venue.
180. JSA refer to Figure 8 of the BIS Report, and submit that the Authority should not consider scenarios whereby the Hotel’s gaming machine takings are assumed to achieve 43%, 80% and 90% of the current average takings after the proposed increase in machine numbers because they are based on a decrease in average gaming machine profit across the venue with the introduction of new gaming machines, and this is not supported by data. They submit that use of the “100%” assumption will also underestimate the social costs, due to “strong evidence” of *growth* in average gaming machine takings over time, but 100% is the only BIS scenario that should be considered by the Authority.

#### **Council’s Response to Fairfield Hospital Advice – 26 March 2019**

181. In a concise submission from Ms Gibbeson dated 26 March 2019, Council note that Fairfield Hospital were incorrect when describing the Hotel’s proposed payments as a “charitable donation” because this connotes a payment made with nothing expected in return.
182. Council notes the Hospital’s position on gaming machines and contends that the Hospital was unlikely to have understood the impact of the Hotel’s proposal when the Hospital previously accepted its proposal. Council submits that the LIA was “completed” upon filing with the Authority and the Authority should now accept the Hospital’s withdrawal of its participation in the Applicant’s proposal. Council submits that it would not be open to the Authority to consider any new offerings to other community participants, as this would require, as a matter of natural justice, consultation with the public and a further LIA.

#### **Applicant’s Response to Fairfield Hospital Advice – 29 March 2019**

183. In a brief two-page submission dated 29 March 2019, the Applicant proposes to redirect the sum of \$1,500,000.00 previously pledged to Fairfield Hospital to the Assyrian Resource Centre. This amount is to be paid in addition to the sum of \$1,150,000.00 previously pledged in the LIA. This would make a total of \$2,650,000.00 payable to the Assyrian Resource Centre. The Applicant states that payment of those amounts would be conditional upon the Authority approving the GMT increase by 7.
184. The Applicant sets out that the conditions of approval would be:
- First payment upon approval or within a reasonable time thereafter (say 30 days) - \$1,410,000.00
  - Prior to first anniversary of approval - \$310,000.00
  - Prior to second anniversary of approval - \$310,000.00
  - Prior to third anniversary of approval - \$310,000.00
  - Prior to fourth anniversary of approval - \$310,000.00
185. In a second submission of the same date, the Applicant maintains that he proposes to redirect the proposed donation of \$1,500,000.00 to the Assyrian Resource Centre.
186. The Applicant then poses an alternative approach, noting that since lodging the Application, the *Gaming Machines Amendment (Leasing and Assessment) Act 2018* (NSW) was passed and part of those reforms include a requirement that monetary payments in support of a proposed community benefit be paid to the Secretary for transfer to the Responsible Gambling Fund established under the *Casino Control Act 1992* (NSW).
187. The Applicant submits that although this Application must be considered pursuant to the pre-3 April 2018 legislation, were the Authority were minded to grant this Application, the Applicant would consent to a condition that the \$1,500,000.00 previously proposed to be paid to the Fairfield Hospital (now proposed to be donated to the Assyrian Resource Centre) should be paid instead to the Secretary for payment into the RGF. The Applicant submits that this proposal would be consistent with the new statutory provisions and notes that the RGF was one intended recipient specified in the LIA.
188. The Applicant refers to the Minister's Second Reading Speech when introducing the *Gaming Machines Amendment (Leasing and Assessment) Bill* into Parliament on 6 March 2018 that payments to the RGF would "ensure that money generated through the local impact assessment process continues to provide benefits for the community in which those machines are introduced" and will "allow a more targeted response to addressing gambling related harms by providing funds" to "local non-gambling forms of entertainment and recreation, health and social services".

#### **Applicant's Response to BIS Report – 29 March 2019**

189. In a submission dated 29 March 2019 the Applicant makes the following points through Hatzis Cusack, in response to both the BIS Report and the JSA analysis:
- With respect to BIS modelling a "low benefit" and "high benefit" scenario and reiterates its submission dated 7 June 2018 that the Authority should consider the full amount of community benefits proposed by the Applicant.
  - BIS has not accepted as a net benefit to the community the value of the proposed community benefit of 4 full-time equivalent staff over 5 years at a cost of \$1 million. The Applicant refers to

the Fairfield LGA unemployment rate of 10.5%, above the State average of 6.3% and submits that people who are most vulnerable to unemployment are new arrivals, who the Hotel proposes to employ.

- The Applicant contends that the value of more gaming machines to recreational gamblers is “pronounced” in Fairfield LGA by reason that the 2012 Ogilvy Report found a “relatively low” problem gambling rate of 0.3% compared to NSW as a whole of 0.8% and their consultant Mr Smith has identified a dearth of entertainment options as a reason why more people use hotels for recreation in this local community.
- BIS has accepted the proposition that there is a community benefit by way of a “consumer surplus”, which broadly equates to the social value of gambling to recreational gamblers, but this has not been quantified by BIS.
- The Applicant refers to the 1999 PC Report which found a consumer surplus of gaming machine gambling (derived by recreational gamblers) across Australia at between \$1.404 and \$2.281 Billion in 1997/1998 dollars, depending on whether a lower or higher price elasticity was imputed in the demand for gambling. This equates to a consumer surplus of between 38% and 62% of gaming machine expenditure by non-problem gamblers.
- The Applicant “assumes the correctness” of the GIS approach to assessing transfer expenditure, which found likely new to industry expenditure of \$243,000.00 per machine per annum.
- Applying a 38% share of (non-problem gamblers) expenditure as equating to the relevant “consumer surplus”, the Applicant contends that the value of consumer surplus would be \$72,025.00 per annum (if problem gambling is assumed to be 22% of new spending) and \$69,255.00 per annum (if problem gambling is assumed to be 25%).
- By reason that both the 1999 and 2010 reports by the Productivity Commission have found that taxation is one of the primary benefits to the Australian community of the gambling industry, the Authority should depart from the approach taken in previous decisions when it found that tax revenue to the State and Commonwealth cannot be traced back as a benefit to the local community. On the basis of GIS modelling that its machines will produce “new” average expenditure of \$243,000.00 per machine per annum, the Hotel will pay 50% gaming tax or \$121,500.00 per machine per annum to the State of New South Wales and one eleventh of the new expenditure, or \$22,090.00, will be payable to the Commonwealth as GST.
- The Applicant submits that gaming machine venues in the Fairfield LGA, between 1 January 2018 and 30 June 2018, accounted for 7.32% of the total hotel gaming machine tax that was paid across the State while the population accounted for 2.66% of the State. If one assumes that all gaming machine taxes benefit all NSW residents proportionately, then the gaming machine tax benefit from the 7 machines to the Fairfield LGA community would be 2.66 divided by 7.32 (or 36.3%) of \$121,500.00, or \$44,149.00 per annum per machine.
- Assuming a similar proposition of GST revenues are remitted back to the Fairfield LGA, one would assume a benefit to the local community of 36.3% x \$22,090.00 which equates to \$8,018.00 per annum per machine.
- The Applicant submits that the Authority should apply a 5-year time period that it applied in its previous two decisions when assessing overall community benefit.
- The Applicant submits that ten years is too long by reason of the uncertainty brought by potential economic changes, disruption of the industry, competition from online betting and changing social attitudes.
- The Applicant refers to data from 2012 to 2018 on gaming machine hotel net profits for NSW, Sydney, Canterbury Bankstown, Fairfield, Liverpool and Blacktown and submits that gaming machine expenditure growth for Fairfield is “broadly in line” with historical growth in NSW and “Western Sydney generally”.
- The Applicant reiterates GIS’ estimate that the 7 new machines will receive 42.5% of the average gaming machine expenditure derived by the 23 existing machines. The Applicant rejects JSA’s approach, which he says has been followed by BIS, to consider expenditure data for communities where there has been a top up in gaming machine numbers, submitting that

these analyses have been conducted in markets where there has been “historical, and ongoing” gaming machine market growth.

- The Applicant submits by reference to the GIS Report of January 2017, that one should separate market growth from growth that is actually attributable to the top up of gaming machines. When this is done, GIS found that “new machine profit as a percentage of existing gaming machine profit fall(s) in the expected range of 30% to 40%”.
- The Applicant submits that the GIS model, which was developed for Tattersalls in Victoria to predict future revenue for its gaming venues, has been audited by Ernst and Young in 2007 and used by VCAT in a “large number of cases” to predict the effect of granting gaming machine licences and top ups.
- The Applicant submits that, in this case, the application of a “simplified” version of the GIS model has yielded an estimate of 42.5% of the level enjoyed by the current machines and that 73.8% of expenditure will be transferred expenditure, leaving only 26.2% as “new to industry”.
- BIS agree with the proposition of an initial supply driven drop in expenditure after a change in gaming machine numbers takes place.
- BIS do not provide an alternative figure to the Applicant’s projected 26.2% “new to industry” expenditure that is modelled by GIS, yet BIS apparently accept the principle of discounting incremental expenditure by reference to transfer expenditure and appear to accept GIS’s use of 26.2%.
- The Applicant notes that BIS has assigned a 22% share of new revenue to problem gamblers, on the basis of regulatory consistency with the Mounties Decision. The Applicant adopts this.
- On the quantification of *social costs*, BIS refer to the 1999 PC Report findings that these are in the order of from \$10,000 to 30,000 per problem gambler (in 1998/9 dollars), or \$12,300.00 to \$37,100.00 adjusted for inflation - with a mid-point of \$25,000.00 per problem gambler.
- The Applicant refers to the 2012 Ogilvy Report on problem gambling prevalence and contends that a rate of 0.3% should apply. The Applicant submits that this is supported by the evidence from Mr Barrett who suggests “significant adaptation” in the Fairfield LGA.
- Assuming that the 7 new machines generate \$243,000.00 new gaming machine expenditure per annum, and the average per capita spend in the Fairfield LGA on gaming machines is \$2,333.00, the Applicant expects that an additional 104 persons per annum will play gaming machines at the Hotel, generating social costs in the amount of \$25,000.00 x 0.31 or \$7,525.00 per annum.
- The Applicant notes that BIS acknowledge that the social cost must be balanced against the consumer surplus, which is represented by the additional revenue generated from non-problem gamblers.

190. In response to the BIS calculations annexed to the BIS Report, the Applicant makes the following submissions:

- BIS has not quantified what the “consumer surplus” should be, nor have they made findings on “taxation/GST” as benefits for the community. These should be included.
- Even so, assuming a problem gambling share of 22%, with only 26.2% of the expenditure as “new to industry” the Applicant contends that he “comfortably” passes the no detriment test on every BIS scenario except where the Applicant will be “lineball” if a 20 year time period is used with gaming machines are taken to perform at 100% of existing performance.
- The Applicant concedes that he may fail if the full amount of his proposed benefits are “artificially and impermissibly disregarded” and the “low benefit” scenario is applied by the Authority.
- The Applicant contends that even if the problem gambling share is taken at 40% (the PC Report midpoint), the Applicant comfortably satisfies the test, *assuming* the correctness of the “43% metric” for the level of expenditure the new machines will derive compared to existing

expenditure. The Applicant submits that even if expenditure is assumed to be 80% of existing expenditure, the test is comfortably satisfied on the 5 and 10-year scenarios.

191. The Applicant then provides its own revised cost/benefit calculations addressing four scenarios. The first two scenarios “A” and “B” consider the proposal over 5 and 10 years while assuming \$927,000.00 per annum will be derived by the 7 machines, with new machines earning 42.5% of past performance and a 26.2% new to industry share (\$243,000.00 per machine per annum) with 73.8% being transferred expenditure.
192. The second two scenarios “C” and “D” also consider the proposal over 5 and 10 years but with \$2,177,000.00 per annum to be derived by the 7 machines, based upon the new machines receiving 100% of past performance but maintaining a 26.2% “new to industry” share with 73.8% being transferred expenditure.

### **Geotech Response to BIS Report – March 2019**

193. The Applicant’s submission attaches a Response to BIS and JSA dated March 2019 (“Third GIS Report”).
194. Briefly, GIS submit that:
  - there are two fundamental metrics to be considered when assessing the increased gaming machine profit to be derived from the addition of new machines – the increased revenue flowing directly from increasing the machines and not due to other factors, such as “general market EGM profit growth” and the proportion of incremental revenue that will be new to industry rather than transferred from other venues.
  - GIS initial report made no assumptions for market-based growth beyond the initial introduction of the new machines. Due to volatility in market growth and the difficulty in forecasting any given years market growth, GIS felt it more prudent to concentrate on the relative profit of new machines as a percentage of existing machines at the venue
  - GIS do not support BIS and JSA referring to ten years of gaming machine data. Rather, in order to isolate the profit that directly flows from new machines from historical growth in a given market, a decision maker should:
    - calculate the percentage of market growth in the surrounding local market, to estimate what growth would have occurred without the increase
    - calculate the profit per machine the newly introduced machines would have to generate in the first year in order to generate the levels of total profit revenue observed, assuming that the pre-existing machines grew their profit at the above identified rate
    - calculate the profit of new machines in the first year as a percentage of the profit of pre-existing machines.
195. GIS submit that BIS has made no attempt to “allow for underlying market growth” when calculating the profit per new machine, which was derived by comparing profits in the period prior to and post the introduction of the new machines. This results in an “overestimate” of what the new machines will be generating because the underlying market profit growth at the venue is being apportioned entirely to the new machines.
196. Adjusting the data in Figure 4 of the BIS Report to align with the GIS approach to dealing with growth in markets, GIS submit that once “underlying annual market growth” in profit per gaming machine is “backed out” of the calculations, the results more closely align with the

GIS estimate that new machines will derive 42.5% of existing machine profit at 12 months at the Hotel.

197. With regard to BIS' critique of the GIS model, GIS reject the assessment of its venue "attractiveness" multipliers against venue revenue. GIS submit that its attractiveness measures are used to "optimize the fit" of the model, not serve as a predictor for venue revenue in their own right.
198. However, GIS acknowledge the "challenge" of providing a venue attractiveness value to "large club venues" such as Fairfield RSL. GIS concede that it is "beyond the scope of the work we have conducted" to investigate how attractiveness should be measured in a large venue like this (there being no equivalent in Victoria).
199. GIS contend that "capping" their attractiveness rating to that of the highest ranked venue in Victoria generates the most conservative (highest new to industry versus transferred) results possible. GIS "do not see this as problematic".
200. In response to BIS commentary that the GIS approach skews toward generating higher transfer and lower revenue estimates in markets with multiple gaming venues, GIS "firmly believe" that their approach "reflects reality", which is supported by the (regional Victoria) case studies presented in the GIS Report. GIS submit that these case studies were extremely detailed and there are no other studies available that investigate gaming machine transfer expenditure to this degree. The studies support the notion that where there are multiple venues in a local market, expenditure typically skews towards a majority of transferred, as opposed to new to industry expenditure and this is consistent with the results that the GIS approach produce.
201. With regard to the cost-benefit approach proposed by BIS, GIS refer to BIS's assessment in Figure 8 of the BIS analysis, whereby BIS identify the percentage of transferred expenditure that would be required to meet the no detriment test under various scenarios. GIS agrees with this as a potential approach but do not believe that the four values selected for the percentage of new to existing gaming machine expenditure (43, 80, 90 and 100 percent) represent a "logical range of likely values". GIS submit that if you back out underlying market growth from the calculations, it would be more appropriate to posit a range of 30, 35, 40 and 43%.
202. GIS believe that the methods used by GIS represent the best possible means for estimating the likely values for new machine profitability and transferred expenditure for the Hotel top up.
203. However, GIS acknowledge that it is "beyond our charter" to try to project new gaming machine profitability for multiple years into the future. GIS submit that due to volatility in year to year gaming machine profit growth in NSW and South Western Sydney, GIS believe that historical average growth and case studies do not provide a solid basis for predicting future growth after the first year, but any attempt to project gaming machine profit beyond year 1 needs to be applied to the new machine profit only.

## **LGNSW Overview of Recent Problem Gambling Research**

204. On 18 April 2019 the Authority's Reviews and Secretariat Unit forwarded an 8-page document titled *Evidence Summary – Problem Gambling and Individual Costs of Gambling in Australian Jurisdictions* ("LGNSW Research"). This document, provided to the Authority during April 2019, was prepared by the LGNSW Program Implementation and Improvement Unit and provides an overview of the state of the Australian empirical research on the social costs of problem gambling.

205. Very briefly, the LGNSW Research includes the following observations:

- Problem gambling is assessed by application of the Problem Gambling Severity Index ("PGSI" Ferris and Wynne, 2001)
- In a 2011 NSW gambling prevalence survey, problem gamblers were assessed as constituting 0.8% of the NSW population, with 2.9% moderate risk gamblers and 8.4% low risk gamblers. The combined cohort of moderate risk and problem gamblers were associated with: being male, younger, single (including divorced/separated/widowed) of low educational attainment and unemployed (Sproston 2012 – also known as the 2012 Ogilvy Report).
- Victorian longitudinal research conducted in 2008 to 2012 has identified an association among those who progressed from being *non-gamblers* to at risk gambling with: being male, speaking a language other than English, having a year 10 level education or less, and having a life time problem or pathological gambling risk. Progression from *non-problem gambling* to at risk or problem gambling was associated with anxiety, obesity and signs of alcohol dependence (Billi et al, 2016).
- Gambling related harm is a recently developed concept, but current definitions accept that it has three main *attributes*: negative consequences from engagement with gambling that result in a decrement in well-being (Blaszczynski et al, 2014; Langham et al, 2016); the inclusion of a range of harms of varying severity (Langham et al, 2016; Brown et al, 2017) and the extension of consequences beyond the individual to the family unit and the community (Blaszczynski et al, 2015; Langham et al, 2016).
- The most cited *forms* of gambling harms in the research are financial harm, relationship harm, emotional or psychological distress, decrements to health, reduced work or study performance and social deviance, including criminal activity and cultural harms (Langham et al, 2016). Of those forms of harm:
  - a community study of 331 gamblers, financial harm was the most frequently nominated harm (Blaszczynski et al, 2014).
  - low and moderate risk gamblers were four times as likely as non-problem gamblers to report that gambling resulted in relationship breakdown (Sproston et al, 2012).
  - a community study of 331 gamblers, health related problems were of the three most frequently nominated harm. Higher frequencies of health-related harm were reported by gaming machine users (Blaszczynski et al, 2014). 14% of moderate risk and problem gamblers combined felt like they had an alcohol or drug problem compared to 3% of low risk and non-problem gamblers (Sproston et al, 2012).
  - one Victorian study found that stealing and feeling compelled to commit a crime for money was associated with problem gambling (Browne et al, 2018).
- On the association between problem gambling harm and gambling products, one 2015 NSW study found that among clinical and community samples, gaming machine players have elevated PGSI scores in comparison to players of other gambling products (Blaszczynski et al, 2015). A 2011 prevalence survey found that, weekly gambling on gaming machines, betting on horse or greyhound races or betting on sports or non-sports events were associated with moderate risk and problem gambling (Sproston et al, 2012).

### **Council Response to LGNSW Overview of Gambling Research – 29 April 2019**

206. In an email dated 29 April 2019, Council, through Ms Gibbeson, note that many of the harms caused by gaming machine gambling are experienced by a large section of the Fairfield community and the proposal by the Applicant on 29 March 2019 to concentrate all proposed cash benefit to a single organisation that provides services to one cultural group within a highly culturally diverse community cannot result in an overall positive benefit to the community. The alternate proposal to apply gaming machine legislation as amended in 2018 to enable these funds to be redirected to the RGF is only appropriate if the entire LIA is considered under the provisions of the legislation as amended in 2018.
207. Council re-iterates that any amendment to the LIA as submitted including reallocation of proposed benefit and increases in the benefit proposed should not be permitted. Should the trustees consider amendments, the changed LIA must be publicly exhibited to enable all stakeholders the opportunity to assess and comment on the proposals. This is procedural fairness and is necessary to provide transparency of the proposal and decision making.
208. Council have attached to this email a four-page submission dated 26 April 2019 in which Council makes the following submissions on the LGNSW Research:
- While there is no access to data relating to a lifetime problem or pathological gambling risk available at the population level, there is data indicating that the Fairfield community has a higher number of people in the risk categories of being male, speaking a language other than English, having a year 10 education or less.
  - The relationship between gaming machine density and accessibility to the level of gambling harm is well documented, as noted in Council's previous submissions on this Application. Research from Delfabbro, Stubbs and Storer and the Productivity Commission support the relationship between density and increased expenditure, therefore increased harm.
  - With respect to the relationship between problem gambling and criminal behaviour Council contends (without specification) that a "number of individuals" in the Fairfield LGA have been coerced into criminal activity due to gambling, including older women forced to become drug couriers to repay debt, with "a number of Fairfield residents" convicted of this type of crime.
  - On the prevalence of relationship breakdown in the local community, Council submit that according to the (Australian Government) Social Health Atlas, as at June 2017, 4.3% of females aged between 15 and 54 years of age were receiving a Sole Parent Pension, compared to 2.4% for Greater Sydney.
  - On the prevalence of Domestic Violence, Council submits that BOCSAR data for 2017 shows this is the fourth most commonly reported crime category (of crime within the LGA). Council further contends that domestic violence is under reported due to cultural barriers and given the levels of newly arrived migrants and refugees, these groups have a lower propensity to report crime. Fraud was the most frequently reported category in the BOCSAR data for 2017 in the LGA. Council contends that this crime is "often related to gambling".
  - On the extent of social disadvantage in the local community, Council submits that Fairfield LGA has the highest level of disadvantage in the Greater Sydney Region and is the 4th most disadvantaged LGA in NSW. Council contends that this results in a high level of vulnerability in a range of domains. Most notably, the Social Health Atlas showing that in 2017 43.2% of children were estimated to be living in low income, welfare dependent families compared to 20.7% for the Greater Sydney Region (the Authority notes that Council refers to the Greater Sydney Region and Greater Sydney Area ("GSA") interchangeably). In 2016, there were 6.1% of people aged 15 to 64 years receiving the Disability Support Pension compared to 3.7% of this cohort in the Greater Sydney Region.
  - On the association between problem gambling and unemployment, Council submits that during 2016 disengagement from employment or education among 25 to 54 year olds was at 30.4% in

Fairfield LGA compared to 15.9% for the GSA. Fairfield LGA was the most disadvantaged local government area in the “Greater Sydney Region” and is the fourth most disadvantaged in the State. ABS 2016 data records that 38.4% of households in the Fairfield LGA had incomes in the lowest quartile compared to 21.6% for the GSA.

- On the association between problem gambling and psychological stress, Council refers to the Social Health Atlas estimates that during 2014/15 13.9% of adults in the LGA were experiencing “high or very high” psychological stress using the Kessler 10 Scale compared to 10.6% for the GSA.
- On the association between problem gambling and speaking a language other than English, Council submits that 2016 (ABS) data indicates 21.6% of the LGA reported difficulty speaking English, compared to only 6.5% for the GSA.
- On the association between problem gambling and low education, 2016 data indicated that 59.5% of people in the LGA had no qualifications compared to 37.7% for the GSA. 33.1% of the LGA had completed year 10 or lower, compared to 26% for the GSA. There was an increase of 5130 people with no qualifications recorded from the 2011 and 2016 census results.

209. Council concludes that Fairfield LGA is a “highly vulnerable” community with a much higher density of gaming machines than “other areas”. The social disadvantage, vulnerability (to problem gambling risk factors) and high level of access to gaming machines must be seriously considered by the Authority when assessing an application for additional machines.

#### **Applicant Response to LGNSW Overview of Gambling Research – 6 May 2019**

210. On 6 May 2019 the Applicant responded to the LGNSW Research and Council’s response in a final 15-page submission made via Hatzis Cusack.

211. In summary, the key contentions made in response to the LGNSW Research are as follows:

- The Applicant accepts the “Neal” definition of problem gambling which identifies: “difficulties in limiting money and/or time spent on gambling which leads to adverse consequences for the gambler, others or for the community”
- The Applicant refers to the 2012 Ogilvy Report, referred to by LGNSW as Sproston et al 2012, which found a NSW wide problem gambling prevalence of 0.8% of the population 0.3% for the South Western Sydney region. The Applicant contends that this report supports the proposition that in this part of Sydney problem gambling rates are significantly below rates found in other parts of NSW.
- Further research performed during 2015 by Blaszczyński et al (2017) indicates that there has been some stability in problem gambling rates.
- The PC Report found at section 5.37 that prevalence rates had fallen from the 1990s to 2009.
- Abbott et al (2016) note that numerous studies have found reductions in gambling participation and in problem gambling prevalence occurring, even during periods of substantial growth in gambling availability and expenditure. The Applicant submits that this data supports the “adaptation” hypothesis noted by the Productivity Commission, whereby populations become used to the presence of certain forms of gambling and less likely to participate in gambling and develop problem gambling symptoms.
- The Applicant contends that the empirical evidence shows that adaptation is evident in Fairfield.
- The Applicant submits, on the basis of some positive commentary from the Fairfield Council website, that this may be due to a “stronger sense of community” in Fairfield LGA.
- Most of the literature shows that males demonstrate higher problem gambling prevalence than females, and the strongest predictor of problem gambling is past problem gambling behaviour.
- The Applicant submits that the evidence for other demographic risk factors is “more equivocal”, with Sproston (the 2012 Ogilvy Report) finding the most likely age group is 18-24, while Victorian and Tasmanian studies have identified 25 to 34.

- The 2012 Ogilvy Report (Sproston 2012) involved NSW research, which found a high association between unemployment and problem gambling. These findings were not replicated by Davidson et al (2014), an ACT study, which found little association between employment status, source of income or income levels, and found that the presence of children in a household may be a “protective factor”.
- The Victorian longitudinal research by Billi (2016) found that only 7% of the initial zero risk gamblers moved out of the zero-risk category to any other risk category during the 4-year period survey. The vast majority of those moved to low risk in one or more subsequent time periods of the survey. While, on the other hand, those who were initially “low risk” gamblers transitioned to “zero risk” during the survey period. While the authors found, among those who moved to low risk, an over representation of people who were male, spoke a language other than English, had education levels of Year 10 or lower, or showed signs of alcohol dependence, obscenity or anxiety, the Applicant submits that, given the “limited subject matter” of that survey, the findings do not show that these demographic traits are “necessarily” associated with problem gambling.
- The Applicant agrees with the LGNSW Research that more research is required before the validity of any “tipping point” is established for increasing gaming related harms.
- The Applicant submits that the finding by Sproston et al (the 2012 Ogilvy Report) that four times as many moderate risk or problem gamblers answered yes to the question of whether gambling had ever led to the breakup of an important relationship including divorce or separation is “not surprising”, but problem gamblers nonetheless comprise a very small proportion of the overall population.
- The Applicant concludes that despite the harms associated with problem gambling, the Productivity Commission (1999 and 2010) have found that, at a societal level the “substantial benefits” of gambling should be preserved, while seeking to minimise harms.

212. The Applicant makes the following contentions and submissions in response to Council’s final submission sent to the Authority via email dated 29 April 2019:

- The Applicant refers to its submission dated 7 June 2018 in response to Council’s submission that the Applicant’s current position amounts to a “changed LIA”.
- In response to Council’s submissions on the demographic traits of the Fairfield LGA, the Applicant submits that Council does not address the “substantial benefits” of its proposal and the “state-of-the-art” harm minimisation measures proposed.
- In response to Council’s contentions that the population demonstrates a high level of “vulnerability “ to harm from gambling the Applicant contends that the 2012 Ogilvy Report indicates a lower prevalence of problem gambling in “South West Sydney” which includes the Fairfield LGA.
- Council’s submissions on community vulnerability are at odds with the information Council publishes to describe the community, in order to achieve its policy of no more gaming machines in the LGA.
- On Council’s concern with the non-English speaking segment of the local community, the Applicant refers to Stevens and Golebiowska (2013), noted by the Applicant’s consultant Mr Smith, which found that “the 2006 CALD population, on the whole, experienced fewer gambling problems than the non-CALD population of Australia”. The Applicant also refers to the ACT survey research of AIGR (2001) which found that “ACT regular gamblers are disproportionately born in Australia”.

- On Council's submissions regarding gaming machine density, the Applicant refers to its submission of 19 March 2018. The Applicant submits that the Fairfield LGA population has grown from 179,893 in 2006 to 210,682 as of 30 June 2018. The Applicant submits that grant of the additional 7 machines will only "minimally affect" gaming machine density across the local community and claims that it will not result in any greater "temporal availability" nor make gaming machines more "geographically available".
- The Applicant submits that Council's contentions regarding the involvement of problem gamblers in criminal activity through becoming drug couriers is not supported by any evidence.
- On Council's submission that the (4.3%) prevalence of females receiving sole parent pension in the local community is above the State wide rate of 3.4%, the Applicant submits that it is still lower than some other LGAs including Blacktown, Penrith, Central Coast and Campbelltown.
- On the prevalence of domestic violence, the Applicant submits that BOCSAR data establishes a decline in the Fairfield LGA from 387.3 per 100,000 persons in 2014 to 341.0 in 2018. The NSW rate fell from 388.4 to 382.1 over the same period.
- On the prevalence of fraud offences in the Fairfield LGA, the Applicant submits that the rate of fraud offences is constantly at, or around, State averages with the BOCSAR data recording a decline from 747.5 to 643.8 over the same period, while the NSW rate slightly increased from 653.8 to 662.0.
- On the proportion of the local community either learning or earning (84.6%), the Applicant submits that this is comparable to the NSW average of 85.0% even if below the Greater Sydney average of 86.9%.
- On social disadvantage, the Applicant accepts that the local community records relatively low SEIFA scores, with ABS (2016) data showing household incomes in Fairfield LGA (\$1,222.00 per week) 18% below the NSW average (\$1,486.00) and 15% below the Australian average (\$1,438.00).
- On the prevalence of persons in psychological distress based on the Kessler model, the Social Health Atlas records 13.9% of the Fairfield LGA population, compared to the Australian average of 11.0. The Applicant submits that 13.9% is comparable to 5 other Sydney LGAs (which the Authority notes range from 12.4 to 14.4%).
- On the prevalence of adverse health outcomes, the Applicant submits that while Council refers to self-reported data, a more objective source is the rate of hospital admissions, which at 27,185 per 100,000 persons is below the NSW rate of 36,951 and the Greater Sydney rate of 36,215. The Applicant notes that the proportion of people with mental health problems in Fairfield LGA is 12.7%, below the NSW average of 13.1%.
- In response to Council's concern about education levels among the local community, the Applicant concedes that there is a higher proportion of people with no educational attainment or Year 9 and below. The Applicant attributes this to a high proportion of newly arrived refugees, with 9% of the population born in Iraq. The Applicant refers to Social Atlas data that 39.8% of persons in Fairfield LGA leaving high school are participating in further education, compared to 36.4% for Greater Sydney and 28.9% for NSW. Fulltime secondary participation rates for persons 16 years of age are 86.5% compared to 84.1% for NSW and 86.2% for Greater Sydney. The Applicant submits that these are indicia of an "immigrant population seeking to advance in its new society".

- The Applicant also cites data that 2.6% of the Fairfield LGA population disagree or strongly disagree with the acceptance of other cultures, compared to 3.9% for NSW and 3.1% in Greater Sydney. The Applicant submits that this is an indicator of “social cohesion” in the local community.

213. The Applicant concludes that while there are indicia of social disadvantage, a balanced assessment of the demographic data presents a more “benign” picture. The Applicant quotes two paragraphs of positive commentary about the Fairfield LGA community from Council’s website which the Applicant submits suggests that the local community is “cohesive” and “robust”.

## **FINDINGS ON OVERALL COMMUNITY BENEFIT**

214. Section 3 of the Act sets out the statutory objects and considerations that the Authority must consider when making a decision under the Act:

### **3 Objects of Act**

- (1) The objects of this Act are as follows:
  - (a) to minimise harm associated with the misuse and abuse of gambling activities,
  - (b) to foster responsible conduct in relation to gambling,
  - (c) to facilitate the balanced development, in the public interest, of the gaming industry,
  - (d) to ensure the integrity of the gaming industry,
  - (e) to provide for an on-going reduction in the number of gaming machines in the State by means of the tradeable gaming machine entitlement scheme.
- (2) The Authority, the Minister, the Secretary, the Commissioner of Police and all other persons having functions under this Act are required to have due regard to the need for gambling harm minimisation and the fostering of responsible conduct in relation to gambling when exercising functions under this Act.
- (3) In particular, due regard is to be had to the need for gambling harm minimisation when considering for the purposes of this Act what is or is not in the public interest.

### **Substantial Departure from LIA Not Accepted**

215. The Applicant has purported to vary the proposal for community benefit that was specified in the LIA on three occasions, with all such variations having occurred after the conclusion of the post application stakeholder consultation process.

216. The changes to the LIA proposal for achieving an overall community benefit are substantial. First, in submissions dated 17 March 2018, the Applicant advised that two of its major proposed recipients, Fairfield PCYC and White Ribbon, would no longer accept the Applicant’s respective proposals to donate \$1,000,000.00 and \$50,000.00 to their organisations. The Applicant instead proposed to increase the previously proposed donation to Fairfield Hospital from \$503,000.00 to \$1,500,000.00 and increase the LIA proposed donation to the Assyrian Resource Centre from \$100,000.00 to \$1,150,000.00.

217. Second, in response to advice from Fairfield Hospital dated 12 March 2019 that it would no longer accept the Applicant’s donation, the Applicant advised in a submission dated 29 March 2019 that he instead proposed to redirect that sum of \$1,500,000.00 to the Assyrian Resource Centre (in addition to the previous amount pledged by the Applicant).

218. Third, in its submission dated 29 March 2019 the Applicant makes another proposal to achieve overall benefit by redirecting that sum of \$1,500,000.00 to the RGF, with a view to that agency deciding where the funds should be allocated in the local community.
219. The Authority does not consider it open to the Applicant to substantially depart from the proposal that he specified in the LIA in the latter stages of an application when making its case for overall positive benefit for the community.
220. The legislative scheme requires that the Applicant's proposal for achieving overall social benefit be set out in the LIA – that is, the LIA information that *must accompany the Application* upon making the Application to the Authority.
221. A GMT applicant is required to observe mandatory pre and post application consultation requirements with a range of statutory stakeholders, as specified by clauses 37 and 41 of the Regulation respectively.
222. The requirement in section 36(3)(d)(iii) of the Act, that the LIA must address concerns raised during the consultation process provided by the Regulations, refers to concerns raised during the pre- Application notification process required by clause 37 of the Regulation. It is open to a prospective applicant, when addressing community concerns, to modify the proposal put to the community in pre Application consultation by either changing the scope of the GMT increase that is sought or making some other provision to address relevant concerns in the LIA that is filed with the application.
223. However, once the actual application is made, supported by the information and evidence in the LIA, this proposal must be put to the community for a second round of consultation pursuant to clause 41 of the Regulation.
224. The Authority does not accept that it is open to an applicant to substantially alter its proposal to achieve a positive community benefit from that disclosed in the LIA. To permit a substantial departure from the proposal put to the community for comment would deprive legislative stakeholders from the opportunity to make an informed comment on the merits of the LIA.
225. The Authority notes the previous decisions, referred to by the Applicant in its submission dated 7 June 2018, whereby the conditions imposed by the Authority have imposed a higher level of community contribution than that proposed by an Applicant. However, all of those matters concerned the lower level threshold that class 1 local impact assessments must establish – being a “positive benefit” for the community. There is little scope for the community to be prejudiced by a late increase in a donation made by an applicant enforced through a licence condition imposed by the Authority, having already established a “positive benefit” in the LIA.
226. The Authority considers that the appropriate course, should circumstances change and some aspect of the community benefit proposal in an LIA becomes unviable, is for the applicant to either rely upon what is left of their proposal, or make a fresh application that is accompanied by a fresh LIA, outlining a new proposal.

227. The Authority is aware that under section 32A of the current Act, a GMT increase application may no longer be made with respect to a venue located within the Fairfield LGA. However, Parliament's enactment of this restriction does not affect the proper construction of the pre-3 April 2018 legislation.

228. In conclusion, the Authority does not consider it open to accept the Applicant's purported substantive amendments to the positive social and economic benefits that were specified in the LIA.

### **Harm Minimisation Costs**

229. In assessing the package of harm minimisation measures specified in the LIA, the Authority accepts the opinion of BIS that the Applicant's proposed employment of four full-time equivalent staff members at a cost of \$1,000,000.00 over 5 years should only be accepted as an overall benefit to the *community* if it were established that those persons would obtain no other employment during that time. The Applicant has not provided sufficient evidence or information about this aspect of the proposal to satisfy the Authority that this would be the case.

230. The Authority accepts Council's criticism of the Applicant's reference to community expenditure that has already occurred and does not consider such expenditure to be relevant to an assessment of community benefit that would result from the approval of this GMT increase.

231. The Authority has also considered Council's criticism of the value of the proposed package of harm minimisation advertising. The Authority accepts that there is the possibility for harm minimisation advertising, in the form of local media advertisements or letterbox drops, to act as an advertisement for the Hotel business and drive patronage, including problem or at-risk gamblers, to the venue. While it would have been preferable for the LIA to have included examples of the proposed harm minimisation advertising, the Authority gives the Applicant the benefit of the doubt and accepts that the proposed harm minimisation material would take the form of community service announcements with an overwhelming focus on problem gambling messaging, not promotion of the Hotel.

232. Furthermore, notwithstanding that there are real concerns in the literature, identified by Council, as to the effectiveness of harm minimisation messaging for persons suffering from gambling addiction, the Authority accepts that there is some utility in this messaging for the local community generally and accepts the Applicant's valuation of that package, as specified in the LIA, save for the Applicant's costs on the proposed employment of four full time staff.

233. The Authority does not accept the payment of gaming machine tax and GST to be relevant benefits to the local community of the Fairfield LGA. While GST revenue from any business activity constitutes a benefit to the Australian community and gaming machine tax will benefit the consolidated revenue of the State of New South Wales, it is incumbent upon an applicant to identify with some certainty and clarity how its proposed benefits will actually manifest in the relevant local community should the GMT threshold be increased during the relevant period of time. It is simply too speculative for the Applicant to claim that increased revenue from the seven additional gaming machines will return to the local community through State Government expenditure.

234. The Authority considers it likely that, when Parliament legislated for an overall social benefit requirement, it intended applicants to demonstrate positive benefits that are over and above their taxation liability which forms part of the cost of doing business.

### **BIS Oxford Cost-Benefit Approach Preferred**

235. The Authority has considered the varying approaches proposed by the Applicant, Council and BIS to assessing whether the proposal identified in the LIA will have an “overall positive impact” on the local community. The Authority prefers the cost-benefit approach devised by BIS for a number of reasons. That is, the Authority will not be satisfied that “the proposed increase in the gaming machine threshold ... will have an overall positive impact” for the purposes of s. 36(3)(d)(i) of the Act if, following an application of the cost-benefit approach, there is a net detriment to the community.

236. First, BIS are in the most independent position of the expert consultants engaged in this matter. GIS have been engaged by this venue to provide a *modified version* of its Retail Gravity model, which was devised for and is in ongoing use by the commercial gambling industry in Victoria, including contested gaming machine applications in VCAT. While Council have engaged their own consultant, JSA, Council is clear in its policy opposing the introduction of *any* new gaming machines in the Fairfield LGA.

237. BIS has been engaged by the Authority for the sole purpose of advising on the preferred approach to assessing overall community benefit in this Application, which will be the last class 2 LIA application to be considered under the pre-3 April 2018 Act regime. To the Authority’s knowledge, BIS has no prior history of acting for any licensed gaming venue operator nor objector in any GMT applications that have required a local impact assessment that have come before the Authority. In devising its “cost benefit” approach, BIS has incorporated elements of the approaches adopted by both the Applicant and Council and have taken the opportunity to depart from the Authority’s previous “policy” approach to assessing overall community benefit.

238. Second, BIS has conducted the most comprehensive approach to assessing costs and benefits informed by the data for *this local community*. In particular the Authority accepts BIS’ concerns with the GIS methodology that:

- The Applicant has not applied the Retail Gravity Model in the same form in which that model is applied in Victoria, whereby a separate expenditure model that estimates spend propensities based on demographic variables would usually apply but is not in this case.
- The Applicant has estimated the level of additional expenditure by reference to 7 case studies in regional Victoria. The Authority has serious concerns as to whether these case studies reflect the reality of the Fairfield LGA, having regard to its demographics, gaming machine density, gaming machine expenditure and scale of the local industry.
- The 42.5% share of expected new to existing machine revenue projected by the Applicant appears to be low when gaming machine profit data for venues in Fairfield LGA over recent years is considered, with additional new machines in Fairfield LGA achieving levels of expenditure comparable to existing machines within 12 months .

- The GIS model implies a large internal transfer in expenditure, but this does not reflect the reality of what gaming machines are achieving in Fairfield LGA after a top up in machine numbers has occurred.
- The GIS model is biased towards finding a lower level of “new to industry” expenditure in a market where there is more competition. The model implies a lower share regardless of how satiated the demand may actually be in a given market.

239. While GIS have, in their reply to BIS, distinguished what they consider to be *market driven* growth from expenditure that is “directly” attributed to the proposed new machines, this reinforces the Authority’s concern that the assumptions underpinning the GIS model do not apply to Fairfield LGA. If gaming machine expenditure is growing in a given community, it is not appropriate to ignore the market growth component when called upon to project what expenditure the new machines will actually derive over time at this venue.
240. On the estimated share of average gaming machine expenditure that the new machines may be expected to achieve, by comparison to existing levels, the Authority accepts the BIS advice on how quickly new gaming machines in Fairfield LGA have achieved levels of expenditure enjoyed before a top up in gaming machine numbers. While it may be open to a decision maker to accept a more conservative 90% (allowing for some period of ramping up expenditure) the Authority prefers 100% in light of the strong and persistent growth in gaming machine expenditure indicated by the Fairfield LGA data over recent years. The LGNSW data before the Authority, indicating persistent growth in hotel gaming machine profits in the Fairfield LGA from 2012/13 to 2017/18, indicates that local community demand has not been met. It supports the proposition that these new machines may be expected to achieve the kind of expenditure enjoyed by the current machines on the Premises in the short-term future.
241. On the estimated share of problem gambling expenditure, the Authority has considered the competing claims made by the Applicant (including through its planning consultant, Mr Smith) and Council as to whether this local community, by reason of its demographic make-up or other factors, such as high prevailing exposure to gaming machine accessibility, is more or less vulnerable to problem gambling impacts.
242. The Authority does not accept the Applicant’s repeated assertion that this community should be expected to have lower rates of problem gambling than NSW as a whole. The finding in the 2012 Ogilvy Report that the “South West Sydney Region” had a problem gambling prevalence of 0.3% (compared to a State-wide of 0.8%) referred to an expansive and socio-demographically diverse part of South Western Sydney incorporating LGAs well beyond the Fairfield LGA (Bankstown, Camden, Campbelltown, Fairfield, Liverpool and Wollondilly). This point was made by the Authority in the 2013 Fairfield Hotel decision.
243. The Applicant also referred to Fairfield LGA not ranking in the top LGAs for persons being provided access to RGF funded assistance. While this information is relevant, its weight is diminished in the context of a community with demonstrable language and cultural barriers and a high level of incoming new arrivals, including humanitarian and protection visa recipients – all of which may impede the level at which people seek access to counselling.

244. It is a matter of some concern to the Authority, when considering the harm minimisation statutory objects and considerations in section 3 of the Act, that notwithstanding the levels of serious disadvantage in this community and very high gaming machine density, that this population is continuing to expend high levels of money on gaming machines. There is also a consistent influx from new arrivals to the country in the Fairfield LGA, raising doubts as to whether this is an appropriate environment for the “adaptation” thesis to operate. In any event, the adaptation effect identified in the research is limited.
245. Gaming machine expenditure is growing in a community that is objectively ill resourced to afford it. Gaming machines are referred to by the Commission in the PC Report as the “crack cocaine” of gambling by reason of the intensity of game play and the scope for players to lose large sums of money in a relatively short period of time, “easily up to \$1,500.00 per hour” in 2010 dollars.
246. In the absence of local empirical research, the Authority accepts that the Productivity Commission range from 22% - 60% presents the most credible estimate of the range of potential problem gambling expenditure that a given gambling venue may receive.
247. BIS has modelled both a 22% share and 40% share, observing that 22% has been modelled for “regulatory consistency” with the Mounties Decision.
248. However, the Application diverges from the Mounties application in several important respects. First, the venue is a hotel licensed premises – a for profit business, not a community enterprise. It is of no criticism of this Applicant that a commercial enterprise stands to derive considerable profits from the operation of its gaming room and a rational business owner may seek to maximise a return on investment. It will take staff of some considerable diligence, confidence and experience to intervene, in the context of a gaming room that trades over very long hours, to prevent at risk or problem gamblers from spending too long gambling on the premises.
249. Second, hotels are by virtue of their licence type public houses that are more readily accessible to the public than registered clubs, who provide services for members and guests and must observe certain entry protocols for non-members living within a 5km radius. As the PC Report makes clear, gaming machine accessibility is an important factor when considering the scope for gambling-related harm in a community. Third, section 41 of the *Registered Clubs Act 1976* (NSW) prohibits club directors, management and employees from deriving payments calculated directly or indirectly by reference to the keeping or operation of gaming machines. No such restriction applies to hotel businesses.
250. The Authority has considered the package of harm minimisation measures proposed by the Applicant and the harm minimisation plans and procedures devised on advice from the Applicant’s compliance consultant Mr Barrett. The Authority assigned the 22% lower end of the Productivity Commission range to Mounties because the harm minimisation measures at this club had been well established.
251. On the information provided in the LIA, the Authority considers that the most significant measures include the Harm Minimisation Manual devised by Mr Barrett and the *voluntary* pre commitment measures to be available on the new machines. The Authority notes that the Manual is a recent development with little information provided by the Applicant as to the

extent to which these new procedures have seen any problem or at-risk gamblers removed from the premises, or the extent to which interventions have occurred to address problematic patron behaviour.

252. The Authority also has some misgivings, arising from the research identified in Council's submission of 31 January 2018 referring to Part 10 of the PC Report, as to the effectiveness of *voluntary* pre-commitment as a countervailing measure to address problem gamblers, who may simply choose to ignore these options.
253. The Authority accepts the information provided by Council that, as of November 2017, no players had yet opted to use these new measures. In the Authority's view, configuring the Hotel's machines with *mandatory* harm minimisation measures, of the kind recommended in the PC Report (including limitations on bets per button push to \$1 and limiting the amount of money that may be fed into a machine at any one time to \$20) would warrant greater weight as counter measures, notwithstanding the commercial nature of the enterprise.
254. On balance, the Authority considers that the more prudent position, given the limited information as to the effectiveness of the new harm minimisation policies at this point in time, would be to apply the BIS scenario of 40%, which is just below the Productivity Commission midpoint of 41%.
255. The Authority is further satisfied, on the basis of the BIS analysis that a ten-year time horizon is the preferable choice when conducting this kind of cost-benefit analysis for the operation of new gaming machines. The Authority notes that this is a departure from the previous 5-year timeframe applied in the Mounties Decision and 2013 Fairfield Hotel Decision but that somewhat conservative (and beneficial) timeframe formed part of a trade-off, for the sake of simplicity, to avoid the resource intensive economic analysis necessitated by the Applicant's identification of "new to industry" expenditure and "net detriment" arising from that assessment.
256. While there remains scope for disruption from new and competing gambling products, LGNSW gaming machine profit data for Fairfield LGA shows that demand for physical gaming machines in this local community has remained persistently strong over recent years, notwithstanding that this community is one of the most economically disadvantaged in the State. Average machine profit per machine in this community remains relatively high compared to those for NSW as a whole.
257. In their submission of 31 January 2018 Council have correctly cited NSW Department of Treasury policy to apply a 20-year timeframe when undertaking cost-benefit analyses for major public projects. However, the Authority accepts the caution, advised by BIS, that this period may be too long, given the scope for future gaming machine expenditure to be affected by general economic conditions, disruption from other gambling products and changing community attitudes.
258. While the Applicant proposed assessing overall positive benefit over five years in the LIA, the Authority accepts the advice from BIS, supported by submissions from JSA, that this timeframe is too short to capture the costs that will actually flow from the operation of the new machines facilitated by approval of the GMT increase. On all the advice and evidence

now before it, the Authority finds that 10 years is a preferable and prudent timeframe over which to conduct the cost-benefit analysis formulated by BIS.

## DECISION

259. Having regard to the BIS analysis provided in the various “low benefit” scenarios and in light of the parameters preferred by the Authority in its findings above, the Authority is not satisfied that the Applicant has established circumstances of “no net detriment” for the local community. If the Applicant is unable to establish no net detriment, the Authority cannot be satisfied, for the purposes of section 36(3)(d)(i) of the Act, that increasing the GMT for the Hotel will have an overall positive impact upon the local community in which the venue is situated. The LIA is not approved.
260. Subsection 36(1) of the Act provides that “If an LIA is required to be provided with a threshold increase application, the application cannot be approved unless the Authority approves the LIA”. Given the Authority has decided not to approve the LIA, it cannot approve the Application. The Application is therefore refused.

Yours Faithfully



Philip Crawford  
Chairperson

### Important Information:

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* (NSW), a relevant person (the Applicant or a person who was required to be notified of the prescribed application and who made a submission to the Authority or the Secretary in respect of the prescribed application) who is aggrieved by this decision may apply to the New South Wales Civil and Administrative Tribunal (“NCAT”) for an administrative review under the *Administrative Decisions Review Act 1997* (NSW).

An application to NCAT must be made within 28 days of notice of this decision being published on the liquor and gaming website <https://www.liquorandgaming.nsw.gov.au/independent-liquor-and-gaming-authority/ilga-and-l-and-gnsw-decisions> and be accompanied by the fee prescribed by the regulations.

For more information, please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>.

<b>Schedule – Material Before Authority</b>	
1	Onegov liquor licence details for the Fairfield Hotel (“Hotel”) recorded as at 210217.
2	Gaming Machine Threshold (“GMT”) Increase Application Form (“Application”) lodged with Liquor and Gaming New South Wales (“LGNSW”) dated November 2017, made by Mr Daniel O’Hara of O’Hara’s Fairfield Hotel Pty Limited, the premises and business owner of the Hotel as the representative of the applicant, the Hotel’s licensee Mr Viet Phuc Andrew Do (“Applicant”).
3	Local Impact Assessment (LIA) Document: <i>“LIA 2 Submission for the Fairfield Hotel”</i> dated November 2017, lodged with the Application by Mr O’Hara. The following material is attached:
3.1	<ul style="list-style-type: none"> <li>• Appendix 1: Geographical map depicting a 1 kilometre radius of the Hotel.</li> </ul>
3.2	<ul style="list-style-type: none"> <li>• Appendix 2: Newspaper articles and Australian Hotels Association (“AHA”) Awards Finalists Certificates in relation to the Hotel.</li> </ul>
3.3	<ul style="list-style-type: none"> <li>• Appendix 3: Existing ground and first floor plans/diagrams of the Hotel.</li> </ul>
3.4	<ul style="list-style-type: none"> <li>• Appendix 4: Multicultural Problem Gambling Service for NSW document: <i>“If gambling is causing problems in your life you can get help”</i>.</li> </ul>
3.5	<ul style="list-style-type: none"> <li>• Appendix 5: Gaming machine related information for the Fairfield local government area (“LGA”).</li> </ul>
3.6	<ul style="list-style-type: none"> <li>• Appendix 6: Social profile information for the LGA.</li> </ul>
3.7	<ul style="list-style-type: none"> <li>• Appendix 7: Report on community consultation prepared by KJA engaging solutions: <i>“Fairfield Hotel application for additional gaming machines Community and Stakeholder Consultation Summary Report”</i> dated February 2017 (KJA Report) accompanied by the following material:</li> </ul>
3.7.1	<ul style="list-style-type: none"> <li>○ Appendix 1: Letter from Mr O’Hara to the General Manager of Fairfield City Council (“Council”) dated 281116 providing notification about the proposed Application including invitation to a community meeting.</li> </ul>
3.7.2	<ul style="list-style-type: none"> <li>○ Appendix 2: The original and an annotated version of the minutes taken by Mr O’Hara at a meeting between the Hotel and Council dated 191216 and written correspondence between Mr O’Hara and Council (in particular Ms Susan Gibbeson, Manager Social Development and Mr Tony Walker, Fairfield Place Manager) between 201216 and 221216.</li> </ul>
3.7.3	<ul style="list-style-type: none"> <li>○ Appendix 3: Letter from Ms Susan Gibbeson, Council, to Mr O’Hara dated 231216.</li> </ul>
3.7.4	<ul style="list-style-type: none"> <li>○ Appendix 4: News media advertisement in the Fairfield Advance newspaper dated 071216 notifying community of a community meeting to be held on 131216 to discuss the proposed Application.</li> </ul>
3.7.5	<ul style="list-style-type: none"> <li>○ Appendix 5: Agenda for community meeting on proposed Application held in the function room of the Green Peppercorn Restaurant at the Hotel on 131216.</li> </ul>

3.7.6	<ul style="list-style-type: none"> <li>○ Appendix 6: Minutes taken by Mr O’Hara at the community meeting dated 131216.</li> </ul>
3.7.7	<ul style="list-style-type: none"> <li>○ Appendix 7: Written correspondence from community organisations on the proposed Application including:</li> </ul>
3.7.7.1	<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>▪ Letter from Mr Dominic Teakle, Chief Executive Officer (“CEO”), New South Wales (“NSW”) Police Citizens Youth Clubs NSW Ltd, to Mr O’Hara dated 211216.</li> </ul> </li> </ul>
3.7.7.2	<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>▪ Letter from Dr Laurence McCleary, Department of Paediatrics and Adolescent Medicine, Fairfield Hospital, South Western Sydney Local Health District, to Mr O’Hara (undated).</li> </ul> </li> </ul>
3.7.7.3	<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>▪ Letter from Ms Libby Davies, CEO, White Ribbon Australia, to Mr O’Hara dated 090217.</li> </ul> </li> </ul>
3.7.7.4	<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>▪ Letter from Ms Carmen Lazar, Centre Manager, Assyrian Australian Association, [not addressed to any specific person] dated 250117 including documents providing information about their association.</li> </ul> </li> </ul>
3.7.8	<ul style="list-style-type: none"> <li>○ Appendix 8: Community consultation survey.</li> </ul>
3.7.9	<ul style="list-style-type: none"> <li>○ Appendix 9: Report on Survey prepared by KJA: “Fairfield Hotel application for additional gaming machines Survey Report” dated February 2017.</li> </ul>
3.7.10	<ul style="list-style-type: none"> <li>○ Appendix 10: A sample letter from Mr O’Hara dated November 2017 giving post Application notification of lodgement of the Application and Class 2 Local Impact Assessment (“LIA”) with the Independent Liquor and Gaming Authority (“Authority”).</li> </ul>
3.7.11	<ul style="list-style-type: none"> <li>○ Appendix 11: A proposed public consultation notice providing post Application notice of lodgement of the Application and 2 LIA.</li> </ul>
3.7.12	<ul style="list-style-type: none"> <li>○ Appendix 12: A proposed news media advertisement providing post Application notification of lodgement of the Application and LIA.</li> </ul>
3.8	<ul style="list-style-type: none"> <li>• Appendix 8: Statement of Mr Leigh James Barrett, Director and Principal Consultant, Leigh Barrett and Associates Pty Ltd, dated 080217. This statement is accompanied by:</li> </ul>
3.8.1	<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>○ Annexure 1: Curriculum Vitae of Mr Barrett.</li> </ul> </li> </ul>
3.8.2	<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>○ Annexure 2: The Hotel’s Responsible Gambling Policies and Procedures Manual dated February 2017, accompanied by:</li> </ul> </li> </ul>
3.8.2.1	<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>▪ Appendix 1: Responsible Gambling Coordinator and Officer Duties.</li> </ul> </li> </ul> </li> </ul>
3.9	<ul style="list-style-type: none"> <li>• Appendix 9: Report prepared by Mr Bruce Waddington of Geotech Information Services (“GIS”): “<i>Estimating the Expenditure Implications</i>”</li> </ul>

	<i>Resulting from the Proposed Increase in EGMs at the Fairfield Hotel, Fairfield NSW</i> dated 010317. The report is accompanied by:
3.9.1	<ul style="list-style-type: none"> <li>○ Annexure A: A document titled “The Formal Architecture of the Geotech Gravity Model”.</li> </ul>
3.9.2	<ul style="list-style-type: none"> <li>○ Annexure B: A document titled “Calculating New vs Transferred Expenditure at Fairfield Hotel”.</li> </ul>
3.9.3	<ul style="list-style-type: none"> <li>○ Annexure C: A document titled “Calculating New vs Transferred Expenditure at Fairfield Hotel” discussing “Top Up Case Studies Victoria”.</li> </ul>
3.9.4	<ul style="list-style-type: none"> <li>○ Annexure D: A document titled “Victorian EGM Transferred Expenditure Detailed Case Studies”.</li> </ul>
3.9.5	<ul style="list-style-type: none"> <li>○ An “Expert Statement &amp; Curriculum Vitae” of Mr Bruce Waddington, Geotech Information Services, dated 010317.</li> </ul>
3.10	<ul style="list-style-type: none"> <li>● Appendix 10: LIA 2 Positive Community Benefit Summary 2017 – Financial Summary prepared by Applicant.</li> </ul>
3.11	<ul style="list-style-type: none"> <li>● Appendix 11: Photographs of the Hotel’s Gambling Help Line / responsible gambling advertisements.</li> </ul>
3.12	<ul style="list-style-type: none"> <li>● Appendix 12: Photos evidencing Hotel support to community including Culinary Carnival (Council) and White Ribbon 2016 team photo.</li> </ul>
3.13	<ul style="list-style-type: none"> <li>● Appendix 13: Online news media article from Fairfield Advance by Craig Vaughan: “<i>Pub violence down 52 per cent in Fairfield thanks to hoteliers, police and local community</i>” dated 170315.</li> </ul>
3.14	<ul style="list-style-type: none"> <li>● Appendix 14: Applicant summary of Hotel’s community support to date / benefits to the Fairfield LGA.</li> </ul>
3.15	<ul style="list-style-type: none"> <li>● Appendix 15: Applicant account of refurbishment of the Hotel as a positive community benefit.</li> </ul>
4	Email from Mr O’Hara to Mr Charles Rivers, LGNSW, dated 151117 regarding the lodgement of the Application.
5	Email correspondence between Mr O’Hara and Mr Charles Rivers, LGNSW dated 151117 regarding notification requirements prior to lodging the Application with the Authority.
6	Email correspondence between Mr O’Hara and Mr Charles Rivers, LGNSW, on 151117 regarding pre Application notification requirements. The following material is attached:
6.1	<ul style="list-style-type: none"> <li>● Letter from Mr O’Hara to the Arab Council of Australia dated 291116 providing notification about the proposed Application including invitation to a community meeting.</li> </ul>
6.2	<ul style="list-style-type: none"> <li>● Letter from Mr O’Hara to the Commander of the Fairfield Police Station dated 291116 providing notification about the proposed Application including invitation to a community meeting.</li> </ul>

6.3	<ul style="list-style-type: none"> <li>Letter from Mr O'Hara to NSW Council of Social Service dated 291116 providing notification about the proposed Application including invitation to a community meeting.</li> </ul>
6.4	<ul style="list-style-type: none"> <li>Letter from Mr O'Hara to the General Manager of Council dated 291116 providing notification about the proposed Application including invitation to a community meeting.</li> </ul>
7	Email correspondence between Mr O'Hara and Mr Charles Rivers, LGNSW, dated 151117 regarding pre-Application notification requirements. The following documents are attached:
7.1	<ul style="list-style-type: none"> <li>Letter from Mr O'Hara to Mr Frank Carbone, Mayor of Council, dated 291116 providing notification of proposed Application including invitation to a community meeting.</li> </ul>
7.2	<ul style="list-style-type: none"> <li>Letter from Mr O'Hara addressed to Council's General Manager, Mr Tony Walker (Fairfield Place Manager, Council), Mr Frank Carbone (Mayor), Ms Susan Gibson (Council), Fairfield Police Station, Wesley Mission, Arab Council of Australia, Vietnamese Community Service in Australia, Uniting Care Mental Health, South Western Sydney Local Area Health District, and Council of Social Services, dated 291116 providing notification of proposed Application and invitation to the community meeting.</li> </ul>
7.3	<ul style="list-style-type: none"> <li>Letter from Mr O'Hara to the Council's General Manager dated 291116 providing notification of proposed Application and invitation to community meeting.</li> </ul>
7.4	<ul style="list-style-type: none"> <li>Letter from Mr O'Hara to South Western Sydney Area Health District dated 291116 providing notification about the proposed Application including invitation to community meeting.</li> </ul>
8	Email correspondence between Mr O'Hara and Mr Rivers, LGNSW, dated 151117 regarding notification requirements prior to lodging the Application with the Authority. The following documents are attached:
8.1	<ul style="list-style-type: none"> <li>Letter from Mr O'Hara to Ms Gibbeson (Council), dated 291116 providing notification of proposed Application including invitation to community meeting.</li> </ul>
8.2	<ul style="list-style-type: none"> <li>Letter from Mr O'Hara to Ms Gibbeson, dated 291116 providing notification of proposed Application including invitation to community meeting.</li> </ul>
8.3	<ul style="list-style-type: none"> <li>Letter from Mr O'Hara to Mr Walker (Council), dated 291116 providing notification of proposed Application and invitation to community meeting.</li> </ul>
8.4	<ul style="list-style-type: none"> <li>Letter from Mr O'Hara to Uniting Care Mental Health dated 291116 providing notification of proposed Application and invitation to community meeting.</li> </ul>

8.5	<ul style="list-style-type: none"> <li>Letter from Mr O'Hara to Vietnamese Community Service in Australia dated 291116 providing notification of proposed Application and invitation to a community meeting.</li> </ul>
8.6	<ul style="list-style-type: none"> <li>Letter from Mr O'Hara to Wesley Mission dated 291116 providing notification of proposed Application and invitation to a community meeting.</li> </ul>
9	Email correspondence between Mr O'Hara and Mr Rivers, LGNSW, between 151117 and 161117 regarding notification requirements prior to lodging the Application.
10	LGNSW Receipt/Tax Invoice for fee on GMT Application 161117.
11	Submission letter from Ms Carmen Lazar, Assyrian Resource Centre (established by the Assyrian Australian Association) to LGNSW dated 161117.
12	Email from Mr O'Hara to Mr Rivers, LGNSW, dated 161117 forwarding email correspondence from Mr O'Hara addressed to "Important Fairfield Local Government Area Stakeholder" dated 091216 giving notification of proposed Application. The following sample letter is attached:
12.1	<ul style="list-style-type: none"> <li>Letter from Mr O'Hara to "Fairfield Community Important Stakeholder" dated 091216 notifying proposed Application with invitation to community meeting.</li> </ul>
13	Email from Mr O'Hara to Mr Rivers, LGNSW, dated 161117 forwarding email correspondence from Mr O'Hara to Mr John Whelan and Mr John Green, Australian Hotels Association, dated 091216 giving notification of proposed Application. The following document is attached:
13.1	<ul style="list-style-type: none"> <li>Letter from Mr O'Hara to "Fairfield Community Important Stakeholder" dated 091216 providing notification of proposed Application and invitation to community meeting.</li> </ul>
14	Submission letter from Applicant to LGNSW dated 221117.
15	Submission letter from Mr Dominic Teakle, Police Citizens Youth Clubs NSW to LGNSW 221117.
16	Email submission from Ms Chantel Plum, Senior Executive, White Ribbon Australia, to then NSW Department of Justice (the Department of Industry is now responsible for Liquor and Gaming matters at the time of this decision) dated 231117.
17	Email from Ms Susan Gibbeson (Council) to the Authority and Mr Rivers, LGNSW, dated 241117 seeking extension of time to respond to the Application and LIA.
18	Superseded submission letter from Dr Kate Alexander on behalf of South Western Sydney Local Health District ("South Western Health") to LGNSW dated 271117.
19	Submission letter from Mr Phil Nakkan, NSW Commercial Sales Manager for Fox Sports to LGNSW dated 281117.
20	Email correspondence between Mr O'Hara and Mr Rivers and Ms Sarah Green, LGNSW, between 281117 and 291117.

21	Submission letter from Mr Sam Elg, National Business Manager of Carlton and United Breweries to Mr O'Hara dated 291117.
22	Email from Mr Rivers, LGNSW to Mr O'Hara dated 291117 forwarding a copy of the email submission from Fairfield Council dated 241117.
23	Email from Ms Simone Olson, Hatzis Cusack Lawyers (acting for Mr O'Hara and O'Hara Group), to Mr Rivers, LGNSW dated 301117. The following document is attached:
23.1	<ul style="list-style-type: none"> <li>Letter from Mr Tony Hatzis, Solicitor Hatzis Cusack to Mr Rivers, LGNSW, dated 301117.</li> </ul>
24	Media Reports concerning the Hotel from December 2017 from the Sydney Morning Herald, Guardian – Australia, ABC Radio Sydney, 2SM Sydney, ABC Illawarra, Channel 10 and public.com.au.
25	Submission letter from Mr Andrew Clement, Trade Relations Manager, Independent Liquor Group Distribution Cooperative Ltd, to LGNSW dated 011217.
26	Submission letter from Mr Troy Primmer, General Manager Sales and Marketing, Ainsworth Game Technology Ltd to LGNSW dated 041217.
27	Submission letter from Senior Constable Matt Green, Crime Prevention Officer, Fairfield Local Area Command, NSW Police, to LGNSW dated 051217.
28	Email from Dr Kate Alexander on behalf of South Western Health to LGNSW dated 051217 advising that her submission dated 271117 was incorrect with the submission signed by the Chief Executive to take precedence.
29	Email from Mr Rivers, LGNSW, to Mr Hatzis, Hatzis Cusack, dated 051217 regarding an extension for making submissions on the Application and LIA.
30	Submission letter from Ms Amanda Larkin, Chief Executive, South Western Health to LGNSW dated 101217.
31	Submission letter from Council to LGNSW dated January 2018 accompanied by the following attachments:
31.1	<ul style="list-style-type: none"> <li>Appendix 1: Report from Judith Stubbs and Associates (“JSA”) <i>“Review of Local Impact Assessment: The Fairfield Hotel”</i> dated January 2017.</li> </ul>
31.2	<ul style="list-style-type: none"> <li>Appendix 2: Map of community facilities, places of worship, school and venues within a 1-kilometre radius of the Hotel.</li> </ul>
32	Submission letter from Ms Sarah Hanania (Hotel staff) to LGNSW dated 150118.
33	Submission letter from Mr Kevin Luu (Hotel staff) to LGNSW dated 170118.
34	Submission letter from Van Son Do (Hotel staff) to LGNSW dated 170118.
35	Submission letter from Mr Keith McDonald, CEO, South Western Sydney Primary Health Network to LGNSW dated 190118.
36	Submission letter from Ms Tona Inthavong, owner of Green Peppercorn Restaurant at the Hotel, to LGNSW dated 240118.

37	Submission letter from Mr Matthew Comensoli, licensee of Mr Tippy's, to LGNSW dated 250118.
38	Submission letter from Mr Gordon Fromhold, licensee of The Berkeley Hotel to LGNSW dated 250118.
39	Submission letter from Mr Bakari Issa of Bakari Issa Cleaning Companies to LGNSW dated 250118.
40	Submission letter from Mr Graeme Neely, licensee of Central Hotel Blacktown, to LGNSW dated 260118.
41	Submission letter from Mr Andrew Glaister, Group General Manager for the O'Hara Group, to LGNSW dated 260118.
42	Submission letter from Mr Dan O'Hara, Director of the Hotel business owner, to LGNSW dated 260118.
43	Submission letter from Mr Steven Minh Hoang (Hotel staff) to LGNSW dated 270118.
44	Submission letter from Chau Thi Nguyen (Hotel staff) to LGNSW dated 270118.
45	Submission letter from Huy Hoang Nguyen (Hotel staff) to LGNSW dated 270118.
46	Submission letter from Thi Chuyen Pham (Hotel staff) to LGNSW dated 270118.
47	Submission letter from Mr David Johnston, CEO, United Resource Management Group, to LGNSW dated 290118.
48	Submission letter from Mr Andrew Glaister, Director of SAFA Services Pty Ltd, to LGNSW dated 290118.
49	Submission letter from Mr Vic Shipley, Business Manager, Powersmart Electrical Services, to LGNSW dated 290118.
50	Submission letter from Mr Daniel McGirr of McGirr Lawyers Pty Ltd to LGNSW dated 290118.
51	Submission letter from Mr Nox Tauakipulu, Group Operations Manager of ISEC Pty Ltd, to LGNSW dated 290118.
52	Submission letter from Mr Leigh Barrett, Leigh Barrett and Associates, to LGNSW dated 290118 attaching the following material:
52.1	<ul style="list-style-type: none"> <li>• Statement of Mr Leigh Barrett dated 080217.</li> </ul>
53	Submission letter from Mr James Lipman, Managing Director of B.E Clean, to LGNSW dated 290118.
54	Submission letter from Mr Cameron Davis, General Manager and licensee of the Collector Hotel Parramatta, to LGNSW dated 290118.
55	Submission letter from Ms Danielle Rayner, Director of GSL Solutions, to LGNSW dated 290118.
56	Submission letter from Mr Joe Rodrigues, Key Account Manager-On Premises of Asahi Premium Beverages, dated 290118 [letter not addressed to anyone].

57	Submission letter from Mr David Jack and Mr Matt Wright on behalf of Aristocrat Technologies Australia Pty Limited to LGNSW dated 300118.
58	Submission letter from Mr Rory O'Brien, owner of Arcon Australia (NSW) Pty Ltd, to LGNSW dated 300118.
59	Submission from Ms Kate Da Costa dated 310118 attaching:
59.1	<ul style="list-style-type: none"> <li>• A submission letter and submission from Mr Tony Mohr, Executive Director, Alliance for Gambling Reform to the Authority dated 300118.</li> </ul>
60	Submission letter from Mr Ricky Raisa of Ricmar Commercial Furniture and Upholstery to LGNSW dated 300118.
61	Submission from Ms Juana Reinoso, CEO, Core Community Services, to LGNSW comprising the official LGNSW submission form dated 300118, a letter dated 250118 and submission.
62	Submission from Ms Pamela Batkin, Woodville Alliance Ltd, to LGNSW (comprising the official LGNSW submission form and letter) dated 310118.
63	Submission letter from Ms Ruby Mose (Hotel staff) to LGNSW undated but received 310118.
64	Submission letter from Ms Samantha Prom (Hotel staff) to LGNSW undated but received 310118.
65	Submission letter from Mr Bruce Waddington, GIS to LGNSW undated but received 310118.
66	Email from Ms Simone Olson, Hatzis Cusack, to Mr Rivers, LGNSW, dated 200218. The following document is attached:
66.1	<ul style="list-style-type: none"> <li>• Letter from Mr Tony Hatzis, Hatzis Cusack, to Mr Charles Rivers, LGNSW, dated 200218 requesting an extension of time to reply to community submissions.</li> </ul>
67	Letter from Mr Dominic Teakle, CEO of Police Citizens Youth Clubs NSW, to LGNSW dated 280218.
68	Letter from Mr Tony Hatzis, Hatzis Cusack, to Mr Charles Rivers, LGNSW, dated 190318 comprising the following material:
68.1	<ul style="list-style-type: none"> <li>• Part I - Executive Summary legal submission dated 190318 accompanied by the following:</li> </ul>
68.1.1	<ul style="list-style-type: none"> <li>○ List of proposed conditions on approval of the Application.</li> </ul>
68.2	<ul style="list-style-type: none"> <li>• Part II – Submission distinguishing present Application from previous (2012) application accompanied by the following:</li> </ul>
68.2.1	<ul style="list-style-type: none"> <li>○ Annexure 1 - The Authority's decision with reasons dated 141113 in relation to the previous 2012 GMT application in relation to the Hotel.</li> </ul>

68.3	<ul style="list-style-type: none"> <li>• Part III – Applicant’s response to community objections dated 190318 accompanied by the following:</li> </ul>
68.3.1	<ul style="list-style-type: none"> <li>○ Annexure 1 – Report prepared by Mr Bruce Waddington, GIS: <i>“Response to Judith Stubbs &amp; Associates Report ‘Review of Local Impact Assessment: The Fairfield Hotel’”</i> dated 200218. This Report is accompanied by:</li> </ul>
68.3.1.1	<ul style="list-style-type: none"> <li>▪ Further report prepared by Mr Bruce Waddington, GIS: <i>“Using Retail Gravity Theory to Model Gaming Venue Expenditure and Transfer in Victoria Model Upgrade 2013/14 – An Overview of Background, Methods and Results”</i> dated June 2014. This is accompanied by:</li> </ul>
68.3.1.1.1	<ul style="list-style-type: none"> <li>➤ Annexure A – <i>Modelling Accuracy</i></li> </ul>
68.3.1.1.2	<ul style="list-style-type: none"> <li>➤ Annexure B – <i>The Formal Architecture of the 2013 Geotech Model</i></li> </ul>
68.3.2	<ul style="list-style-type: none"> <li>○ Annexure 2 – Submission from Design Collaborative Pty Limited consultants on behalf of Applicant in response to community submissions dated March 2018.</li> </ul>
68.3.3	<ul style="list-style-type: none"> <li>○ Annexure 3 – Constitution of <i>Kids of Cumberland Health Foundation Ltd.</i></li> </ul>
68.3.4	<ul style="list-style-type: none"> <li>○ Annexure 4 – Letter from Mr Domenic Portolesi, Director, and Mr Vincent Movizio, Director/Secretary, Kids of Cumberland Health Foundation Ltd, to LGNSW dated 120318.</li> </ul>
68.3.5	<ul style="list-style-type: none"> <li>○ Annexure 5 –Supplementary statement from Mr Leigh Barrett, Leigh Barrett and Associates dated 080318.</li> </ul>
68.3.6	<ul style="list-style-type: none"> <li>○ Annexure 6 – Information about the services of Warakirri College from its website.</li> </ul>
68.3.7	<ul style="list-style-type: none"> <li>○ Annexure 7 – Statutory Declaration from Darcy Plowman, Paralegal, Hatzis Cusack dated 130318 providing the following letters from gaming machine players at Hotel:</li> </ul>
68.3.7.1	<ul style="list-style-type: none"> <li>▪ Letter from Mr Carlos Trejos to the Authority dated 150218.</li> </ul>
68.3.7.2	<ul style="list-style-type: none"> <li>▪ Letter from Mr Marco Valenzuela to the Authority dated 150218.</li> </ul>
68.3.7.3	<ul style="list-style-type: none"> <li>▪ Letter from Mr Anthony Baysari to the Authority dated 150218.</li> </ul>
68.3.7.4	<ul style="list-style-type: none"> <li>▪ Letter from Ms Alycia Callus-Gauci to the Authority dated 150218.</li> </ul>
68.3.7.5	<ul style="list-style-type: none"> <li>▪ Letter from Mr Jo Seaton to the Authority dated 150218.</li> </ul>
68.3.7.6	<ul style="list-style-type: none"> <li>▪ Letter from Mr Hans Bodagh to the Authority dated 150218.</li> </ul>
68.3.7.7	<ul style="list-style-type: none"> <li>▪ Letter from Mr John Deanno to the Authority dated 150218.</li> </ul>

68.3.7.8	<ul style="list-style-type: none"> <li>▪ Letter from Mr Frank Manly to the Authority dated 150218.</li> </ul>
68.3.7.9	<ul style="list-style-type: none"> <li>▪ Letter from Mr Kevin [no last name specified] to the Authority dated 150218.</li> </ul>
68.3.7.10	<ul style="list-style-type: none"> <li>▪ Letter from Mr Wally [no last name specified] to the Authority dated 150218.</li> </ul>
68.3.7.11	<ul style="list-style-type: none"> <li>▪ Letter from Mr Eric [no last name specified] to the Authority dated 150218.</li> </ul>
68.3.7.12	<ul style="list-style-type: none"> <li>▪ Letter from Mr John Mamsoor to the Authority dated 150218.</li> </ul>
68.3.7.13	<ul style="list-style-type: none"> <li>▪ Letter from Mr Jason [no last name specified] to the Authority dated 150218.</li> </ul>
68.3.7.14	<ul style="list-style-type: none"> <li>▪ Letter from Ms Hilda Ormeno to the Authority dated 210218.</li> </ul>
68.3.7.15	<ul style="list-style-type: none"> <li>▪ Letter from Mr Oscar Baez to the Authority dated 210218.</li> </ul>
68.3.7.16	<ul style="list-style-type: none"> <li>▪ Letter from Mr Eric [no last name specified] to the Authority dated 210218.</li> </ul>
68.3.7.17	<ul style="list-style-type: none"> <li>▪ Letter from Mr Moataane Masi to the Authority dated 210218.</li> </ul>
68.3.7.18	<ul style="list-style-type: none"> <li>▪ Letter from Mr Stewart Carson to the Authority dated 210218.</li> </ul>
68.3.7.19	<ul style="list-style-type: none"> <li>▪ Letter from Mr Mick Reitano to the Authority dated 210218.</li> </ul>
68.3.7.20	<ul style="list-style-type: none"> <li>▪ Letter from Ms Thi Le to the Authority dated 210218.</li> </ul>
68.3.7.21	<ul style="list-style-type: none"> <li>▪ Letter from Mr Steve [no last name specified] to the Authority dated 210218.</li> </ul>
68.3.7.22	<ul style="list-style-type: none"> <li>▪ Letter from Mr Thai Tran to the Authority dated 210218.</li> </ul>
68.3.8	<ul style="list-style-type: none"> <li>○ Annexure 8 – Statutory Declaration of Mr O’Hara unsigned and undated, accompanied by:</li> </ul>
68.3.8.1	<ul style="list-style-type: none"> <li>▪ Results of a survey conducted on average gaming machine play occupancy at the Hotel over 3 weeks from 070218 to 280218.</li> </ul>
68.3.9	<ul style="list-style-type: none"> <li>○ Annexure 9 – Letter from Ms Carmen Lazar, Assyrian Australian Association, to Authority dated 260218.</li> </ul>
68.3.10	<ul style="list-style-type: none"> <li>○ Annexure 10 – Letter from Tony Hatzis, Hatzis Cusack to Ms Juana Reinoso, CEO, Core Community Services, dated 060218.</li> </ul>
68.3.11	<ul style="list-style-type: none"> <li>○ Annexure 11 – Letter from Ms Reinoso to Mr Hatzis dated 210218.</li> </ul>
68.3.12	<ul style="list-style-type: none"> <li>○ Annexure 12 – Australian Medical Association Position Statement “<i>The Health Effects of Problem Gambling</i>” (2013).</li> </ul>
69	Email from Mr Rivers, LGNSW, to Mr Hatzis, Hatzis Cusack dated 230518 regarding Applicant change of position on donations from that specified in LIA.
70	Letter from Mr Hatzis to Mr Rivers dated 070618 making legal submissions in reply.
71	Email from Mr Charles Rivers, LGNSW, to Mr Tony Hatzis, Hatzis Cusack Lawyers, dated 230818 advising Authority view on Applicant’s change of position from LIA.

72	Submission from Mr Hatzis to Mr Rivers dated 130918 making further submission on Applicant's position on overall social impact attaching:
72.1	<ul style="list-style-type: none"> <li>Annexure 1 – News article from Ms Anna Patty, Sydney Morning Herald <i>"Fairfield Hospital nurses 'understaffed' the night baby died, inquest hears"</i> dated 120318.</li> </ul>
73	Statutory Declaration from Mr Dan O'Hara dated 111018 regarding observance of notification requirements, attaching the following material:
73.1	<ul style="list-style-type: none"> <li>Attachment A – Extract from the Fairfield Advance newspaper giving notice of the Application dated 151117.</li> </ul>
73.2	<ul style="list-style-type: none"> <li>Attachment B – Two photograph of the public consultation site notice displayed at the Hotel premises.</li> </ul>
74	Briefing Letter from Authority General Counsel to BIS Oxford Economics ("BIS") dated 061218, accompanied by the following material ("Briefing Material"):
74.1	<ul style="list-style-type: none"> <li>The Applicant's GMT Application form lodged in November 2017(produced above).</li> </ul>
74.2	<ul style="list-style-type: none"> <li>LIA (and accompanying documents) filed with the Application in November 2017 (produced above).</li> </ul>
74.3	<ul style="list-style-type: none"> <li>27 pages Authority Paper (internal briefing paper) dated 111018 prepared by Mr Charles Rivers, LGNSW. [Containing an error on page 13 in the Table for "NSW Hotel Quarterly Gaming Profile", in that the figure in bold for "Total profit of All Hotels" in the "Average (pre-tax) profit per machine" column should state "\$26,829" not "\$288,855"].</li> </ul>
74.4	<ul style="list-style-type: none"> <li>Authority decision dated 090813 regarding GMT increase application in relation to Mount Pritchard Community Club Ltd.</li> </ul>
74.5	<ul style="list-style-type: none"> <li>Authority decision dated 141113 regarding the Hotel's previous GMT increase application.</li> </ul>
74.6	<ul style="list-style-type: none"> <li>Google pinpoint map showing location of all hotels and clubs with gaming services in the Fairfield LGA.</li> </ul>
74.7	<ul style="list-style-type: none"> <li>Onegov liquor licence records for all hotels and clubs in Fairfield LGA (including the Hotel) showing licensed trading hours and gaming machine shut down times extracted on 301118.</li> </ul>
74.8	<ul style="list-style-type: none"> <li>Excel spreadsheet specifying each hotel and club in the Fairfield LGA, the number of gaming machine entitlements, their licensee trading hours, their advertised or actual trading hours (based on information provided on the website or a phone call) and the daily gaming machine shutdown period.</li> </ul>
74.9	<ul style="list-style-type: none"> <li>Excel spreadsheet tracking average gaming machine profit in all hotels in Band 2 and 3 areas between 2009 and 2018 who have received an increase in their GMT.</li> </ul>
74.10	<ul style="list-style-type: none"> <li>Excel spreadsheet containing details of gaming machine profit data by LGA, Fairfield SA2 and Fairfield suburb, broken down by LGA, Financial Year</li> </ul>

	(2013/2014 to 2018/2019), Licence Type (hotel or club), Premises Size (small, medium, large, very large), Number of Venues, Total Gaming Machines, Total Profit and Profit Per Gaming Machine.
74.11	<ul style="list-style-type: none"> <li>Excel spreadsheet containing details of gaming machine profit data by LGA broken down by LGA, Financial Year (2013/2014 to 2017/2018), Licence Type (hotel or club), SortOrder, Premises Size (small, medium, large, very large), Number of Venues, Total Gaming Machines, Total Profit and Profit Per Gaming Machine.</li> </ul>
74.12	<ul style="list-style-type: none"> <li>PDF document comprising six tables of data extracted from Onegov as at 25 November 2018 specifying: NSW Gaming Machine Entitlements; NSW Licences with Entitlements; Fairfield LGA Licences with Entitlements (and Permits); Fairfield SA2 licences with Entitlements (and Permits); Fairfield LGA Entitlements; Fairfield SA2 Entitlements.</li> </ul>
74.13	<ul style="list-style-type: none"> <li>Report from Bruce Waddington of GIS titled "Estimating the Expenditure Implications Resulting from the Proposed Increase in EGMs at the Fairfield Hotel, Fairfield NSW" dated 010317 including accompanying attachments (produced above).</li> </ul>
74.14	<ul style="list-style-type: none"> <li>Report titled "Review of Local Impact Assessment: The Fairfield Hotel" dated January 2017 by JSA (produced above).</li> </ul>
74.15	<ul style="list-style-type: none"> <li>Report prepared by Mr Bruce Waddington, GIS, titled "Response to Judith Stubbs &amp; Associates Report 'Review of Local Impact Assessment: The Fairfield Hotel'" dated 200218 including accompanying attachments (produced above).</li> </ul>
75	Report from BIS " <i>Fairfield Hotel Additional EGM Application – Economic Advice</i> " dated 24 January 2019 ("BIS Report") accompanied by:
75.1	<ul style="list-style-type: none"> <li>PDF document noting BIS cost benefit calculations</li> </ul>
76	LGNSW review of research into gambling related harms: " <i>Evidence Summary – Problem gambling and individual costs of gambling in Australian jurisdictions</i> " prepared by Dr Bev Lloyd, Manager Research and Evidence, LGNSW dated February 2019 ("LGNSW Research") accompanied by:
76.1	<ul style="list-style-type: none"> <li>Appendix 1 – Summary of gambling harm minimisation research by Australian jurisdictions</li> </ul>
77	Email from Dr Rochelle Hurst, Authority Reviews and Secretariat Unit ("Authority Secretariat"), to Hatzis Cusack and Council dated 150219 providing BIS Report, the Briefing Material and inviting any final submissions in reply.
78	Letter from Tony Hatzis to Rochelle Hurst dated 180219 requesting access to certain gaming machine data referred to in the Briefing Material provided to BIS.
79	Submission letter from Susan Gibbeson, Council, to Rochelle Hurst dated 220219 requesting access to data referred to in the Briefing Material.

80	Email from Susan Gibbeson to the Authority dated 010319. The following material is attached:
80.1	<ul style="list-style-type: none"> <li>Report from Mr John Storer, JSA: <i>“Review of Fairfield Hotel Additional EGM Application – Economic Advice”</i> dated February 2019.</li> </ul>
81	Letter from Tony Hatzis to Rochelle Hurst dated 040319 making a further request for access to certain gaming machine data referred to in the Briefing Material to BIS.
82	Letters from Authority Secretariat to Hatzis Cusack and Council dated 110319 requesting undertakings prior to the release of gaming machine data to GIS and JSA.
83	Email correspondence dated 130319 from Bruce Waddington GIS and John Storer, JSA to the Authority Secretariat providing undertakings.
84	Email from Dr Laurence McCleary, Fairfield Hospital, to the Authority Secretariat dated 180319 attaching the following
84.1	<ul style="list-style-type: none"> <li>Letter from Dr Laurence McCleary, Fairfield Hospital, to the Authority dated 120319 providing notification that Fairfield Hospital Children’s Ward Charitable Trust (Kids of Cumberland) rescinds the agreement to accept charitable donations from the Fairfield Hotel upon the successful outcome of the application.</li> </ul>
85	Email from Dr Rochelle Hurst, Authority Secretariat, to Hatzis Cusack Lawyers and Council dated 190319 forwarding the letter from Dr Laurence McCleary, Fairfield Hospital, dated 120319 and inviting written submissions.
86	Email from Ms Susan Gibbeson to the Authority dated 190319. The following document is attached:
86.1	<ul style="list-style-type: none"> <li>A supplementary submission prepared by Ms Judith Stubbs, JSA, to Council dated 190318 (sic, 2019).</li> </ul>
87	Email from Ms Aileen Zheng, Authority Secretariat, to Hatzis Cusack Lawyers dated 210319 forwarding the email and supplementary submission from Council dated 190319 for comment.
88	Email from Ms Beatrice Pitpaiac, Authority Secretariat, to Hatzis Cusack dated 280319 forwarding the email response dated 260319 from Ms Susan Gibbeson, Council, in relation to the letter from Dr Laurence McCleary dated 120319 rescinding the agreement to accept charitable donations.
89	Email from Mr Hatzis to Dr Rochelle Hurst, Authority Secretariat, dated 290319. The following document is attached:
89.1	<ul style="list-style-type: none"> <li>Submission from Mr Hatzis to Dr Hurst dated 290319 responding to the letter from Dr Laurence McCleary dated 120319 rescinding the agreement to accept charitable donations.</li> </ul>

90	Email from Ms Stephens, Hatzis Cusack, to Dr Hurst, Authority Secretariat, dated 290319. The following document is attached:
90.1	<ul style="list-style-type: none"> <li>• Second submission from Mr Hatzis, to Dr Hurst dated 290319 responding to the letter from Dr Laurence McCleary dated 120319 rescinding the agreement to accept charitable donations.</li> </ul>
91	Email from Ms Meg Stephens, Hatzis Cusack to Dr Hurst, Authority Secretariat, dated 290319. The following material is attached:
91.1	<ul style="list-style-type: none"> <li>• Legal submission letter from Mr Hatzis dated 290319 providing legal submissions on the BIS Report. The following documents are annexed:</li> </ul>
91.1.1	<ul style="list-style-type: none"> <li>○ Report by Mr Waddington, GIS: <i>“Estimating Expenditure Implications Resulting from the Proposed Increase in EGMs at the Fairfield Hotel, Fairfield NSW”</i> in response to BIS Report and Council submissions on BIS Report, dated March 2019</li> </ul>
91.1.2	<ul style="list-style-type: none"> <li>○ Document specifying Applicant’s analysis of four cost/benefit analysis scenarios “A, B, C and D”.</li> </ul>
92	Email from Ms Beatrice Pitpaia, Authority Secretariat, to Hatzis Cusack and Council dated 180419 providing a copy of LGNSW Research and inviting written submissions.
93	Email from Ms Gibbeson, Council, to Hatzis Cusack and Authority dated 290419. The following document is attached:
93.1	<ul style="list-style-type: none"> <li>• Submission letter from Ms Gibbeson to Ms Pitaiac, Authority Secretariat, dated 260419 responding to the LGNSW Research.</li> </ul>
94	Email correspondence between Mr Hatzis and Ms Gibbeson, Council, dated 290419 regarding a reference in Council’s response to the LGNSW Research.
95	Email from Ms Meg Stephens, Hatzis Cusack to Authority Secretariat and Council dated 060519. The following document is attached:
95.1	<ul style="list-style-type: none"> <li>• Legal submission from Mr Hatzis, Hatzis Cusack Lawyers dated 060519 responding to the LGNSW Research and Council’s response.</li> </ul>
96	Updated Onegov licence details for the Hotel recorded as at 070619.
97	LGNSW Fact Sheet “Class 2 Local Impact Assessment (LIA)”.
98	LGNSW Fact Sheet “All Local Government Areas by band” effective 14 June 2017.