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Victorian Commission for Gambling and Liquor Regulation

Benmara Pty Ltd at The Bridge Inn Hotel premises (Gaming-EGM increase) [2014] VCGLR 41 (11 November 2014)

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DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the Gambling Regulation Act 2003, by Benmara Pty Ltd for amendment of its venue operator's licence to vary the number of electronic gaming machines at the approved venue, The Bridge Inn Hotel, 1425 Plenty Road, Mernda, from forty (40) to sixty (60) gaming machines.

Commission: Miss Gail Owen, Deputy Chairman

Mr Des Powell, Commissioner

Date of Hearing: 10 October 2014

Date of Decision: 11 November 2014

Date of Reasons: 11 November 2014

Appearances: Mr Nick Tweedie SC with Ms Nicola Collingwood of Counsel on behalf of the Applicant (instructed by Bazzani Scully Priddle)

Mr John Rantino, Partner, Maddocks Lawyers on behalf of Whittlesea City Council

Mr Andrew 'Max' Lee on behalf of the Whittlesea Interagency Taskforce on Gambling

Mr Bronte Campbell as Counsel assisting the Commission

Decision: That the application be granted subject to the conditions set out at paragraph 83 of these Reasons for Decision.

Signed:

Gail Owen

Deputy Chairman

REASONS FOR DECISION

INTRODUCTION

1. This is an application by Benmara Pty Ltd (the Applicant) for amendment of its venue operator's licence to vary the number of electronic gaming machines (EGMs) operating at the Bridge Inn Hotel, 1425 Plenty Road, Mernda (the Hotel), from 40 to 60 EGMs.
2. The relevant municipal authority is the Whittlesea City Council (the Council). The Council opposed the application and was represented at the hearing of the application.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the Gambling Regulation Act 2003 (the Act). The Act recognises that, although a legal activity, gaming on EGMs causes harm to some communities and some members of some communities.^[1] For this reason the Act includes safeguards to ensure an appropriate balance is struck between a lawful recreational activity for some and a potentially harmful activity for others. In particular, the balance is maintained by requiring an applicant wishing to increase the number of EGMs at a venue to satisfy the Commission of the "no net detriment test" and the other matters set out in section 3.4.20(1) of the Act.
4. The no net detriment test requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.
5. Section 3.4.19 of the Act allows the Council to make a submission addressing the economic and social impact of the proposal on the well-being of the community and the impact of the proposal on surrounding municipal districts. The Commission is bound to take this submission into consideration when applying the no net detriment test. This recognises the special role of local government in representing the people of a community.^[2]

THE MATERIAL BEFORE THE COMMISSION

6. The Applicant filed the following documents in support of its application:

- (a) a completed application form to increase the number of EGMs at the Hotel, dated 1 July 2014;
- (b) a completed application form for approval to modify a gaming machine area in an approved venue, dated 1 July 2014 and indicating the proposed layout of EGMs, if the application is approved;^[3]
- (c) a social and economic impact assessment report prepared by Ratio Consultants Pty Ltd, dated July 2014;
- (d) an expenditure report prepared by Mr Michael Clyne, Progressive Venue Services Pty Ltd, dated 24 June 2014;
- (e) a letter from Mr Leigh Barrett, Managing Director of Leigh Barrett and Associates Pty Ltd, dated 24 May 2014;
- (f) a witness statement by Mr Edward Victor Gauci, Director of the Applicant, dated July 2014; and
- (g) a witness statement by Ms Lyn Knight, the Applicant's Gaming Compliance Manager, dated July 2014

7. The Council filed the following documents in opposition to the application:

- (a) economic and social impact submission form dated 22 September 2014;
- (b) a social and economic impact assessment report prepared by The Planet Group, dated September 2014;
- (c) a letter of support from the Seventh-Day Adventist Church of the Council's intention to oppose the application, dated 5 August 2014;
- (d) a report and extract of Ordinary Council Minutes from the Council's meeting on 16 September 2014, recording Council's resolution to oppose the application; and
- (e) a witness statement by Mr Glenn Menner, Director of The Planet Group, dated 29 September 2014.

8. The Applicant subsequently filed further material in response to the Council's submission, being:

- (a) an addendum economic and social impact assessment report prepared by Ratio Consultants Pty Ltd dated 1 October 2014; and
- (b) an additional expenditure report by Mr Michael Clyne of Progressive Venue Services Pty Ltd dated September 2014.

9. The Commission received a submission from the Whittlesea Interagency Taskforce on Gambling^[4] (WITOG) opposing the application and two objections to the application from members of the public.

10. The Commission also had before it two reports prepared by Commission officers, being:

(a) a statistical economic and social impact report dated September 2014; and

(b) a pre-hearing inspection and compliance report dated September 2014.

THE BRIDGE INN HOTEL

11. The Hotel was established in 1891 and is located in the growth suburb of Mernda on the corner of Bridge Inn Road and Plenty Road. The Hotel was purchased by the Applicant in 2010, remaining in its original state until 2012 when the Applicant undertook a major renovation at a cost of \$9.8 million.

12. The Hotel now comprises the following facilities:

(a) bistro with seating for 230 patrons;

(b) alfresco area with seating for 20 patrons;

(c) sports bar and TAB, including a pool table, large screen TVs and outdoor seating;

(d) children's play area;

(e) community room; and

(f) gaming lounge with 40 EGMs and external smoking area.

13. The Hotel was been the subject of three applications before the Commission's predecessor, the Victorian Commission for Gambling Regulation (VCGR):

(a) in 2007, the VCGR rejected an application for 60 EGMs on the basis that the Hotel was located in a core retail area conducive to convenience gambling and a concerning level of social and economic disadvantage in the City of Whittlesea;

(b) in 2008, the VCGR approved an application for 40 EGMs on the condition that 12 EGMs would be relocated from other venues in the southern (and more disadvantaged area) of the municipality but that approval lapsed as the Applicant was unable to satisfy the relocation condition; and

(c) in 2011, the VCGR approved an application for 40 EGMs, noting considerable population growth in the area immediately surrounding the Hotel.

14. The Hotel reopened in December 2013 and has proven to be a popular venue.

THE CITY OF WHITTLESEA

15. The City of Whittlesea (Whittlesea) is a Metropolitan Local Government Area located approximately 23 kilometres north of Melbourne and includes the major centres of Bundoora,

Thomastown, Epping, Mill Park and Lalor. The Hotel is located within the northern part of the municipality.

16. Whittlesea consists of three statistical local areas^[5] (SLAs), Whittlesea - North, Whittlesea -South-East and Whittlesea - South-West. The Hotel is located within the Whittlesea - North SLA.

17. In terms of social and economic disadvantage, Whittlesea is ranked as the 38th most disadvantaged of all 79 Victorian LGAs according to its SEIFA ranking.^[6] However, the level of disadvantage within the expected patron catchment of the Hotel^[7] is less, with no Statistical Area Level 1 (SA 1)^[8] in the first quintile of relative disadvantage and only 8.3% of SA 1 s in the second quintile of relative disadvantage. The majority of the SA 1 s within a 2.5km radius of the Hotel are in the fourth and fifth quintiles of relative disadvantage indicating that the venue's gaming patrons are likely to experience lower levels of social and economic disadvantage.

18. Whittlesea is characterised by strong population growth, having an annual growth rate of 4% over the 2011-16 period, compared to the Victorian average of 1.54% for the same period. The suburbs of Mernda and Doreen, which surround the Hotel, have experienced particularly significant growth. In 2001, the combined population of Mernda and Doreen was 1,347 and increased to 19,823 in 2011. Mernda and Doreen's population is projected to increase to 40,267 by 2016.

19. Whittlesea experiences an above average unemployment rate (8.10%) when compared with the State average for metropolitan LGAs (5.97%). The unemployment rate in Whittlesea has increased from 7.57% to 8.10% in the past 12 months.

GAMING EXPENDITURE IN THE CITY OF WHITTLESEA

20. For the purpose of the distribution of gaming machines, the Whittlesea LGA is split into two areas. The south of the municipality, including the postcode areas 3074, 3075, 3076, 3082 and 3083, is subject to a regional cap of 581 EGMs. There are currently eight gaming venues operating a total of 570 EGMs within the capped area of the municipality.

21. The northern area of the municipality, where the Hotel is located, is subject to a municipal limit of 212 EGMs.^[9] There are currently two gaming venues operating within this area, the Hotel (with 40 EGMs) and the Whittlesea Bowls Club (with 50 EGMs).

22. In terms of gaming machine density, Whittlesea has 4.75 EGMs per 1,000 adults, which is 15% less than the metropolitan average and 18.6% less than the Victorian average. As a result of the population growth in Whittlesea, gaming machine density has reduced from 6.12 EGMs per 1,000 adults in the 2007-08 financial year to 4.66 EGMs per 1,000 adults in the last financial year.

23. Whittlesea experiences above average gaming expenditure per head when compared with the Victorian and metropolitan averages. In the 2013-14 financial year, Whittlesea had an average gaming expenditure per adult of \$692, which is 20.5% more than the metropolitan average and 27.3% more than the State average. The Applicant estimates that approval of this application would result in a 0.4% increase in adult per head gaming expenditure in Whittlesea.

THE APPLICANT'S MATERIAL

24. The Applicant provided the Commission with extensive material to establish the economic social benefits that approval of the application would bring to the municipality. That material is summarised below.

Social and Economic Impact

25. The Applicant engaged Ratio Consultants Pty Ltd (Ratio) to prepare a social and economic impact statement for the purposes of the application. Ratio also prepared an addendum report after considering the Council's submission. The Applicant called Ms Colleen Peterson, Director of Ratio to give evidence at the hearing of the application. The Commission has regularly accepted that Ms Peterson is qualified to give an expert opinion on the likely social and economic impacts of EGMs.

26. Ms Peterson gave evidence that the Hotel is located in the heart of Mernda, on the corner of two main arterial roads. In the last ten years, Mernda (and its surrounding suburbs including Doreen) has experienced population growth that has exceeded the projections of both the ABS and the local council. Ms Peterson told the Commission that the growth in the Mernda and Doreen area is largely 'middle class' growth, and as a result, the socioeconomic indicia in the area has steadily improved. Ms Peterson noted that the suburbs of Mernda and Doreen now present as areas with very little social and economic disadvantage.

27. Ms Peterson noted two exceptions to the strong social and economic indicia for the Mernda and Doreen area; above average levels of housing stress and above average levels of unemployment. Ms Peterson told the Commission that whilst the level of housing stress was above average, it was likely explained by a large proportion of growth in the area being 'upgrade buys'. Ms Peterson explained to the Commission that as housing stress is calculated as expenditure on rent or mortgage repayments that exceeds 30%, with amenities and services largely fixed costs, a threshold level can be reached where those on higher incomes can put themselves in 'voluntary housing stress' whilst still retaining a level of disposable income to comfortably live within their means. Ms Peterson acknowledged that while 'voluntary housing stress' would account for some of the incidents of housing stress in the area, it is likely that there are still persons experiencing real housing stress, which is an indicator of disadvantage.

28. Ms Peterson told the Commission that it was difficult to explain the above average levels of unemployment in the northern part of Whittlesea. Ms Peterson said that typically, an area exhibiting strong social and economic indicators would be expected to have an average or lower than average level of unemployment. Ms Peterson did note that growth regions generally experience above average levels of unemployment compared with established metropolitan regions. While Ms Peterson said that the above average levels of unemployment were concerning, they should be viewed relative to other municipalities and noted that Victoria's more disadvantaged municipalities generally exhibit levels of unemployment higher than that currently experienced in the northern part of Whittlesea.

29. In terms of the expected catchment area for gaming patrons at the Hotel, Ms Peterson said that it is generally accepted that a 2.5km radius is applied in metropolitan areas. However, in cases such as these, where a venue is located in a growth area, it would be

appropriate to adopt a larger catchment area with the acknowledgement that as the growth in the area continues and population density increases, the catchment area is likely to narrow to 2.5km.

30. As part of Ratio's assessment of social and economic impacts of the proposal, a patron postcode survey was undertaken. The results of the survey show 47.5% of gaming patrons are drawn from suburbs within a 2.5km radius of the Hotel, Mernda (27.3%) and Doreen (20.2%). Ms Peterson told the Commission that typically a patron survey conducted in a more established region would show between 70-80% of patrons coming from suburbs within a 2.5km radius of the venue.

31. Ms Peterson noted that 12.2% of gaming patrons surveyed at the Hotel came from Epping, which presents as considerably more disadvantaged than the suburbs of Mernda and Doreen. In Ms Peterson's opinion, this is due to the venue being newly established and in a growth area. Ms Peterson considers that, in the future, as Mernda and Doreen become more established and the 'novelty factor' of the Hotel wears off, it is less likely that residents of Epping will travel to the Hotel. Ms Peterson noted that, with the exception of Epping, the suburbs from which the Hotel's gaming patrons were drawn (for the surveyed period) have strong social and economic indicators and exhibit few signs of disadvantage.

32. In terms of the venue itself, Ms Peterson considers the Hotel to be one of the best entertainment venues in Melbourne's north. It has a high quality fit-out, a diverse entertainment offering and popular food and beverage facilities. The Hotel does not currently have function facilities. However, should this application be approved, renovation works will be undertaken on the Hotel's first floor to add function facilities and a lift providing disabled access. In addition to these works, the Applicant plans to expand the Hotel's kitchen capacity and add a roof-top garden and beer lounge. It is anticipated that an additional nine full time equivalent positions will be created to service the new areas of the Hotel.

33. Ms Peterson gave evidence that the Hotel is currently committed to providing \$75,000 per annum in cash contributions to local community and sporting groups. As at October 2014, the Applicant had provided \$74,952 to community organisations since the Hotel reopened including a \$15,000 donation to the Whittlesea Branch of the State Emergency Service and a \$14,000 donation to the Whittlesea Football Club. Should this application be approved, the Applicant will increase its community contributions by \$20,000 to \$95,000.

34. Ms Peterson was asked whether the rezoning of land opposite the Hotel to allow construction of a supermarket and retail centre (as being considered by the Council) would change the character of the Hotel and promote convenience gambling. Ms Peterson told the Commission that, after considering the proposed plans for the supermarket and retail centre, she did not believe pedestrian traffic would be increased around the Hotel to an extent that would promote convenience gambling.

35. In summarising her evidence, Ms Peterson told the Commission the approval of the application will result in a number of social and economic benefits for the residents of Whittlesea, including:

(a) a two stage renovation to the Hotel which will expand the capacity and attractiveness of the Hotel;

- (b) an increase of gaming capacity and variety for those who partake in gaming as a recreational pursuit without harming themselves or others;
- (c) an increase in community contributions of \$20,000;
- (d) an increase in employment of 9 equivalent full-time positions;
- (e) an economic stimulus for the community derived from the anticipated increase in gaming expenditure and complimentary expenditure; and
- (f) an increase in short term employment associated with the renovation works to be undertaken at the venue.

36. In terms of disbenefits, Ms Peterson noted that, as with all applications that increase accessibility to gaming, the key concern is a risk of an increase in problem gambling. In Ms Peterson's opinion, approval of this application is unlikely to increase the rate of problem gambling within Whittlesea as:

- (a) there is already access to EGMs within the municipality and at the Hotel;
- (b) gaming is one component of a larger entertainment offer at the Hotel;
- (c) the anticipated increase in EGM expenditure within the municipality is modest and is unlikely to have a material impact on expenditure derived from problem gambling; and
- (d) the Applicant takes its responsible service of gaming obligations seriously and has a proven track record of regulatory compliance.

37. In Ms Peterson's opinion, approval of this application would not result in a net social and economic detriment to the community of Whittlesea. In her view, the cumulative social and economic impact of approval of the application will be positive.

Evidence of likely EGM expenditure

38. The Applicant provided the Commission with an expenditure estimate prepared by Mr Michael Clyne for PVS Australia Pty Ltd (PVS). Mr Clyne is an independent gaming expenditure expert and was engaged by PVS to critique and analyse the outputs of the Geotech Model that is used to estimate likely EGM expenditure in gaming venues. The Geotech Model is a retail gravity geo-spatial model that has been presented as evidence and accepted by the Commission, with some qualifications, on numerous occasions. The Commission accepts that Mr Clyne is qualified to give an expert opinion on matters of gaming expenditure.

39. Mr Clyne told the Commission that the Geotech Model predicted the annual expenditure on the 20 additional EGMs to be installed at the Hotel to be approximately \$531,050 of which 54% would be transferred from other venues within the municipality.

40. In Mr Clyne's view, given the above average population growth in the area surrounding the Hotel and the small number of gaming venues in the northern part of Whittlesea, it is appropriate to adjust the Geotech Model's output to the upper bound 75% confidence level^[10]

to allow for above average growth in gaming expenditure. Utilising the upper bound prediction, Mr Clyne anticipates the annual expenditure on the 20 additional EGMs to be installed at the Hotel to be approximately \$844,933.

41. Mr Clyne did not consider it necessary to apply any adjustment to the Geotech Model's predicted transfer rate of 54%. While typically a higher transfer rate could be expected in the context of a mature gaming industry, Mr Clyne told the Commission that a lower transfer rate was not unsurprising in this case, given the lack of competing gaming venues in the area.

42. Should the Geotech Model, together with Mr Clyne's adjustment, prove to be accurate, it can be expected that expenditure within Whittlesea would increase by \$389,565 in the first 12 months of the additional EGMs being operational at the Hotel.

Witness Statement - Mr Edward Victor Gauci

43. Mr Edward Gauci is a Director of the Applicant and has extensive experience in the hospitality industry, having owned and operated licensed venues since 1994. Mr Gauci, together with his brother, Joseph Gauci, manages the Hotel and has a financial interest in the corporate entities that own the Hotel and its freehold.

44. Mr Gauci and his brother are also the owners and operators of the Seachange Management Group (Seachange), an entity set up to assist in the management of licensed venues. Seachange has been involved in the management of many gaming venues including the St Albans Hotel, Victorian Tavern (Gisborne), Crown Hotel (Lilydale) and venues operated by the Collingwood Football Club.

45. Mr Gauci gave evidence that he and his brother entered into a long-term purchase agreement for the Hotel in 2006, with a view to completing a major redevelopment of the venue by 2010. The Hotel was identified as a venue that was well located to take advantage of significant population growth in a developing region. However, after delays in obtaining the required approvals, the redevelopment of the Hotel was not completed until December 2013.

46. The Hotel now provides a rounded entertainment offering with a large bistro and lounge, sports bar and TAB facilities, gaming room with 40 EGMs and external al fresco areas. According to Mr Gauci, the Applicant employs 75 staff at the venue, the vast majority of whom live in the local area.

47. Since its reopening, the Hotel has been embraced by the local community. Mr Gauci told the Commission that during December - January holiday period, the Hotel was serving approximately 4,000 meals per week. The Hotel now averages approximately 2,000 meals per week, which Mr Gauci considers to be an 'extremely strong' performing venue.

48. Mr Gauci told the Commission that further development of the Hotel would take place should this application be successful. The further development is to be undertaken in two stages and is designed to provide the venue with additional capacity to cater for its current level of patrons and the projected growth in the Mernda and Doreen area.

Stage 1 is estimated to cost \$1,500,000 and will include:

(a) construction of two new courtyards

- (b) extensions to the storage capacity of the Hotel's freezer, kitchen, cool room and keg facilities;
- (c) reconfiguration of the kitchen to increase capacity to 90 meals per half hour;
- (d) installation of a pizza oven; and
- (e) weatherproofing the gaming area courtyard.

Stage 2 is estimated to cost \$1,200,000 and will include:

- (a) installation of a lift and staircase;
- (b) redevelopment of the Hotel's first floor to ensure all function areas meet council standards and are compliant with disability use requirements; and
- (c) the addition of a roof deck beer garden.

49. Mr Gauci estimated that the Stage 1 works would be completed within 12 months of the introduction of the additional gaming machines, and the Stage 2 works would be completed within 18 months of completion of the Stage 1 works. Mr Gauci told the Commission that the Stage 1 and 2 works were dependent on the approval of this application, as the Applicant would only be able to secure additional credit with a projected increase in gaming revenue.

50. In terms of community contributions, Mr Gauci acknowledged that the Applicant had previously committed to providing \$75,000 per annum to community and sporting groups as part of its premises approval application in 2011.^[11] Mr Gauci told the Commission that since the reopening of the Hotel, the Applicant had provided 'just under' the promised \$75,000 but intended to reach that amount within the next few months. Should this application be approved, Mr Gauci told the Commission the Applicant would increase its community contributions by \$20,000 to a total of \$95,000 per annum. Mr Gauci confirmed that the Applicant would accept a condition on the approval of this application securing the total amount of promised community contributions (\$95,000 per annum) for the life of the EGM entitlements.

51. Mr Gauci told the Commission that it had always been intended that the venue would operate with 60 EGMs to provide 'a balance' to the venue, given the scale and scope of the Hotel and to accommodate for the projected population growth in the area. In Mr Gauci's opinion, the popularity and usage of the gaming facilities at the Hotel since its reopening has shown that there is a demand for an increase in gaming capacity at the venue.

52. Mr Gauci reiterated to the Commission that all of the staff of the Applicant, and all members of the Gauci group of companies (Gauci Group), take their responsible service of gaming obligations very seriously. Mr Gauci told the Commission that the Gauci Group's commitment to responsible service of gaming is evidenced by the engagement of Leigh Barrett and Associates to oversee regulatory compliance at the Hotel.

Witness Statement - Mr Leigh James Barrett

53. Mr Leigh Barrett gave evidence to the Commission concerning the Hotel's regulatory compliance and responsible gambling practices. Mr Barrett is the Director of a consultancy

business specialising in the provision of regulatory compliance services and staff training for Victorian gaming venues and has expertise in responsible gaming practices and procedures.

54. Mr Barrett told the Commission that in March 2013, he was engaged by the Applicant to provide a range of responsible gambling support services for the Hotel and other gaming venues managed by Seachange. The services provided by Mr Barrett include:

- (a) reviewing, and enhancing, the Responsible Service of Gaming and Customer Care policies and procedures for all venues;
- (b) staff professional development and training sessions (in conjunction with Gambler's Help) for all gaming and wagering staff;
- (c) regular audits of all gaming venues of their compliance with regulatory and Responsible Gaming Code of Conduct obligations; and
- (d) providing ongoing support in developing and implementing Responsible Service of Gaming initiatives.

55. In Mr Barrett's view, the location of the gaming room in the Hotel is appropriate and is not conducive to opportunistic or convenience gambling. Mr Barrett told the Commission that the Hotel's gaming room could be accessed directly from the rear car park (via a small unsupervised foyer) and through a narrow passage from the Hotel's sports bar, but could not be accessed directly from the bistro or lounge areas. Mr Barrett acknowledged that the entrance to the gaming room from the rear car park did not have a direct line of sight from the gaming cashier's booth. Mr Barrett told the Commission that should CCTV cameras be positioned to monitor the entry foyer, this would adequately mitigate against the risk of minors entering the gaming room.

56. Mr Barrett told the Commission that he did not have any concerns with an increase in the number of gaming machines at the Hotel. The Applicant ensures that at least two staff members are present on the gaming floor at all times and gaming room is monitored by CCTV cameras viewable from the cashier's booth. Further, the gaming room is well spaced and can accommodate an additional 20 EGMs without breaching any regulatory requirements.

Witness Statement - Ms Lynette Anne Knight

57. The Applicant called Ms Lynette Knight to give evidence as to the responsible service of gaming practices of the Applicant. Ms Knight is employed by Seachange as its Gaming Compliance Manager and is responsible for overseeing gaming operations for all venues managed or operated by Seachange.

58. Ms Knight's day to day responsibilities include:

- (a) maintenance of all financial records and reconciliations;
- (b) overseeing responsible service of gambling and alcohol training and ensuring compliance at all venues; and

(c) regular compliance audits of venues.

59. Ms Knight told the Commission that she works closely with Leigh Barrett and Gambler's Help (Western) in her role. Ms Knight acknowledged that the Hotel was not in the western region, but told the Commission that she had a strong relationship with Gambler's Help (Western) through her work with other venues managed by Seachange that are in the western region. Ms Knight told the Commission that Gambler's Help (Northern) attends the venue on a monthly basis and conducts staff training sessions on a quarterly basis. While Ms Knight does not have a familiar relationship with the Gambler's Help (Northern) venue support worker, she told the Commission that the gaming manager of the Hotel did have such a relationship.

60. Ms Knight confirmed that all gaming staff employed at the Hotel are required to hold a current gaming industry employee licence and that it is a Hotel requirement for at least two staff members monitor the gaming room floor at all times. In terms of CCTV coverage, Ms Knight confirmed that all entrances to the gaming room were monitored by cameras which are able to be viewed from the cashier's booth. Ms Knight is confident that the presence of staff members on the gaming room floor, together with CCTV coverage of entrances to the gaming room, will ensure that no minors are able to enter the Hotel's gaming room.

61. Ms Knight concluded by telling the Commission that she did not believe any major changes would need to be made at the Hotel should an additional 20 EGMs be installed in the gaming room. Ms Knight is confident the responsible service of gaming practices and procedures implemented at the Hotel will mitigate the risk of problem gambling taking place at the venue.

THE COUNCIL'S SUBMISSION

62. In opposition to the application, the Council filed a Social Impact Assessment Report prepared by Planet Group Proprietary Limited (Planet Group).

Mr Glenn Menner

63. Mr Glenn Menner is a Director of the Planet Group and the author of the Social Impact Assessment Report filed by the Council. Mr Menner is a social planner with approximately 15 years experience working for local government authorities

64. Mr Menner broadly agreed with the findings of Ms Peterson in respect of the social and economic standing of Whittlesea and the area surrounding the Hotel. However, Mr Menner's analysis differed from Ms Peterson's on the following matters:

(a) while the Mernda and Doreen area has seen a significant growth in population, health and welfare services in the area have not shared a similar growth. To Mr Menner's knowledge, there are no health and welfare services in the immediate Mernda and Doreen area to assist in minimising the impacts of problem gambling. This lack of social infrastructure makes the Mernda and Doreen community more vulnerable than a community with well established support services, despite its robust social and economic indicators;

(b) with respect to housing stress, Mr Menner agreed that those with higher disposable incomes may be able to take on 'voluntary housing stress', however those persons are not immune to other factors such as changes in interest rates which may compound the impact of housing stress;

(c) there is a lack of public infrastructure, which can lead to vulnerability in the community. For example, Mr Menner argued that the Mernda and Doreen area has a high level of car dependency to access services such as childcare, health and community facilities. This means that the residents of Mernda and Doreen are vulnerable to costs associated with car use including fuel and servicing. While on its own a high level of car dependency is not a significant factor in terms of vulnerability, if coupled with a high level of housing stress and other factors, those who may normally present as advantaged are at risk of becoming vulnerable in a short space of time;

(d) Mr Menner drew the Commission's attention to the current lack of competing entertainment and food and beverage facilities in the Mernda and Doreen area. The effect of this is that for those who wish to go out to eat in the local area, they are only able to do so at a venue with gaming machines;

(e) Mr Menner surveyed eight health and welfare agencies as to the impact an increase of EGMs would have on the residents of Whittlesea. Five agencies responded to Mr Menner's survey and all indicated that they believed an increase in gaming machines at the Hotel would have a negative impact on the wellbeing of clients accessing their services. In particular, the Whittlesea Community Connections agency noted:

"It is likely that the number of clients presenting to our services with gambling issues is underrepresented. Clients will often seek assistance when in crisis (i.e. at risk of homelessness, disconnection of utilities) and do not disclose that this is a result of gambling losses.

For those in Mernda and Doreen, social and physical isolation due to a lack of social and physical infrastructure further increases the risk of gambling problems."

(f) Mr Menner did not conduct a community attitudes survey in his assessment of this application but referred to a survey conducted by the Council in 2008 to gauge the community's attitude towards gaming. That survey showed that 70% of respondents were opposed to gaming (with the majority being strongly opposed) and fewer than 10% were in favour of gaming. In Mr Menner's view, the community's attitude towards gaming is unlikely to have shifted dramatically from the results of the 2008 survey; and

(g) Mr Menner told the Commission that the Hotel is located in close proximity to the proposed Mernda Town Centre development which will include the addition of a supermarket and several other retail land uses. Mr Menner argued that, once completed, the Mernda Town Centre will increase pedestrian traffic and the risk of convenience gambling occurring at the Hotel. This, in turn, may result in problem gambling occurring at the venue.

65. Having conducted his assessment, Mr Menner is of the view that the proposal for an additional 20 EGMs at the Hotel will have a net social and economic detriment on the

wellbeing of the municipal district and those that live in the Mernda and Doreen area. Mr Menner told the Commission that while the catchment area of the Hotel presents as having little social and economic disadvantage, the vulnerability indicators of housing stress and unemployment are concerning and cannot be ignored.

THE WHITTLESEA INTERAGENCY TASKFORCE ON GAMBLING'S SUBMISSION

66. In addition to its written submission in opposition to the Application, WITOG sought leave to make an oral submission at the hearing of the application. The Commission granted leave for WITOG to make an oral submission on the basis that the submission was limited to matters not addressed in its written submission. Mr Andrew 'Max' Lee is the Chief Executive Officer of the Hume Whittlesea Primary Care Partnership (a WITOG member), appeared on WITOG's behalf to make the oral submission.

67. The written and oral submissions of WITOG are summarised as follows:

(a) WITOG is a collection of eight major community and welfare agencies operating across Whittlesea which share concerns regarding the impacts EGM gaming has within the municipality. WITOG's purpose is to reduce harm arising from gambling in Whittlesea;

(b) WITOG opposes the application on the basis that an additional 20 EGMs would result in a significant net detriment to the Mernda and Doreen communities;

(c) WITOG notes that while the Mernda and Doreen area does not present as disadvantaged on a SEIFA basis, the area still experiences high levels of housing stress, unemployment and family violence. Additionally, there is poor access to transport, social services and a lack of leisure and recreation activities alternative to the Hotel.

(d) WITOG submitted that, since the opening of the Hotel, there has been an increase in the number of people seeking support services from the Mernda and Doreen area. For example, for the period between January and June 2014, 17 persons from Mernda and Doreen presented to the Whittlesea Community Connections agency with family violence concerns. This figure is almost double that recorded (9 persons) for the previous six month period (during most of which the Hotel was closed). WITOG argued that problem gambling and its associated financial stressors can be a catalyst for family violence.

(e) WITOG submitted that there is evidence to suggest that only a small portion of problem gamblers will seek access to support services or self-exclude from gaming venues. This suggests that problem gambling is impacting many more people and is of much greater concern than may be apparent from statistics concerning those who seek support services for problem gambling.

(f) In WITOG's opinion, the expenditure estimate provided by Mr Clyne is vastly understated. Given the growth in the area and current high levels of EGM usage at the Hotel, there is no reason to suggest that additional EGMs at the venue would perform any worse than the machines currently installed at the Hotel. WITOG suggested a more appropriate forecasting methodology would be to adopt the Hotel's current per machine performance and apply it to

the additional machines. This methodology suggests that the additional machines will achieve expenditure of \$2,371,304, which is considerably greater than Mr Clyne's forecast.

(g) WITOG considers the additional \$20,000 in community contributions proposed by the Applicant to be insignificant when compared to the revenue that is likely to be generated by the additional EGMs to be installed in the Hotel.

(h) WITOG acknowledged that the Hotel is a popular venue and provides a social benefit to the community, and the renovation works proposed by the Applicant will further enhance the venue and its positive benefit on the community. However, in WITOG's opinion, this benefit is not sufficient to outweigh the social and economic harm that will be caused by an increase in EGMs at the Hotel.

LIKELY ECONOMIC IMPACT OF APPROVAL

68. There is often a large degree of overlap between economic and social impacts of applications to operate EGMs. The Commission considers it useful for the purpose of balancing community benefits and detriments that a thorough analysis and identification of the economic and social impact on the community be undertaken.

69. Following the recent comments of the Victorian Civil and Administrative Tribunal^[12], the Commission notes that regardless of what analytic tools are employed, a large element of judgement is necessary in forecasting. Obviously, no model can incorporate the very many real life variables that influence expenditure trends. Given the above average growth in the Mernda and Doreen area and the popularity of the Hotel, the Commission considers it more likely than not that the performance of an additional 20 EGMs at the Hotel will exceed the outputs provided by the Geotech Model. The Commission is satisfied that Mr Clyne's adjustment to the outputs of the model is appropriate to allow for factors not taken into account by the Geotech Model. Accordingly, the Commission considers Mr Clyne's estimate of an increase in expenditure of \$844,933 to be not unreasonable.

70. In terms of transferred expenditure, the Commission notes that it is never possible to quantify with absolute certainty the exact amount of revenue that will be drawn from other venues (indeed, even after the event it is not possible to identify the transfer rate with any confidence). Given the lack of competing gaming venues in close proximity to Hotel and the significant population growth in the Mernda and Doreen area, the Commission would expect a lower rate of transferred expenditure compared with a gaming venue in a settled and more competitive market. Having regard to this, the Commission considers the transfer rate predicted by the Geotech Model (54%) to be not unreasonable.

71. The Commission considers there to be a marginal economic benefit associated with this application through an increase in gaming expenditure within the municipality. The Commission considers gaming expenditure (excepting that associated with problem gambling) to be legitimate consumption expenditure undertaken by a majority of users that are enjoying a lawful recreational activity. The Commission notes that the Productivity Commission considers this associated consumer surplus to be the largest source of benefit from gaming.^[13]

72. The Commission considers the two stage renovation works proposed by the Applicant to be an economic benefit. The totality of the works is estimated to cost \$2.7 million and should be seen as a significant investment. It is likely that some local businesses in the Mernda and Doreen area will benefit from ancillary expenditure associated with the renovation works at the venue. This also should be seen as an economic benefit.

73. The Commission considers an increase in employment at the venue to be a slight economic benefit. Traditionally, employment impacts are viewed largely as transfers (e.g. by the Productivity Commission), but in the case of a rapidly growing area, new jobs offer a benefit.

74. Accordingly, the Commission considers that there will be a positive economic impact on the community if the Application were to be approved.

LIKELY SOCIAL IMPACT OF APPROVAL

75. It is appropriate to acknowledge that gaming expenditure that is derived from problem gaming is both an economic and social cost. The effects of problem gambling are not isolated to the individual. Problem gambling places strain on families, friends and community support services. The concerns raised by the Council and WITOG are valid concerns. However, the Commission was not presented with any reliable evidence to show that problem gambling was occurring at the Hotel, or was likely to occur or increase, should this application be approved.

76. While the Commission can never completely discount the possibility of problem gambling occurring at a venue, the Commission is satisfied that the Applicant has appropriate policies and procedures in place to mitigate the risk of problem gambling. Further, the Commission is satisfied that the area in which the venue is situated does not present as disadvantaged. While the Commission notes the above average levels of housing stress and unemployment that exist in the Mernda and Doreen area, it is not satisfied that these factors present an unacceptable level of vulnerability in the area.

77. The Commission is concerned by the level of family violence that is apparent in the Mernda and Doreen area. However, on the material presented to the Commission it is not possible to conclude that the existence of gaming venues in the area is a causative factor. The Commission acknowledges the evidence of the Whittlesea Community Connections agency in respect of an increase those seeking support services since the Hotel opened. However, given the considerable population growth in the area, the Commission cannot discount the possibility that this increase is attributable to population growth, rather than the existence of the Hotel.

78. The Commission places some weight on the lack of health and wellbeing community services in the Mernda and Doreen area. The Commission agrees with the Council that the difficulty in accessing local support services has the potential to compound the impacts of problem gambling. While the Commission acknowledges that a lack of support services in the immediate area heightens the vulnerability of local residents, for the reasons previously articulated, the Commission does not consider the risk of an increase in problem gambling arising out of approval of this application to be great.

79. The Commission is satisfied that the further improvements to the Hotel planned by the Applicant will provide a social benefit. The Hotel does not currently have function facilities. The addition of function facilities will further enhance the venue's entertainment offering and also provide space for use by the rapidly expanding local community and by sporting groups. The Commission considers the improvement of disability access is also be a benefit. The Commission considers an increase in community contributions of \$20,000 to be a small social benefit.

80. After considering the social benefits of the proposal, balanced against the detriments, the Commission considers that, on the balance, the likely social impact of the proposal will be neutral.

CONDITIONS

81. The Applicant provided the Commission with a set of proposed conditions, should the Commission be minded to grant the application.

82. The Commission has considered the proposed conditions and, in this case, has determined to adopt the conditions, save for some drafting amendments and changes to the required timing for the proposed renovation works. In the Commission's view, a key benefit of the application is the two stage renovation works to the venue and this benefit should be realised as a priority. Accordingly, the Commission has determined to reduce the time period proposed by the Applicant for completion of each stage of the works by six months. The Commission notes that the conditions provide for an extension of time should unanticipated factors delay the completion of the works.

83. Accordingly, the Commission's approval of the application is subject to the following conditions :

1. **Works**

1.1 If the **Stage 1 Works** (as defined below) are not substantially completed by 30 June 2016 or such later date as agreed to in writing by the Commission, this approval will lapse.

The Commission may, upon the request of the owner or operator of the Premises, agree to extend the time for substantial completion of the Stage 1 Works. Any request for an extension of time must include an explanation as to why the Stage 1 Works have not been substantially completed by 30 June 2016.

Stage 1 Works means:

(i) construction of two new courtyards, one adjacent to the sports bar and one adjacent to the gaming room;

(ii) extensions to the freezer, kitchen, cool room and keg room at the Hotel to increase storage capacity;

(iii) reconfiguration of the kitchen to increase our covers capacity to 90 covers every half an hour. This includes installation of a double pass, additional dishwashing capability, an additional combi oven and ancillary back of house alterations;

(iv) installation of a pizza oven to enable the Hotel to offer wood fired pizzas, which are very popular with patrons and can be cooked quickly; and

(v) works to weather proof the gaming area courtyard.

1.2 If the **Stage 2 Works** (as defined below) are not substantially completed by **31 December 2017** or such later date as agreed to in writing by the Commission, this approval will lapse.

The Commission may, upon the request of the owner or operator of the Premises, agree to extend the time for substantial completion of the Stage 2 Works. Any request for an extension of time must include an explanation as to why the Stage 2 Works have not been substantially completed by **31 December 2017**.

Stage 2 Works means

(i) installation of a lift and staircase;

(ii) redevelopment of the Hotel's first floor to ensure all function areas meet council standards and are compliant with disability use requirements; and

(iii) the addition of a roof deck beer garden.

2. Community Contributions

2.1 The Venue Operator will make annual cash contributions of \$20,000 per annum (increased annually by reference to increases in the CPI, All Groups Melbourne), from the commencement of the operation of the twenty (20) additional electronic gaming machines (**EGMs**) at the Hotel (the **Contribution**):

2.2 The Contribution will be allocated each year to not-for-profit community groups and sporting organisations providing services and facilities to residents in the Shire of Whittlesea.

2.3 The distribution of the Contribution in accordance with condition 2.2 will be determined by a committee (the **Committee**) established by the Venue Operator comprising:

(a) Two representatives of the Venue Operator; and

(b) One representative of Council or, in the event that Council is unwilling to provide a representative, a community representative nominated by the Venue Operator.

2.4 The Committee will advertise annually in a newspaper circulating in the Shire of Whittlesea area for submissions for contributions from not-for-profit community and sporting organisations, providing services and facilities to residents within the Shire of Whittlesea. The Committee will assess submissions in accordance with guidelines to be established by the Committee.

2.5 In addition to the payment of the Contributions referred to in Clause 2.1, the Venue Operator must continue to pay cash contributions to sporting and community groups in the Shire of Whittlesea of not less than \$75,000 per annum (Existing Contributions) until 15 August 2022. The Existing Contributions will be increased annually by reference to increases in the CPI All Groups Melbourne.

If the Venue Operator sells or transfers the Hotel business to a third party after the commencement of the operation of the 20 additional EGMs at the Hotel, the Venue Operator shall, as part of the sale or transfer, require the purchaser or transferee to assume responsibility for the obligations in these Conditions.

CONCLUSION

84. The no net detriment test in section 3.4.20(1)(c) of the Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the wellbeing of the relevant community will be either neutral or positive.^[14]

85. After consideration of the material put forward by both the Applicant and the Council, the Commission has concluded that the social and economic impacts of the proposal are likely to be slightly positive.

On the material that has been put before it, the Commission is satisfied that the Application is not in conflict with the other matters set out in section 3.4.20(1) of the Act. The Commission is also satisfied that the Applicant understands and will continue to act in accordance with its obligations to, so far as is reasonable, take measures to prevent problem gambling. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the Application subject to the conditions set out in paragraph 83.

The preceding paragraphs are a true copy of the Reasons for Decision herein of Miss Gail Owen , Deputy Chairman and Mr Des Powell, Commissioner

[1] See: s 1.1 (2) of the Act.

[2] Ramsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation [2009] VCAT 2275, [247] - [249].

[3] The Commission notes that approval to modify a gaming machine area is the subject of a subsequent approval process.

[4] WITOG is a partnership of health and community agencies including the Hume Whittlesea Primary Care Partnership, Salvation Army and Kildonan Uniting Care.

[5] The Statistical Local Area (SLA) is an Australian Standard Geographical Classification defined area which consists of one or more SA1s. SLAs are Local Government Areas, or parts thereof. Where there is no incorporated body of local government, SLAs are defined to cover the unincorporated areas. SLAs cover, in aggregate, the whole of Australia without gaps or overlaps.

[6] The Socio-Economic Indexes for Areas (SEIFA) is a product developed by the Australian Bureau of Statistics

(ABS) which ranks areas in Australia according to their relative socio-economic advantage and disadvantage. The ABS selects indicators such as education, employment, income, families and housing and combines them to provide an index score for each area and ranks all areas in Australia to enable comparison to be made.

[7] The 2003 Victorian Longitudinal Community Attitudes Survey found that the majority of a metropolitan venue's gaming patrons are sourced from areas within 2.5km of the venue.

[8] The Statistical Level Area 1 is a unit of measure developed by the ABS designed to indicate the smallest unit of release of 2011 Census data. The Statistical Level Area 1 unit is indicative of an area with a population of between 200 to 800 persons.

[9] Pursuant to section 3.4A.5(3A)(b) of the Gambling Regulation Act 2003 the Victorian Commission for Gambling and Liquor Regulation determined, in accordance with the criteria specified in the Minister for Gaming's Order on 15 August 2012, the maximum permissible number of gaming machine entitlements under which gaming may be conducted in each region.

[10] This is a process whereby the outputs of the model are increased to give a statistical probability to accuracy of 75%. That is, the model is adjusted to give a prediction that is 75% likely to not exceed the actual performance of the gaming machines

[11] The VCGR did not consider it necessary to impose a condition on the 2011 premises approval securing the \$75,000 in community contributions

[12] In particular, the decisions of *Mount Dandenong Tourist Hotel Pty Ltd v Greater Shepparton CC* [2012] VCAT 1899 and *Francis Hotel Pty Ltd v Melbourne* [2012] VCAT 1896.

[13] Australian Government Productivity Commission, "Productivity Commission Inquiry Report: Gambling", Volume 1, No. 50, 26 February 2010.

[14] *Romsey* [2008] VSCA 45; (2008) 19 VR 422, 4