

# Victorian Commission for Gambling and Liquor Regulation

## DECISION AND REASONS FOR DECISION

In the matter of an application by Bendigo Stadium Ltd under section 3.3.4(1) of the *Gambling Regulation Act 2003* for approval of the premises, the Wellington at Botanical Gardens, located at 555 Napier Street, White Hills as suitable for gaming with forty-four (44) electronic gaming machines.

**Commission:** Ms Deirdre O'Donnell, Deputy Chair  
Mr Des Powell AM, Commissioner

**Appearances:** Mr John Larkins of Counsel, for the Applicant (instructed by Wisewould Mahony Lawyers)  
Ms Amy Rudolph, Counsel Assisting the Commission

**Date of Hearing:** 4 July 2017

**Date of Decision:** 18 August 2017

**Date of Reasons:** 18 August 2017

**Decision:** The application is refused.

**Signed:**

**Deirdre O'Donnell**  
Deputy Chair

## REASONS FOR DECISION

### INTRODUCTION

1. On 7 April 2017, Bendigo Stadium Ltd (**Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (**Commission**) for approval of the Wellington at Botanical Gardens, located at 555 Napier Street, White Hills (**Premises**), as premises suitable for gaming with forty-four (44) electronic gaming machines (**Application**) pursuant to section 3.3.4(1) of the *Gambling Regulation Act 2003* (**Act**).
2. The relevant municipal authority is the City of Greater Bendigo (**Council**). On 19 June 2017, the Council provided the Commission and the Applicant with a written submission (together with supporting documents) in opposition to the Application.
3. The Commission considered the Application by way of a public inquiry.<sup>1</sup> To this end, a public hearing was conducted on 4 July 2017 (**Hearing**). The Applicant was represented by Mr John Larkins of Counsel, instructed by Wisewould Mahony Lawyers. As stated above, the Council provided a written submission but did not appear before the Commission at the Hearing.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Gambling on electronic gaming machines (**EGMs**) is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the Act. The Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities. For this reason the Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some, and a potentially harmful activity for others.
5. The objectives of the Act are set out in section 1.1, which provides, inter alia:
 

...

(2) *The main objectives of this Act are—*

  - (a) *to foster responsible gambling in order to-*
    - (i) *minimise harm caused by problem gambling; and*
    - (ii) *accommodate those who gamble without harming themselves or others;*
  - (ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*
  - (b) *to ensure that gaming on gaming machines is conducted honestly;*

<sup>1</sup> A public inquiry is required to be conducted by the Commission in relation to the Application pursuant to section 28(g)(iii) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (**VCGLR Act**). As to the manner in which the Commission is to conduct an inquiry, see generally Pt 3 Div 2 VCGLR Act (Inquiries), see also Pt 2 Div 3 VCGLR Act (Performance and exercise of the Commission's functions, powers and duties).



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- (c) *to ensure that the management of gaming equipment and monitoring equipment is free from criminal influence and exploitation;*
- (d) *to ensure that other forms of gambling permitted under this or any other Act are conducted honestly and that their management is free from criminal influence and exploitation;*
- (e) *to ensure that-*
  - (i) *community and charitable gaming benefits the community or charitable organisation concerned;*
  - (ii) *practices that could undermine public confidence in community and charitable gaming are eliminated;*
  - (iii) *bingo centre operators do not act unfairly in providing commercial services to community or charitable organisations;*
- (f) *to promote tourism, employment and economic development generally in the State.*

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

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

7. Section 9(3) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)* provides, inter alia:

*The Commission must, when performing functions or duties or exercising its powers under the Gambling Regulation Act 2003 ... or any other Act, have regard to the objects of the Act conferring functions on the Commission.*



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8. The relevant provisions concerning this Application are to be found in sections 3.3.7 and 3.3.8 of the Act:

(a) section 3.3.7 provides:

- (1) *The Commission must not grant an application for approval of premises as suitable for gaming unless satisfied that—*
  - (a) *the applicant has authority to make the application in respect of the premises; and*
  - (b) *the premises are or, on the completion of building works will be, suitable for the management and operation of gaming machines; and*
  - (c) *the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located.*
- (2) *In particular, the Commission must consider whether the size, layout and facilities of the premises are or will be suitable.*
- (3) *The Commission must also consider any submission made by the relevant responsible authority under section 3.3.6.<sup>2</sup>*
- ...
- (5) *The Commission cannot approve an area as a gaming machine area unless that area is wholly indoors.*

(b) section 3.3.8 provides, inter alia:

- (1) *The Commission must determine an application by either granting or refusing to grant—*
  - (a) *approval of the premises as suitable for gaming; and*
  - (b) *if applicable, approval for 24 hour gaming on the premises on any one or more days.*
- ...
- (2) *An approval must specify—*
  - (a) *the number of gaming machines permitted; and*
  - (b) *the gaming machine areas approved for the premises; and*
  - (c) *if applicable, the days on which 24 hour gaming is permitted on the premises.*
- ...

9. Section 3.3.7(1)(c) provides for what is now commonly described as the 'no net detriment' test. It requires the Commission to be satisfied that there is no net detriment arising from the approval through positively and objectively establishing that the net economic and social impact will not be detrimental to the well-being of the community.<sup>3</sup>

<sup>2</sup> Section 3.3.6 of the Act allows the Council to make a submission addressing the economic and social impact of the proposal for approval on the well-being of the community of the municipal district in which the premises are located; and taking into account the impact of the proposal on surrounding municipal districts.

<sup>3</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.

10. The Act does not specify the matters which the Commission must consider in deciding whether this ‘*no net detriment*’ test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:
- the likely economic impacts of approval;
  - the likely social impacts of approval; and
  - the net effect of those impacts on the well-being of the relevant community.<sup>4</sup>
11. As such, the ‘*no net detriment*’ test is a composite test requiring consideration of a single net impact in economic and social terms on the well-being of the community.<sup>5</sup> The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.
12. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues, and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.<sup>6</sup> On review, decisions in the Victorian Civil and Administrative Tribunal (**VCAT**) have held that for impacts that may be both economic and social – for example the benefits of gaming consumption – it does not matter whether the impact is considered on the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.<sup>7</sup>
13. The Commission also accepts the position expressed by Morris J in *Branbeau Pty Ltd v Victorian Commission for Gaming Regulation* [2005] VCAT 2606 at [51] that:

*“Although the [no net detriment] test requires consideration of the impact of approval on the well-being of the community of the municipal district in which the premises are located, logic and common sense require this to be considered in the context of the spatial impact of the gaming machines to be installed in the venue concerned.”<sup>8</sup>*

14. The Commission also notes that on review, it has been indicated by VCAT that:

*A table of likely economic and social benefits and disbenefits, and with some comments relevant to the relative weight to be given to particular factors ... is a useful way of*

<sup>4</sup> *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [42]-[43] per Warren CJ, Maxwell P and Osborn AJA.

<sup>5</sup> *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275, [332], [348] per Bell J cited in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [58] per Dwyer DP.

<sup>6</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [57] per Dwyer DP.

<sup>7</sup> See *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275, [352] per Bell J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [58] per Dwyer DP.

<sup>8</sup> See also *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation & Anor* [2009] VCAT 2275, [274] per Bell J.

*transparently dealing with the 'no net detriment' test, and might perhaps be considered for wider application.<sup>9</sup>*

This approach has been adopted in a number of VCAT decisions.<sup>10</sup> To facilitate greater consistency between the Commission and VCAT, the Commission has adopted the same approach in this matter.

15. If the Commission is not satisfied that the 'no net detriment' test is met, it cannot approve the application, given the opening words of section 3.3.7(1) of the Act. The test is a mandatory precondition to approval. However, although section 3.3.7(1) sets out certain mandatory considerations for the Commission, the provision is not cast in exhaustive terms. If the Commission is satisfied that the 'no net detriment' test is met, it still has an ultimate discretion as to whether or not to grant the approval.<sup>11</sup> The Commission must decide whether to grant the approval, even where an applicant has satisfied the minimum threshold of the 'no net detriment' test.<sup>12</sup>
16. In considering the exercise of this discretion:
  - (a) it must be exercised having regard to the purposes of the Act and, in particular, the specific purposes of Chapter 3 of the Act dealing with the regulation, supervision and control of gaming machines;<sup>13</sup> and
  - (b) it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the Act as a whole.<sup>14</sup>
17. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*<sup>15</sup> that if all of the mandatory considerations under the Act favour the grant of an approval, one would expect

<sup>9</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [60] per Dwyer DP.

<sup>10</sup> See, for example: *Darebin CC v Victorian Commission for Gambling and Liquor Regulation & Anor* [2013] VCAT 1389; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Monash CC v L'Unico Pty Ltd* [2013] VCAT 1545; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

<sup>11</sup> See *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [97] and following per Dwyer DP; see also *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M.

<sup>12</sup> *Gambling Regulation Act 2003*, section 3.3.8(1).

<sup>13</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [98] per Dwyer DP.

<sup>14</sup> *Ocean Grove Bowling Club v Victorian Commission for Gambling Regulation* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M. As to policy principles identified for consideration, see *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

<sup>15</sup> [2013] VCAT 101, [98].

that the ultimate discretion will commonly favour approval – other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.

18. Finally, it is noted that pursuant to section 9(4) of the VCGLR Act the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation.
19. On 16 October 2013, Ministerial decision-making guidelines were published in the Victorian Government Gazette pursuant to section 5 of the VCGLR Act concerning applications for approvals of venues for EGMs (**Ministerial Guidelines**). The Ministerial Guidelines concern the assessment of the suitability of a premises for gaming which contain, or will contain, a children's play area to ensure that the venue operator provides a responsible gambling environment. The Ministerial Guidelines provide a list of criteria regarding children's play areas that the Commission should have regard to, and also states that the Commission should have regard to:

*any other aspect of the design and location of a children's play area that it deems relevant to ensuring that the approved premises for gaming will provide a responsible gambling environment.*

## **MATERIAL BEFORE THE COMMISSION**

20. The Applicant provided the Commission with the following material in support of its Application:
  - (a) Approval of Premises for Gaming application form dated 10 March 2017;
  - (b) Social and Economic Impact Assessment, prepared by ratio:consultants pty ltd (**Ratio**), dated March 2017 (**Ratio Report**);
  - (c) Expenditure Report prepared by Mr Clyne from Progressive Venue Services (**PVS**), dated December 2016 (**Expenditure Report**);
  - (d) Statement from the Chairman of the Applicant (Brendon Goddard) dated 2017;
  - (e) Witness Statement of Jason Scott Wallace, previous Chief Executive Officer of the Applicant, dated 10 March 2017;
  - (f) Financial Viability Analysis Report from Tim Stillwell, partner at ShineWing Australia, dated 31 March 2017 (**ShineWing Report**);
  - (g) Witness Statement of Leigh James Barrett, Director and Principal Consultant of Leigh Barrett and Associates Pty Ltd, dated 14 September 2016;



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- (h) Letter of Consent from the owners of the Premises for the use of the Premises for the conduct of gaming, dated 18 January 2017 (**Letter of Consent**);
- (i) Application for Planning Permit to the City of Greater Bendigo with respect to the Premises, dated 11 March 2017 (**Planning Permit Application**);
- (j) Proposed red line and green line plans for the Premises dated 17 March 2017;
- (k) Statutory declaration confirming service of Application on the Council dated 4 April 2017;
- (l) Addendum to the Ratio Report dated June 2017 (**Ratio Report Addendum**).
- (m) Witness statement of Nathan Paul O'Neill, Acting Chief Executive Officer of the Applicant, dated 29 June 2017<sup>16</sup>;
- (n) Statement of Richard Anthony Whitehouse from PVS dated 28 June 2017 referencing the Expenditure Report and annexing his curriculum vitae and a copy of the Geotech Retail Gravity Model regarding gaming venue expenditure and transfer of expenditure<sup>17</sup>; and
- (o) Amended red line plan of the Premises dated 16 June 2017.

21. The Council provided the following material in opposition to the Application:

- (a) Economic and Social Impact Submission Form completed by City of Greater Bendigo;
- (b) Social and Economic Impact Statement (SEIS) dated 16 June 2017, prepared by Bonnie Rosen, Principal of Symplan, on behalf of the Council (**Symplan Report**);
- (c) Peer review of the Symplan Report dated June 2017, prepared by Remplan on behalf of the Council (**Remplan Report**); and
- (d) A study of Community Attitudes prepared by Wallis Market and Social Research dated June 2017.

22. The following material, prepared by Commission officers, was provided to the Applicant and the Council and was considered by the Commission:

- (a) a report titled *Economic and Social Impact Report*, dated July 2017;
- (b) a report titled *Pre-Hearing Size, Layout and Facilities Report*, dated 23 June 2017; and
- (c) a report titled *Pre-Hearing Inspection and Compliance Report*, dated June 2017.

<sup>16</sup> The witness statement of Nathan O'Neill replicates the witness statement of Jason Wallace, the Applicant's previous Chief Executive Officer referred to at paragraph 20(e) of these Reasons for Decision.

<sup>17</sup> In this witness statement, Mr Whitehouse confirms he has reviewed the Expenditure Report and he submits that the prediction given by Mr Clyne in the Expenditure Report is reasonable and there is no need to amend the prediction.





23. In addition, the Commission received correspondence in opposition to the Application from seven individuals and one community organisation, the Youth Support Advocacy Service.
24. The Commission was also provided with written opening submissions from Counsel on behalf of the Applicant dated 4 July 2017 and a copy of a decision of the Victorian Casino & Gaming Authority dated 29 June 2004 relating to an application by the Applicant at the Bendigo Sports and Entertainment Centre.
25. Commissioners O'Donnell and Powell visited the Premises prior to the public hearing. Visits were also made to other gaming venues within the City of Greater Bendigo operated by the Applicant, namely The Borough and The Bendigo Stadium.

## DECISION AND REASONS FOR DECISION

### *Background*

26. The City of Greater Bendigo is a local government area (**LGA**) which is a geographical area under the responsibility of a local government council and references to both terms are used interchangeably throughout these reasons for decision.
27. The City of Greater Bendigo<sup>18</sup> is a regional municipality located approximately 150 kilometres north of Melbourne and covers an area of 3,000 square kilometres. Major centres include Bendigo, Eaglehawk and Heathcote. The City of Greater Bendigo has an estimated adult population of 152,365, with an estimated annual rate of population growth of 2.0% for the period 2016-21 projected by the Victorian Department of Environment, Land, Water and Planning. This is higher than the Victorian average of 1.8%. It is estimated that 36.2% of the population will be over 50 years of age by 2021.
28. The Premises are situated at 555 Napier Street, in White Hills in the inner north part of the City of Greater Bendigo. The Premises are located in a General Residential 1 Zone and are adjoined to the north-west by the Bendigo Botanical Gardens and to the south, east and north by residential sites. The surrounding land use also includes two Primary Schools, the Racecourse, the Golf Course and a Holiday Park.
29. The Premises' facilities currently comprise a bistro, an alfresco dining area, a public bar with TAB, a children's play area and a car park.

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<sup>18</sup> Where reference is made in these reasons to the City of Greater Bendigo, this is a reference to the regional municipality.



30. The City of Greater Bendigo is subject to a municipal cap of 756 EGMs.<sup>19</sup> At the time of this decision, there are 11 gaming venues within the municipality with approvals to operate a total of 641 EGMs<sup>20</sup> (with 641 EGMs currently operating). The Application seeks to introduce 44 EGMs at the Premises however it is not evident from the Application, nor was it provided in evidence at the Hearing, as to where these additional 44 EGM entitlements would be sourced from.
31. The City of Greater Bendigo has an EGM density of 7.6 EGMs per 1000 adults, which is 2.4% lower than the regional average (7.8) and 34.8% higher than the State average (5.6). If the Application is approved, the EGM density within the City of Greater Bendigo would increase to 8.1 EGMs per 1000 adults, an increase of 6.9% on existing density.
32. The City of Greater Bendigo has an average gaming expenditure of \$575 per adult, which is 5.8% lower than the regional average (\$610) and 3.9% higher than the State average (\$553). Overall gaming expenditure within the City of Greater Bendigo has decreased by 15.31% in real terms over the past five years, which is compared with a decrease of 15.18% in the regional average over the same period.

### ***Catchment area of the Premises***

33. The determination of the likely catchment area is important in the Commission's consideration of the identity of those residents who will be most affected by the Application in terms of gambling-related harms. The Commission's Economic and Social Impact Report noted that the immediate surrounding area for a venue located in a regional area is usually 5km, however for a Premises in the City of Greater Bendigo, which is the second most populated regional area in Victoria, it is defined by a 2.5km radius. This report went on to note that the immediate surrounding area does not specifically aim to define the origin of the patrons likely to visit the Premises but is aimed at providing a profile of the area immediately surrounding the venue.
34. In the Ratio Report, Ms Peterson focussed on a 5km radius from the Premises and estimated that 70%-80% of the gaming room patrons would come from within that 5kms. Ms Peterson also submitted that the venue would serve a predominantly local role and that she expects the catchment area of the Premises would reflect the results of the bistro patron survey conducted by the Applicant which indicated that 59.9% of the patrons in the bistro over a two week period

<sup>19</sup> Pursuant to section 3.4A.5(3A)(b) of the Act, the Commission 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 a given municipality. While the number of entitlements operating within a particular region or municipality is capped, the Commission notes that there is nothing to preclude the aggregate number of EGMs for which approved venues may be licensed from exceeding that cap.

<sup>20</sup> It is noted that the Foundry, another venue in the LGA, has been granted approval for 20 additional EGMs subject to conditions and the additional 20 EGMs have not yet commenced operation at that venue.



came from within a 5km radius of the Premises. On that basis, Ms Peterson submitted the primary patron catchment of 5km would comprise the suburbs of White Hills and Epsom and the secondary patron catchment would comprise the suburbs of Eaglehawk and Bendigo. Ms Peterson also submitted in the Ratio Report that the bistro patron survey showed 25.8% of patrons at the Premises came from outside Bendigo and that she anticipated a reasonable degree of mobility of gaming patrons likely to attend the Premises.

35. In the Symplan Report the writer does not adopt a catchment area and in the Remplan Report the writer states that it is unclear as to why the catchment area would be set at 5km. The Symplan Report writer notes that the Applicant's bistro patron survey identified that more than a quarter of the bistro patrons at the Premises come from suburbs outside of Bendigo with only just over one fifth coming from White Hills within the 2.5km catchment. The Symplan Report writer also notes that there are no gaming venues within the 2.5km catchment of the Premises and there are eight within the 5km catchment of the Premises.
36. The Expenditure report and Mr Whitehouse in his evidence at the Hearing refer to a trade area of the Premises (as opposed to a catchment area), which is defined as the area in which the majority of the venue's customers are domiciled<sup>21</sup>. The trade area of the Premises does not contain any other gaming venues. The local network of the Premises however covers an area that includes trade areas of other venues that overlap with the trade area of the Premises. Therefore, the customers of other venues within the local network of the Premises are likely to be impacted by this Application. Mr Whitehouse provided evidence that one such venue likely to be impacted by the Application is the All Seasons, as he anticipates that just over 50% of the transferred expenditure at the Premises is likely to be obtained from that other venue.
37. The Commission notes that if the Application is approved, the Premises would be located in a position in the City of Greater Bendigo where there are no other gaming venues in the surrounding 2.5kms and there are eight gaming venues in the surrounding 5kms. The Commission does not consider the bistro patron survey can definitively predict the gaming room patrons however it does provide an indication of who is currently attending the Premises and an indication of some of the people who may be impacted by the Application. Having regard to the above material, and having regard to the estimated levels of transferred expenditure set out at paragraph 53 which must necessarily come from areas outside of the 2.5km radius, the Commission considers that a catchment area of 2.5km may not accurately reflect the likely catchment and that in these circumstances a larger catchment area of 5km is more appropriate.

<sup>21</sup> Expenditure Report, page 6

### ***Reasons for Decision***

38. Pursuant to section 3.3.7 of the Act, there are three elements that the Commission must be satisfied before it can grant the Application.

#### **AUTHORITY TO MAKE APPLICATION**

39. The first element in relation to which the Commission is required to be satisfied is that the Applicant has authority to make the Application in respect of the Premises.
40. Evidence was provided to the Commission in the application form in which the Applicant acknowledges that it is the lessor of the Premises, and that an associated entity is the holder of the relevant liquor licence at the Premises. Further, the Letter of Consent provided to the Commission by the Applicant confirms the owner of the Premises consents to the Applicant using the Premises for the purposes of gaming.
41. The Applicant has informed the Commission that if the Application is granted it would apply for the liquor licence to be transferred into the name of the Applicant. Further, the Applicant advised the Commission it would exercise an existing option to purchase the freehold of the Premises and subsequently apply to the Commission to vary its existing liquor licence to a club licence.
42. Based on the evidence above, the Commission is satisfied that this first element has been met.

#### **SUITABILITY OF PREMISES FOR THE MANAGEMENT AND OPERATION OF GAMING MACHINES**

43. The second element in relation to which the Commission is required to be satisfied is that the Premises are, or on the completion of refurbishment works will be, suitable for the management and operation of gaming machines. In particular, the Commission must consider whether the size, layout and facilities of the Premises are, or will be suitable.<sup>22</sup>
44. The Commission was provided with a Pre-Hearing Size, Layout and Facilities report prepared by staff at the Commission. This report was prepared based on plans provided by the Applicant in relation to the Premises and the gaming machine area (GMA), and which form part of the materials before the Commission in this Application. According to the Pre-Hearing Size, Layout and Facilities report, the redevelopment of the venue and the GMA have been assessed by Commission Licence Management and Audit Inspectors against standards and guidelines in relation to the size, location and layout of the GMA, type and height of perimeter barriers, floor numbering and layout of gaming machines, windows, proximity of the GMA to other facilities

within the venue (e.g. children's play areas) and any liquor or statutory authority conditions imposed. Based on the plans submitted, and subject to any planning issues, the report concluded that the size, layout and facilities of the Premises would be suitable for gaming.

45. Mr Barrett in his witness statement made the following submissions in relation to the suitability of the Premises for the management and operation of EGMs:
- (a) the gaming room will be discrete from other parts of the venue and patrons would not have sight of the EGMs from the bistro or the sports bar;
  - (b) the Applicant has agreed to place a frosted glass sliding door across the entrance to the gaming room nearest the entrance to the Premises from the western (rear) carpark;
  - (c) the proposed venue would be considered medium in size and less attractive to potential problem gamblers than a larger venue; and
  - (d) there is good separation from the relocated children's play area and the gaming room.
46. Mr Barrett noted that his only concern regarding the location of the Premises was that it would be immediately opposite the Holy Rosary School. In this regard, Mr Barrett<sup>23</sup> clarified at the Hearing that although its proposed signage is legal, the Applicant had taken his advice and would remove any "Pokies" signage from the front of the venue so it is not visible to the school. A similar suggestion was also made on behalf of the Council in the Symplan Report. During the Hearing, the Applicant's representative confirmed it was agreeable to a condition that there be no signage along the front of the Premises on Napier Street.
47. The Council raised the issue of whether the gaming room would be visible to persons entering the Premises from the western (rear) carpark. It was clarified by Mr Barrett<sup>24</sup> in the Hearing that the gaming room would be visibly shielded from other areas of the Premises. Further, Counsel for the Applicant<sup>25</sup> confirmed in submissions at the Hearing there is no rear entrance directly into the gaming room. Further, the amended plans for the Premises indicated an automatic door with obscure glazing is to be installed to restrict the visibility into the gaming room while entering the Premises using that entrance.
48. As a result of queries raised in the Hearing about monitoring five entrances to a Premises, Mr Goddard indicated that the Applicant would remove two of the five entrances from the proposed plans for the Premises.

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<sup>22</sup> Section 3.3.7(2) of the Act.

<sup>23</sup> Transcript, page 65, lines 42 to 45.

<sup>24</sup> Transcript, page 65, line 22.

<sup>25</sup> Transcript, page 126, lines 8 to 11.



49. Based on the evidence above, and given that the proposed plans would need to be approved by officers of the Commission prior to the commencement of operation of any EGMs at the Premises, the Commission is satisfied that this second element has been met.

#### 'NO NET DETRIMENT' TEST

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

#### ECONOMIC IMPACTS

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

#### Gaming expenditure not associated with problem gambling

52. As the economic category includes consumption, then to the extent that gaming expenditure is not associated with problem gambling, it has been recognised (by, for example, the Productivity Commission in its 1999 report) that such expenditure can be treated as an economic positive.<sup>26</sup> As Bell J further notes in *Romsey #2*, this approach also brings to account the benefit obtained from pure consumption by the lone gambler who does not use machines for social reasons.<sup>27</sup>
53. The Commission was provided with evidence regarding the anticipated expenditure arising from the introduction of 44 EGMs at the Premises in the Expenditure Report and from Mr Whitehouse from PVS at the Hearing. In summary, the evidence was that:
- (a) it was estimated that gross gaming expenditure at the Premises would be between \$1,900,525 and \$2,166,599 per annum for the first 12 months;

<sup>26</sup> See *Romsey #2* at [351] per Bell J.

<sup>27</sup> See *Romsey #2* at [351]. Bell J notes further at [352] that the other approach is to say, as did Morris J in *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [79] that gaming extends 'substantial economic and social benefits' to gaming machine users, which treats consumption as a benefit without saying whether it is economic or social. While Bell J states both approaches are correct, for the purposes of this Application this benefit is treated as an economic benefit.



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- (b) this estimated gross gaming expenditure would place this Premises at the lower end of the existing venues in the LGA but that this is to be expected, as it takes some time for a new venue to reach its potential; and
- (c) of the estimated gross gaming expenditure, it was estimated that 79% – between approximately \$1,508,827 and \$1,720,063 – would be transferred expenditure (from a number of existing gaming venues both within and outside the City of Greater Bendigo), with the remaining amount of between approximately \$391,698 and \$446,536 being new expenditure.
54. While the Council in its Remplan Report did not agree with the anticipated expenditure and transfer estimates provided in the Expenditure Report, it did not provide any contrary expert evidence proposing an alternative estimate for the Commission's consideration.
55. As set out at paragraph 36 above, the trade area of a venue is defined as the area where the majority of a venue's customers are domiciled. The Expenditure Report noted there are no other gaming venues located within the trade area (as defined by PVS) of the Premises however there are a number of gaming venues in the LGA with trade areas that overlap the trade area of the Premises to some extent. The venues with overlapping trade areas that would be impacted by the Application at the Premises were confirmed as: Rising Sun Hotel, All Seasons International Hotel Bendigo, Shamrock Hotel, City Family Hotel, The Bendigo Club, Bendigo District RSL, The Borough Club and Bendigo Stadium.
56. The Expenditure Report did not go on to provide further detail of the expected transfer of expenditure from each of the gaming venues with overlapping trade areas. Mr Whitehouse in his evidence at the Hearing stated that the All Seasons venue probably would contribute just over 50% of the estimated transferred expenditure given it is such a high performing venue already, but did not provide any other detail as to origin of the estimated transferred expenditure.
57. Further, the Applicant did not provide details of where it proposed to obtain the additional EGMs from, if the Application was granted. Ordinarily, there is likely to be an element of lost (i.e. non-transferred) gaming expenditure at venues where EGMs are transferred from, however as it is not known where the EGMs will be relocated from, or whether the EGMs would even be sourced from within this LGA, the Commission cannot assess the likely impact of any lost gaming expenditure.
58. The Commission notes that Mr Whitehouse, on behalf of the Applicant, provided the relevant modelling support of the Expenditure Report and that Mr Stillwell also indicated that he considered the estimate reasonable. The Commission considers that such modelling is of

relevance as it enables the Commission to consider the accuracy of the predicted transferred expenditure figures.

59. In assessing the extent of this benefit, the Commission has had regard to the evidence outlined in paragraphs 101 to 117 below with respect to the incidence of problem gambling. The Commission finds that the portion of new expenditure not attributable to problem gambling is an economic benefit. Various factors suggest that the extent of problem gambling at the Premises is likely to be low to moderate, including that the proposed Premises are medium in size, with a relatively low number of EGMs, and reduced operating hours. The Premises are located in an area of mixed socio-economic disadvantage and one that is anticipated to experience ongoing population growth. Having said that, there are limited areas of high relative socio-economic disadvantage within the likely catchment area of the Premises.
60. In respect of transferred expenditure, the Commission considers that the estimated rate of 79% transfer to be a high rate, however there is some uncertainty regarding this figure, given the lack of certainty in relation to the appropriate catchment area (see above at paragraph 37) and the fact that the Premises would be a new gaming venue in a location that previously had no ready access to gaming. The Commission considers that it is likely that the transferred expenditure may be lower than expected and that correspondingly, the new expenditure may be higher. Further, the Commission notes the difficulty in assessing the likely impact of this transfer given there is limited evidence to show where this expenditure will be transferred from. Even so, the extent of the new expenditure at the Premises is expected to be low, and as such, a marginal weight is given to this benefit.

#### Expenditure on capital works

61. A potential economic benefit associated with this Application is that arising from the expenditure on the proposed works at the Premises if this Application is granted.
62. According to the statement of Jason Wallace, the Applicant's previous Chief Executive Officer, and confirmed by Nathan O'Neill, the Applicant's current Acting Chief Executive Officer, the Applicant is proposing to redevelop the Premises at a cost of approximately \$1.7 million to \$2 million. The redevelopment of the Premises will include:
- (a) an upgrade to the bistro to improve the facilities and layout but with no increase in capacity;
  - (b) construction of a new outdoor dining area and smoking area;
  - (c) relocation of the children's play room;





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- (d) expansion of and asphalt surfacing of the carpark; and
- (e) creation of a gaming room to accommodate 44 EGMs.

63. In the Ratio Report, Ms Peterson submitted that the proposed redevelopment would improve the Applicant's ability to provide a full range of entertainment and recreational facilities in a venue with an improved overall size, offer and feel. Ms Peterson also confirmed that if the Application were granted this would result in the Premises converting from a Hotel to a Club requiring the signing in of all patrons who are not members.
64. The Commission was also provided with copies of supporting plans of the proposed redevelopment. However, the Commission was not provided with any detailed costings for the redevelopment (other than the overall cost estimate of \$1.7 million to \$2 million) or any evidence identifying the proposed developer or workforce to be used for the redevelopment.
65. The Symplan Report submitted on behalf of the Council addresses the economic impact of the capital works in a minor way by stating it is not clear how the \$2 million expenditure on capital works can be attributed to the introduction of EGMs at the Premises. The Remplan Report also raised the issue that there was no project cost breakdown provided and it would be useful to gain an understanding of how much of the proposed development cost is related specifically to the creation of the gaming room for the 44 EGMs.
66. Ms Peterson, in the Ratio Report Addendum, confirmed that the Applicant would not proceed with the proposed redevelopment at the Premises should the gaming machines not be installed. Mr Stillwell in his Financial Viability Analysis stated that the cash flows demonstrate that in the current situation (without the EGMs) the venue is not profitable. At the hearing, Mr Stillwell provided further details of the analysis he had undertaken into the financial performance of the venue and concluded that the proposed redevelopment of the Premises could not be facilitated without the approval of the EGMs.
67. Given the experience of Ms Peterson and Mr Stillwell in relation to EGM-related applications, the Commission accepts their evidence that the redevelopment of the Premises would not proceed without the approval of this Application. In doing so, the Commission is mindful of VCAT's decision in *Monash CC v L'Unico Pty Ltd*,<sup>28</sup> where it held (albeit in relation to an EGM increase application) that it is not appropriate under the relevant statutory framework to either engage in a 'project feasibility' or 'existing financial capacity' assessment, but rather (with two

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<sup>28</sup> [2013] VCAT 1545.



provisos<sup>29</sup>) that it is appropriate to simply take the proposal for what it is and then assess its likely social and economic impacts as per the 'no net detriment' test.

68. Accordingly, the Commission finds that the expenditure of capital works is a positive economic benefit. The Commission recognises that this expenditure is dependent upon the Application being granted, in that if this does not occur, the Applicant will not proceed with the proposed redevelopment of the Premises. This is supported by the Applicant's proposal that any approval of the Application should be subject to a condition related to the completion of the works associated with the redevelopment.
69. Overall, the Commission considers the extent of the proposed expenditure on capital works is of a significant nature however there is a lack of evidence before the Commission to substantiate how the value of \$1.7 million to \$2 million has been calculated. There is also some uncertainty as to the extent to which the expenditure will be retained in the relevant LGA in which the Premises are located. Accordingly, the Commission has attributed a low weight to this benefit.
70. The Commission notes it is important that the benefits associated with the proposed redevelopment at the Premises are not double-counted, having regard to the social impact that may result from the improved facilities and services. This aspect has been considered separately, and is detailed below at paragraphs 122 to 125.

#### Employment creation

71. The economic benefit of employment creation resulting from this Application can be described as both short term and longer term as follows:
- (a) short term employment benefits that arise during the redevelopment of the Premises; and
  - (b) longer term employment benefits arising from the introduction of EGMs and increased patronage of existing facilities at the Premises.
72. In relation to short term employment benefits, the extent of the works have been described generally in paragraphs 62 to 64 above. As noted above, it is not clear to what extent this work will be undertaken by individuals who live in the relevant municipality.

<sup>29</sup> The first proviso was that common sense suggests that there needs to be a reasonable degree of corroborating information, to at least provide comfort that the "estimated project value" of the proposed works is more than just an ambit or "back of the envelope" calculation. As such, less weight should be given to purported proposed works where there is a concern about the bona fides of the "project value" figure being relied upon. The second proviso was that it seemed appropriate to recognise that the proposed works may in practice be easier to achieve financially if the Application were approved.



73. Based on the lack of evidence presented, the Commission concludes that it should not place any weight on this short term economic benefit. To the extent that this benefit does arise in relation to this Application, the Commission considers that any benefit has been captured by the consideration of the expenditure on capital works in paragraphs 61 to 70 above.
74. Separate from the short term economic benefits associated with the capital works is the potential benefit associated with longer term employment arising from the Application.
75. In relation to this benefit, Ms Peterson gave evidence that if approved, the Application would result in the employment of 12 full time equivalent (FTE) staff members at the Premises, six in the gaming room and six throughout the Premises, however no evidence was provided as to how this estimate of additional employment had been calculated.
76. Mr O'Neill also gave evidence at the hearing that if the Application were to be approved there would be an increase in staff employed at the Premises. He stated that these staff members would be required to staff the gaming room and cashier, as well as the fact that there would be two bars as a result of redevelopment of the Premises that would need to be staffed. Further, he anticipated the kitchen would become much busier which would also lead to an increased requirement for staff at the venue. Mr O'Neill has only been the Acting Chief Executive Officer of the Applicant for a short period of time, however he was previously the General Manager of Hospitality and therefore should have an understanding of the operational requirements of the Applicant.
77. In the ShineWing Report, Mr Stillwell estimated that if the Application were to be granted, the labour costs associated with the operation of the gaming room at the Premises would be \$249,000 and that there would also be additional labour costs associated with the bistro and bar services. At the hearing, Mr Stillwell confirmed that if the Application were granted this would result in additional employment of approximately six FTE staff in the gaming room based on wages around the mid \$40,000s. He further stated there would be an additional one or two FTE staff members employed in the bistro and bar.
78. In the Symplan Report, it was noted that the Applicant did not provide any evidence of existing staff numbers employed by the Applicant at the venue. In the evidence of Mr O'Neill, he stated that currently there are only 2 staff members, with an increase on Thursday, Friday and Saturday, at the Premises.
79. The Commission accepts the evidence given on behalf of the Applicant that if the Application is granted, this will result in an increase in employment at the Premises however it considers that based on the evidence of Mr O'Neill and Mr Stillwell it is unlikely this will be to the extent of 12



FTE positions; rather it is more likely to be in the order of 8 FTE positions at best. The Commission also considers that some employment may be transferred from within the LGA given the high level of transferred gaming expenditure estimated by the Applicant. In such circumstances, the Commission considers the additional employment arising from the Application is positive but taking into account the anticipated numbers of employees and the potential for some transfer of local employment, gives this benefit marginal weight.

Supply contracts and complementary expenditure

80. As noted in paragraph 76 above, the Applicant considers that the approval of the Application will result in additional demand at the Premises and estimates that an increase in food and beverage sales will occur, which is separate to the anticipated gaming revenue to be generated through the operation of EGMs.
81. Related to additional demand at the Premises is the complementary expenditure that may arise from improvements in facilities which results in more clientele attending the Premises and hence increased economic activity within the local area.
82. Ms Peterson in the Ratio Report stated that a benefit of the Application would be an increase of \$150,000 of supply contracts and the creation of \$328,000 of complementary expenditure. The Council in the Remplan report noted that the figures quoted in the Ratio Report in relation to supply contracts and complementary expenditure were not mentioned anywhere else in the Ratio Report and no methodology as to their calculation was provided.
83. The Commission considers that there is a high level of uncertainty as to the extent of the anticipated increase in food and beverage supply contracts, and what proportion of any such increased expenditure that would be retained in the municipality. The Commission also considers there is insufficient evidence in relation to the estimated complementary expenditure to enable it to contribute weight to this anticipated benefit.
84. As such, the Commission considers that the increase in supply contracts and complementary expenditure at the Premises may result in an uncertain economic benefit, and can only attribute it marginal weight.

Community contributions

85. In determining the net economic and social impact of applications of this nature, both the Commission<sup>30</sup> and VCAT<sup>31</sup> have regularly treated community contributions as a positive benefit.

<sup>30</sup> See, for example, *Richmond Football Club Ltd at Wantima Club premises* [2015] VCGLR 31 (24 July 2015).

86. According to Mr Goddard, the Applicant has donated approximately \$380,000 to charitable causes and community initiatives within the City of Greater Bendigo over the 2015-2016 financial year. At the Hearing, Mr Goddard gave evidence that the purpose of this Application is to create profit to enable the Applicant to continue to expand the Bendigo Stadium which is a preeminent community facility.
87. As a result of the operation of the Premises currently without gaming, the Applicant stated that it donates approximately \$15,000 per annum to charity. In the evidence of Mr Goddard and Ms Peterson, it was confirmed that this would be increased to \$100,000 if the Application were to be approved. Evidence was provided further as follows:
- (a) the additional \$85,000 contribution would be donated for the life of the entitlements (if approved); and
  - (b) this additional contribution would be distributed to the local community in accordance with the Council's consideration as to where it should be allocated.
88. While aware of the need to treat community contributions carefully in the assessment of gaming applications under the Act, the Commission does not consider it of assistance to assess the level of such contributions against the expected gaming revenue at the Premises in determining whether the community contributions provide an economic benefit to the community. The significance of any such contributions is assessed on the effect on the community, rather than the proportion of revenues or profits they represent that would be realised by a venue operator.
89. The Commission considers the Applicant to be a successfully operated not-for-profit organisation that is an active social contributor to the community of the City of Greater Bendigo. This is demonstrated in the evidence from Mr Goddard regarding the significant funding by the Applicant toward the creation of the Bendigo Stadium as well as various contributions to other community and sporting groups.
90. The Commission accepts the proposed additional community contributions will have a positive economic impact. The Commission is further satisfied that the contributions will only occur if the Application is granted. The Commission does however note that the Applicant has committed to making the contributions for the period of the "life of the entitlements" which is less certain given that the entitlements remain in force<sup>32</sup> only until August 2022, which is a relatively short time period.

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<sup>31</sup> See, for example, *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

<sup>32</sup> Section 3.4A.7 of the Act.

91. Having regard to the amount of increased community contributions that will occur, the time period for these contributions, and the fact that these contributions will be made to community groups operating in the City of Greater Bendigo (in accordance with conditions of any approval of this Application), the Commission considers these contributions to be a positive benefit to which it accords a marginal weight.

*Increased gaming competition in the City of Greater Bendigo*

92. Increasing competition in gaming in the City of Greater Bendigo is a factor to be considered by the Commission in light of the statutory purposes of the Act and the consumer benefits that derive from competition.
93. At the hearing, Mr Whitehouse confirmed the information provided in the Expenditure Report that indicated the trend over recent years for gaming expenditure in the City of Greater Bendigo has actually increased slightly (in nominal terms), which is contrary to the trend of the total for Country Victoria. Both Mr Whitehouse and Ms Peterson, in their evidence at the Hearing, attributed this to population growth in the LGA. The Commission notes that granting approval of the Application could be considered to increase gaming competition in the City of Greater Bendigo by providing an additional venue at which patrons may choose to play EGMs. However the Commission also notes that the Applicant already operates two of the 11 venues with EGMs within the City of Greater Bendigo. Approval of this Application would increase the already substantial share of gaming (20.6% of the EGMs in the LGA<sup>33</sup>) in the municipality attributable to the Applicant and mean that they would operate one quarter of the venues in the LGA. This would necessarily involve a degree of market consolidation, rather than an increase in competition, in the City of Greater Bendigo.
94. The Commission also considers that the location of the Premises, which is separated by distance from other venues within the LGA, may result in the Premises having less impact on competing gaming venues than may otherwise be expected. Accordingly, the Commission attributes no weight to this benefit.

*Improved financial position of the Applicant and purchase of freehold of venue*

95. As set out at paragraph 89 above, the Applicant makes significant contributions to the community of the City of Greater Bendigo. As a not-for-profit club the Commission accepts that it would need to remain financially viable to continue to make such contributions.

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<sup>33</sup> Symplan Report , paragraph 36



96. Ms Peterson in her Ratio Report states that if the Application were granted it would enable the Applicant to purchase the freehold at the Premises. This would improve the financial stability of the Applicant given that its assets are currently all on Crown Land.
97. The Council in response stated that the Chairman Mr Goddard noted in his statement that the Applicant had always run profitably.
98. The Applicant is a Club that already operates two gaming venues within the City of Greater Bendigo and a further gaming venue in St Arnaud. Mr Goddard in his Chairman's statement submitted that the Applicant is the epitome of a successful community sporting club and it is being run efficiently and profitably. He further outlined that the board of the Applicant has taken into account the business model and viability of the Applicant in making this Application. He stated that should the Application be granted, it would "tick off" on a number of considerations, including that the Applicant be a financially sound and well run club. At the hearing, Mr Goddard stated that the Applicant runs a very successful business with costs that are "well within line"<sup>34</sup> and that two years ago a business planner from Clubs New South Wales informed the Applicant that it was the "best club in Victoria he had ever seen, in terms of ... our profit"<sup>35</sup>.
99. The Commission has accepted on rare occasions that a benefit of an application may be that a Club which is experiencing financial difficulty will become more financially viable as a result of the application. This can be distinguished from this Application where the Applicant on its own evidence is financially sound and its ability to operate profitably is not dependent upon the outcome of this Application.
100. The Commission considers that the Applicant has identified an opportunity to invest in a venue with EGMs in order to grow its profitability to enable it to contribute even further to the community. The Commission notes that this Application must be assessed for net benefit and disbenefit and whilst it is arguable that improved viability of the Applicant may be a benefit of the Application, it is less relevant in relation to a financially sound Applicant. Further, the proposed benefits relating to community contributions have already been considered by the Commission at paragraphs 85 to 91. The Commission therefore assigns no weight to this benefit.

<sup>34</sup> Transcript of hearing, page 100, line 5.

<sup>35</sup> Transcript of hearing, page 100, line 7.

Gambling expenditure associated with problem gambling

101. To the extent that a portion of new gaming expenditure is attributable to problem gambling, this represents an economic disbenefit.<sup>36</sup> In assessing the extent of this disbenefit, the Commission recognises that transferred expenditure should not be included as such expenditure cannot be said to exacerbate problem gambling.<sup>37</sup> In assessing this impact (and other impacts involving problem gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gambling undertaken by those who may be defined as 'problem gamblers', as well as those who may be otherwise regarded as 'low-risk' or 'moderate-risk' gamblers.
102. In assessing the extent of this disbenefit, the Commission has regard to the expenditure evidence set out in paragraphs 53 to 60. The extent to which it can be considered that new expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with this Application, will be influenced by the socio-economic status and vulnerability of the community in the area surrounding the Premises, as communities characterised by socio-economic disadvantage are more vulnerable to problem gambling and the negative impacts of gambling.
103. At the hearing, Ms Peterson stated that the catchment of the Premises consists of a mix of social and economic profiles. She stated that there are clusters of more disadvantaged residents, particularly in the western part of the City of Greater Bendigo, and clusters of more advantaged residents in the northern central part of the LGA.
104. According to the Ratio Report and Ratio Report Addendum prepared by Ms Peterson and based on the catchment area discussed at paragraphs 33 to 37 above, features of the socio-economic characteristics of the surrounding area are that:
- (a) the primary patron catchment of White Hills and Epsom exhibits a mixed socio-economic profile with indices both above and below the Victorian Country averages;
  - (b) the secondary patron catchment of Eaglehawk and Bendigo areas also exhibit a mixed socio-economic profile, however with a less wealthy community.

<sup>36</sup> The Commission recognises that on review, the key likely disbenefit of 'problem gambling' has for convenience been treated under the heading of 'social impacts' in various instances: see *Mount Dandenong Tourist Hotel Pty Ltd v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted: see, for example: *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [178] and following per Dwyer DP. For completeness the Commission considers both the economic and social impacts of problem gambling in its assessment of this Application.

<sup>37</sup> See *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [113] per Code PM and Nelthorpe M; *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J.





105. According to the Symplan Report filed on behalf of the Council it was noted that although the Premises are not located in an area displaying significant socio-economic disadvantage, they are adjoined by local areas within the 5km radius that do display such disadvantage. The Symplan Report confirmed that two of these local areas, being California Gully-Eaglehawk and Bendigo, exhibit more indicators of vulnerability to problem gambling than the trade area of the Premises, including:
- (a) an index of relative socio-economic disadvantage;
  - (b) higher levels of unemployment;
  - (c) higher proportions of Aboriginal and Torres Strait Islanders; and
  - (d) higher percentages of households with rental stress.
106. In considering the extent to which any new expenditure may give rise to problem gambling, the manner in which gaming is to be conducted at the Premises is a relevant factor. In addition, the characteristics of the Premises and the Application may also impact the extent to which expenditure associated with the Application is likely to be associated with problem gambling.
107. Ms Peterson noted that an application for a new gaming premises has higher risks of problem gambling associated with it than an application for the approval of additional EGMs at an existing gaming venue. However, Ms Peterson also gave evidence that the Premises would be a Club and evidence suggests Clubs are less attractive venues for problem gamblers due to the innate relationships they have with their members as well as the sign in requirements.
108. Ms Peterson gave evidence at the Hearing that there is an element of convenience<sup>38</sup> with the Premises, given that it is on a main road leading out of town and that there is no other gaming venue within the immediate 2.5km radius. Ms Peterson distinguished the convenience of the Premises as being "convenient to attend" as opposed to the convenience of a venue located within an activity centre and submitted that gaming at the Premises would require a predetermined decision and this would reduce the risk of problem gambling.
109. Ms Peterson concluded that problem gambling was a detrimental factor that should be allocated low weight. In the Ratio Report, she stated that "*there is a disbenefit, albeit uncertain in size, in the higher costs to health and service providers and lower spending on local goods and services*".<sup>39</sup>

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<sup>38</sup> Transcript, page 20

<sup>39</sup> Ratio Report, page 57.

110. The Applicant is a current venue operator with two other venues already in operation in the City of Greater Bendigo and one further venue in St Arnaud. The Applicant's approach to the responsible service of gaming (**RSG**) was set out in the evidence of Mr O'Neill, Mr Goddard and Mr Barrett. Mr Goddard stated that the Applicant's board members are provided a report at monthly meetings about any incidents at its existing venues. At the Hearing, Mr O'Neill gave evidence that there would be about 10 to 14 incidents per month depending on which venue, but that these were liquor-related incidents not gambling-related incidents. Mr Barrett confirmed he deals with the supervisor in relation to RSG practices at the current venues operated by the Applicant but that he hadn't yet spoken to Mr O'Neill (the Acting CEO) in this regard.
111. The Commission finds that this Application will result in a new venue being established with 44 EGMs, and that this will be associated with new expenditure of between approximately \$391,698 and \$446,536, or possibly higher<sup>40</sup>, in the first 12 months. It accepts that a proportion of this expenditure will be associated with problem gambling.
112. The Commission considers that while the immediate area surrounding the Premises exhibits lower levels of socio-economic disadvantage as compared with the municipality as a whole, the likely catchment area of the Premises exhibits mixed levels of socio-economic disadvantage as well as exhibiting higher than average scores for indicators associated with problem gambling.
113. Further, as discussed above, it is unclear from where the transfer of expenditure is likely to result and therefore it is difficult to be satisfied that the potential for an increase in problem gambling is mitigated by the high transfer rate. Additionally, the Commission notes that Mr Whitehouse estimated that just over 50% of the expenditure to be transferred was estimated to be transferred from the All Seasons Hotel, which itself is surrounded by areas of relative socio-economic disadvantage. Arguably, the approval of this Application would therefore increase the venue choice for problem gamblers and those at risk of problem gambling.
114. The Commission notes this Application is for a new premises which has higher risks of problem gambling associated with it (in that it may attract those who would be otherwise less exposed to gaming). The Premises also exhibits an element of convenience as referred to in paragraph 108 above.
115. The Commission is satisfied that the Applicant is an experienced gaming operator with RSG procedures in place. However, the Commission was not provided with evidence that gave it confidence that on a practical level there was appropriate implementation of procedures or strategies being followed in order to manage the risks associated with problem gambling at the

Applicant's existing venues and this may be translated to the Premises if the Application were to be granted.

116. Whilst a Club venue may be considered a lower risk venue due to membership requirements, this does require appropriate practices and procedures are adhered to. During the Commissioners' visit to the two Club venues currently operated by the Applicant in the LGA, although there was signage relating to visitors signing in at the venues, the requirement for visitors to sign in prior to entry was not enforced by the venues on those occasions. Accordingly, the Commission is less assured that the characteristics of a Club, that are usually considered a protective factor against the risk of problem gambling, can be relied upon to such an extent in relation to this Application.
117. As such, the Commission finds that there is an economic disbenefit associated with problem gambling as a result of this Application to which it attributes low to moderate weight. Issues associated with the negative social impacts associated with problem gambling are considered further in paragraphs 132 to 142 below.

Potential diversion of trade from other gaming venues and retail facilities

118. The business plan of the Applicant is to grow the bistro and bar facilities at the Premises which will likely result in a diversion of trade from other gaming venues and retail facilities in the LGA. The anticipated transfer rate of gaming expenditure is relatively high and this would tend to support the suggestion that an element of other trade from gaming venues may also be diverted from those other venues. There is little evidence before the Commission as to where the associated diversion of trade is likely to arise from. Further, as there are a number of existing gaming venues in the LGA, any diversion of trade is likely to be dispersed to such an extent that it is unlikely to significantly impact one retailer.
119. The Commission attributes this disbenefit marginal weight.

Conclusion on economic impacts

120. After considering the economic benefits of the proposal and balancing these against the detriments, the Commission considers that, on balance, the proposal is likely to have a slightly positive economic impact.

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<sup>40</sup> See paragraph 59 of these Reasons for Decision



## SOCIAL IMPACTS

121. The materials before the Commission, together with the evidence adduced at the public hearing, detailed a range of social benefits and disbenefits associated with the Application.

### Improved facilities at the Premises

122. The Applicant proposes to undertake capital works expenditure, if this Application is granted, and carry out a redevelopment of the Premises which will result in improved facilities being available to be patronised by the community. Access to such improved facilities is an outcome which the Commission has regularly determined is a positive social impact associated with applications of this nature.

123. The Applicant has submitted that the redevelopment at the Premises will result in improvements to existing facilities, along with an increase and improvement to the car park and the creation of the gaming room.

124. The Commission refers to its findings in paragraph 68 above that the redevelopment of the Premises will only proceed if this Application is approved, and it is therefore appropriate to consider the social benefits arising from the community's access to and use of the improved facilities as benefits of this Application. As such, the Commission finds that the introduction of EGMs at the Premises would enable the Applicant to renovate and improve facilities at the Premises as well as create a gaming room at the Premises.

125. The Commission does however note that the proposed work involves renovation and improvement to existing facilities and that, other than the increase in car parking, the main addition to the services and facilities at the Premises would be the provision of a gaming room. Accordingly, the Commission regards access to such improved facilities as a positive social impact, upon which it places a marginal weight.

### Increased gaming opportunities for those who enjoy gaming

126. Related to the economic benefit of increased competition is the social benefit that arises from there being increased gaming opportunities for those who enjoy gaming.

127. The Commission considers that the Application will better serve the needs of gaming patrons through providing an additional venue at which they may choose to play EGMs. The location of the Premises being some distance from other gaming venues in the LGA means this benefit may be increased to some extent.



128. The Commission has also had regard to the evidence and submissions made with respect to increased gaming competition in the City of Greater Bendigo and more generally that contained in paragraph 53 in relation to the calculation of expenditure figures. Further, given the current number of EGMs and venues in the City of Greater Bendigo, the Commission considers this to be a social benefit on which it places marginal weight.

*Social benefit derived from increased community contributions*

129. Related to the financial impact associated with increased community contributions, such contributions can also have a positive social impact by improving the social fabric of the community in which they are made. In assessing the weight to be placed on such a benefit, it is important that the Commission does not conflate this benefit with the economic benefit associated with such contributions.

130. The Applicant has committed to distribute the additional community contributions in consultation with the Council. However, there was no evidence provided as to what community organisations or projects are likely to benefit from these contributions which makes it more difficult to assess the extent of social benefit these contributions are likely to achieve in the community.

131. Having regard to the evidence and submissions made with respect to these community contributions that are set out in paragraphs 85 to 89, the Commission considers the community contributions (if distributed in accordance with conditions proposed by the Applicant and approved by the Commission) and the impact on local community organisations to be a social benefit which is given marginal weight.

*Possibility of increased incidence and impact of problem gambling on community*

132. Wherever accessibility to EGMs is increased there is always a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, relationship breakdowns, emotional harms and other social costs. Accordingly, the Commission accepts there is potential for negative social costs through possible increased problem gambling.

133. The Commission refers to and relies upon the evidence set out in paragraphs 101 to 110 with respect to the economic impact of problem gambling on the community.

134. Overall, the Commission finds that this Application will result in a new venue being established with 44 EGMs, and that this is estimated to be associated with new expenditure of approximately between \$391,698 and \$446,536 in the first 12 months. It accepts that a proportion of this expenditure will be associated with problem gambling.

135. Adverse impacts associated with problem gambling include health, jobs, finances, emotional states and relationships. The Commission notes that the “public health” approach to problem gambling, including “burden of harm” research in the gambling context, is in its infancy.
136. The Council argued that it has a strong focus on improving the health and wellbeing of the community as evidenced by the inclusion of a “wellbeing and fairness” objective in its 2017-2021 Community Plan. The Symplan Report also concluded that gaming-related harms may result in compromised health and wellbeing status with both direct and indirect impacts on individuals and considered that the increased risk of gambling-related harms and the impact on the health and wellbeing of potential employees and patrons within the local area was “significantly negative”.
137. The catchment area of the Premises exhibits mixed levels of socio-economic disadvantage, but is generally lower as compared with the municipality as a whole. The catchment of the Premises includes areas with more indicators of vulnerability to problem gambling (as set out at paragraph 105 above) than the wider municipality, which is of concern to the Commission.
138. There are venue-specific factors that can reduce the risk of problem gambling, including that the venue would have a moderate size gaming room with 44 EGMs and would be a Club. These both generally allow for better monitoring of patrons, although for the sign-in requirements to have the desired protective effect they must be implemented by the Club as noted at paragraph 116 above.
139. The practical application of robust RSG procedures are also a factor that can be considered to protect against the risk of problem gambling at a venue. As discussed at paragraph 115 above, the Commission has some concerns as to the level of implementation of RSG practices by the Applicant at its existing venues which may be translated to the operation of the Premises if the Application is granted.
140. The Commission also notes the Premises could be said to hold characteristics pertaining to a convenience venue, in that it is located on a main thoroughfare and thus could be said to be easily accessible when individuals are travelling to or from Bendigo. This “convenience” element is also enhanced when considering the uses of other nearby facilities (e.g. the Botanical Gardens, a local pool and the primary school), which are discussed below.
141. Whilst Ms Peterson, in her response to questioning by the Commission, indicated that there are some mitigating factors that would act to reduce the harms potentially arising to those who gamble, the reality remains that approval of the Application would result in installation of 44 new EGMs and the impacts of the expenditure that will arise poses a significant risk.



142. Whilst finding that the social disbenefit associated with problem gambling as a result of this Application is a low to moderate risk, the Commission accepts that it is a negative social impact upon which it places a moderate weight.

#### Location of Premises

143. The proposed location of the Premises is in an area of the City of Greater Bendigo that previously had no gaming venues and in an area that houses other nearby recreational facilities such as the Botanical Gardens and local pool. The Commission considers this to be a negative social impact as it increases the likelihood that people using the area surrounding the Premises will be exposed to (and potentially attracted by) gaming where they previously may not have been.

144. The Premises are also located directly across the road from a primary school. The Commission considers this is a negative impact of this Application as it has the potential to increase children's exposure to gaming. However, the Commission also notes the Applicant, to its credit, recognised this issue and proposed various actions to mitigate this exposure, such as not erecting a "Pokies" sign at the venue and proposing to commence trading at 9:30am, which is after the usual drop off time for school, so as to limit the opportunity for parents dropping children at school to conveniently attend the Premises. Having said that, the Commission notes Ms Peterson's evidence that despite the mitigation factors, a residual risk remains.

145. The Commission has considered the above locational factors, along with the proposed mitigating actions, and concludes that they represent a social disbenefit of this Application, to which it attributes a marginal weight.

#### Community attitude

146. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,<sup>41</sup> the Commission recognises that while community apprehension is not an over-riding factor (in the sense that the Application is not a referendum on gaming), it is certainly a relevant factor in the consideration of particular social impact as part of the 'no net detriment' test.

147. The evidence before the Commission indicates that the general community attitude towards this Application has been negative. In summary:

<sup>41</sup> (2008) 19 VR 422, [44] per Warren CJ, Maxwell P And Osborn AJA. See also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [73] per Dwyer DP.



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- (a) the Council, as the representative body of the relevant community and charged with statutory duties under various pieces of legislation, has made a submission in opposition to the Application;<sup>42</sup>
- (b) one community organisation provided short submissions to the Commission indicating concerns at the addition of a further gaming venue; and
- (c) a number of objections from local members of the community were received by the Commission.

148. The Commission notes that the community attitudes survey commissioned by Council (and based on interviews with 419 residents), found that when the entire proposal for the redevelopment was explained, 56% of those surveyed opposed it with 37% in support. Further, 69% considered that the introduction of more EGMs at the Premises would have a negative impact on the sense of the community's happiness but contrariwise the survey also concluded that the development was considered unlikely to have a detrimental effect on the community's sense of happiness.

149. Ms Peterson's view was that the impact on wellbeing is strongly related to the existing exposure of the community to gaming machines, considering that this was not the case in *Romsey #2*, which involved a relatively isolated semi-rural community with far higher levels of community opposition.

150. The Commission finds that there is some evidence of negative attitude and opposition within the community of the City of Greater Bendigo in relation to this Application. It clearly does not reach the level of opposition in the *Romsey* matter, but exists nevertheless and should be carefully considered, particularly in this matter where approval would result in the introduction of a new gaming venue in an area which previously had no gaming venues within a 2.5km radius. In all of these circumstances, the Commission considers it appropriate to attribute low weight to this impact.

*Loss of an EGM-free venue from the local community*

151. The Premises is currently operated by the Applicant as a licensed premises without EGMs. The Application will result in the loss of an EGM-free licensed premises for the local community to conduct social activities. The Premises are in an area that has not previously contained EGMs, including its close proximity to the Botanical Gardens and White Hills recreation reserve which

<sup>42</sup> See also *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [42]; *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey #2)* [2009] VCAT 2275 at [249] and [288]-[321].





are family friendly social spaces. However, the Commission notes that the Applicant submitted that, from a financial perspective, it was not be viable to operate the Premises as a hotel without gaming.

152. Arguably, the conversion of a licensed premises into a gaming premises represents a disbenefit for those who wish to attend a hotel (and utilise its facilities) but not be exposed to gaming. The Ratio Report states that EGMs “should be located where there is a reasonable choice of alternative non-gaming entertainment and recreational facilities”. This disbenefit can be ameliorated when there are other similar non-gaming hotels (with like facilities) that are able to be attended. Ms Peterson told the Commission that there were two other non-gaming venues nearby (the White Hills Bowling Club and Bendigo Golf Club) but the Commission notes that no evidence was provided as to their facilities (and how they compare to the facilities at the Premises) and the both venues may be for the benefit of members rather than the general public. The Commission notes that the financial situation outlined by the Applicant (i.e. that it may not be viable to operate the premises as a hotel only and therefore the licensed premises may be lost in any event), but notes that the alleged financial concerns could potentially be remedied by a different operator.
153. The Commission considers this to be a negative social impact that would result from this Application but, in the circumstances, attributes it only a marginal to low weight.

#### Conclusion on social impacts

154. After considering the social benefits of the proposal and balanced against the detriments, the Commission considers that, on balance, the range of social disbenefits in aggregate clearly outweigh the social benefits of this Application. The Commission therefore considers there is likely to be a detrimental social impact of the Application.

#### **NET ECONOMIC AND SOCIAL IMPACT**

155. The no net detriment test in section 3.3.7(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 well-being of the relevant community will be either neutral or positive.<sup>43</sup>

<sup>43</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.



156. After consideration of the material before it, including the evidence provided at the public hearing, and weighted as outlined above and summarised in tabular form at Appendix One of these Reasons for Decision, the Commission has concluded that there is likely to be a small net negative social and economic impact to the well-being of the community in the municipality in which the Premises are located if the Application is approved

## CONCLUSION

157. On the material that has been put before it, the Commission has determined that the '*no net detriment*' test has not been satisfied and, pursuant to section 3.3.7(1), the Commission must not grant the Application. Accordingly, the Commission cannot go on to consider the general discretion referred to in paragraph 16.

158. The Application is therefore refused.

***The preceding 158 paragraphs are a true copy of the Reasons for Decision of Ms Deirdre O'Donnell, Deputy Chair, and Mr Des Powell AM, Commissioner.***

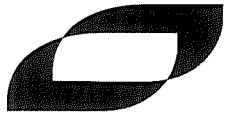
## Appendix One

### Summary of social and economic impacts

The following table is a summation of the economic and social benefits and disbenefits considered by the Commission in reaching its decision. The table is to be read in conjunction with the main body of the Reasons for Decision, as the weight attributed to each factor is determined in light of the particular circumstances of the Application and the evidence presented.

#### *Economic impacts*

	<b>Impact</b>	<b>Paragraph Reference</b>	<b>Comments relevant to weight</b>
<b>Benefits</b>	<i>Gaming expenditure not associated with problem gambling</i>	53 to 60	<p>New gaming expenditure at the Premises estimated by the Applicant to be approximately \$391,698 to \$446,536 in the first year of trading and anticipated transfer rate of expenditure estimated at 79%.</p> <p>The immediate area surrounding the Premises has no other gaming venues. The Premises is located in a mixed socio-economic area with relatively lower socio-economic disadvantage than the LGA on average.</p> <p>Within the likely catchment of the Premises are areas of higher relative socio-economic disadvantage than other areas of the municipality, however residents in those communities already have access to gaming machines that are more proximate than those which would be located at the Premises.</p> <p>Although the Commission considers the anticipated transfer rate may be lower than expected the extent of the new expenditure at the Premises is still expected to be relatively low.</p> <p>Marginal weight.</p>



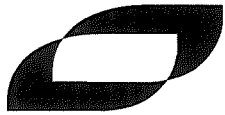
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	<i>Expenditure on capital works</i>	61 to 70	<p>Redevelopment of the venue including creation of gaming room containing 44 EGMs with estimated value between \$1.7 million to \$2 million.</p> <p>The extent of the expenditure on capital works is of a significant nature but it is unknown as to the extent to which the expenditure will be retained in the municipality in which the Premises are located.</p> <p>Low weight.</p>
	<i>Employment creation</i>	71 to 79	<p>The Applicant estimates the Application will result in the creation of 12 FTE jobs at the Premises in respect of its gaming operations and food and beverage service. The Commission considers the financial information suggests this may be more likely in the order of 8 FTE jobs at best.</p> <p>Further, given the high level of anticipated transfer of expenditure this may result in a transfer of employment from nearby gaming and hospitality venues within the municipality.</p> <p>Marginal weight.</p>
	<i>Supply contracts and Complementary expenditure</i>	80 to 84	<p>Redevelopment will result in additional demand for food and beverage services at the Premises</p> <p>The Applicant estimates the complementary expenditure will be \$328,000 which will also cause an increase in supply contracts in the amount of \$150,000 however lack of evidence supporting these estimates. Uncertainty as to the extent of the increased economic activity or whether it will be retained in the local area.</p> <p>Marginal weight</p>



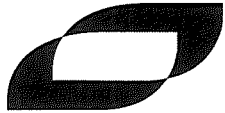
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	<p><i>Community contributions</i></p>	<p>85 to 91</p>	<p>The proposed community contributions represents an increase of \$85,000 per annum from the Applicant for the life of the entitlements. The length of time for which these contributions are certain to be made is quite short.</p> <p>These contributions (distributed in accordance with conditions of any approval of this Application) will have a positive economic impact on community groups operating in and across the municipality.</p> <p>Marginal weight.</p>
	<p><i>Increased gaming competition in the City of Greater Bendigo</i></p>	<p>92 to 94</p>	<p>Although the Application will result in an additional venue at which patrons may choose to play EGMs it would also increase the share of gaming in the municipality operated by the Applicant somewhat decreasing the competitiveness of the other existing gaming venues.</p> <p>Any benefit associated with the Application in terms of additional choice of EGMs within the City of Greater Bendigo is dealt with as a social benefit.</p> <p>No weight.</p>
	<p><i>Improved financial position of the Applicant and purchase of freehold venue</i></p>	<p>95 to 100</p>	<p>Applicant submits the granting of this Application would result in the Applicant purchasing the freehold of the Premises and improve financial stability of Applicant.</p> <p>Applicant is already financially sound and the Applicant's financial viability is not dependant on this Application.</p> <p>No weight</p>



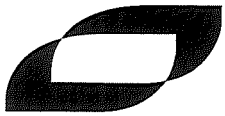
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<b>Disbenefits</b>	<i>Gambling expenditure associated with problem gambling</i>	101 to 117	<p>The portion of new gaming expenditure attributable to problem gambling is an economic disbenefit.</p> <p>The immediate area of the Premises exhibits lower levels of socio-economic disadvantage as compared with the municipality as a whole. However the catchment for the Premises exhibits mixed socio-economic profiles and residents in areas of the catchment exhibit more indicators of vulnerability to problem gambling than the average for the municipality.</p> <p>Some benefit to the proposed transfer of gaming expenditure if it is from areas of higher socio-economic disadvantage and financial vulnerability to the Premises however there is no clear evidence as to where the transfer is likely to come from.</p> <p>The Applicant is an experienced gaming operator at other venues with responsible service of gambling practices in place, however insufficient evidence of appropriate implementation of these practices. The Premises is a Club and the number of EGMs is small to moderate which are factors that are less attractive to problem gamblers.</p> <p>Low to moderate weight.</p>
	<i>Potential diversion of trade from other gaming venues and retail facilities</i>	118 to 119	<p>The business plan of the Applicant is to grow the bistro and gaming at the Premises which will likely result in a diversion of trade from other gaming venues and retail facilities.</p> <p>The anticipated transfer rate of gaming expenditure is quite high but is expected to be spread across a number of existing gaming venues in the municipality and any diversion of other trade is likely to be dispersed.</p> <p>Marginal weight.</p>



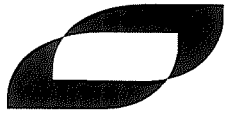
**Social impacts**

	<b>Impact</b>	<b>Paragraph Reference</b>	<b>Comment relevant to weight</b>
<b>Benefits</b>	<i>Improved facilities at the Premises</i>	122 to 126	<p>The Application includes a proposed redevelopment at an existing Premises. Other than the addition of the gaming room and the larger car park, the redevelopment provides an improvement to the existing facilities at the Premises, rather than adding new facilities.</p> <p>Marginal weight.</p>
	<i>Increased gaming opportunities for those who enjoy gaming</i>	127 to 129	<p>The Application will better serve the needs of gaming patrons through providing an additional venue at which they may choose to play EGMs.</p> <p>The location of the Premises being some distance from other gaming venues means this impact may be increased to some extent.</p> <p>Marginal weight.</p>
	<i>Social benefit derived from increased community contributions</i>	130 to 132	<p>The Applicant has committed to an additional \$85,000 community contributions (distributed in accordance with conditions of any approval of this Application) for the life of the entitlements. The impact on local community organisations of this is a social benefit although there is no certainty as to what parts of the community are likely to benefit.</p> <p>Marginal weight.</p>



<b>Disbenefits</b>	<i>Possibility of increased incidence and impact of problem gambling on community</i>	133 to 142	<p>A proportion of total gaming expenditure at the Premises will be associated with problem gambling. Adverse impacts include health, jobs, finances, emotional states and relationships. Public health approach to problem gambling, including “burden of harm” research in the gambling context, is in its infancy.</p> <p>The catchment area of the Premises exhibits mixed levels of socio-economic disadvantage, but is generally lower as compared with the municipality as a whole.</p> <p>Venue-specific factors will reduce risk of problem gambling (it is a Club with a relatively low number of EGMs and small gaming room size). There was a lack of evidence in relation to implementation of RSG practices at the existing venues operated by the Applicant which may be transferred to Premises if Application granted.</p> <p>An element of convenience about the Premises, on a main route out of/in to centre of Bendigo and in the vicinity of other recreational facilities.</p> <p>Moderate weight.</p>
	<i>Location of Premises</i>	143 to 145	<p>The location of the Premises has a number of attributes that are a negative impact as they increase exposure to gaming in an area that was previously free of gaming.</p> <p>Issues associated with the location being proximate to a school have been somewhat mitigated by the Applicant, however the location of the Premises are in an area offering other family friendly activities that previously had no access to gaming.</p> <p>Marginal weight</p>
	<i>Community attitude</i>	146 to 150	<p>Overall negative community attitude to gaming and to the Application.</p> <p>The Council, as representative of the residents of the City of Greater Bendigo objects to the Application and submits it will have negative impact on the health and wellbeing of its residents.</p> <p>Low weight.</p>





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	<p><i>Loss of an EGM free venue from the local community</i></p>	<p>151 to 153</p>	<p>The Application will result in the loss of an EGM-free venue for local community to conduct social activities. The Premises are in an area that has not previously contained EGMs, including its close proximity to the Botanical Gardens and White Hills recreation reserve which are family friendly social spaces.</p> <p>Marginal to low weight</p>
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