



Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application by Third Bekkah Pty Ltd under section 3.3.4(1) of the *Gambling Regulation Act 2003* for amendment of its venue operator's licence to vary the number of electronic gaming machines at the approved premises, the Cobram Hotel, located at 4 Terminus Street, Cobram from 38 to 50.

Commission:

Mr Ross Kennedy, Deputy Chair
Ms Helen Versey, Deputy Chair

Appearances:

Mr Dale Curtis, solicitor from Tresola Legal, for Third Bekkah Pty Ltd

Ms Brooke Hutchins of Counsel as Counsel Assisting the Commission.

Date of Hearing:

31 March 2016

Date of Decision:

28 April 2016

Date of Reasons:

28 April 2016

Decision:

The Application is granted.

Signed:

A handwritten signature in blue ink, appearing to read 'Ross Kennedy', with a long, sweeping tail.

Ross Kennedy
Deputy Chair



REASONS FOR DECISION

INTRODUCTION

1. This is an application by Third Bekkah Pty Ltd (**Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**Commission**) for an amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Cobram Hotel, located at 8 Station Street, Cobram (**Premises**), from 38 to 50 (**Application**).
2. The Premises are located in the Shire of Moira, and the relevant municipal authority is the Moira Shire Council (**the Council**). On 12 January 2016, the Commission notified the Council of the Application and requested that it advise the Commission whether it wished to lodge a submission to address the social and economic impacts of the Application on the local community. The Council responded to the Commission on 23 February 2016, advising that it did not oppose the Application. The Council did not elect to lodge any written submissions, nor did it appear at the hearing of the Application.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (**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.
4. 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;*
 - (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.

5. 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.*

6. 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.

7. The relevant provision concerning this Application is to be found in s. 3.4.17(1)(b) of the Act, which states that variation of the number of EGMs permitted in an approved venue may be amended in accordance with this Division.



8. Section 3.4.20 of the Act sets out matters that are for consideration before the Commission with respect to a proposed amendment. Relevantly for this Application that section provides, inter alia:
- (1) *Without limiting the matters which the Commission may consider in deciding whether to make a proposed amendment the Commission must not amend a venue operator's licence unless—*
- ...
- (b) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the regional limit or municipal limit for gaming machines for the region or municipal district in which the approved venue is located will not be exceeded by the making of the amendment; and*
- (c) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the net economic and social impact of the amendment will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located;*
- ...
9. Subsection 3.4.20(1)(c) of the Act 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.¹
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:
- (a) the likely economic impacts of approval;
- (b) the likely social impacts of approval; and
- (c) the net effect of those impacts on the well-being of the relevant community.²
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 well-being of the community.³ The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net

¹ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 (**Mount Alexander Shire Council**) at [52] per Dwyer DP.

² *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422 (**Macedon Ranges Shire Council**) at [42]-[43] per Warren CJ, Maxwell P and Osborn AJA.

³ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275 (**Romsey No. 2**) at [332] and [348] per Bell J; cited in *Mount Alexander Shire Council* at [58] per Dwyer DP.



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.⁴ In a number of decisions on review, the Victorian Civil and Administrative Tribunal (VCAT) has 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.⁵
13. 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 transparently dealing with the 'no net detriment' test, and might perhaps be considered for wider application.⁶

This approach has been adopted in a number of VCAT decisions.⁷ The Commission has adopted the same approach in this instance to add clarity to its decision making process.

14. If the Commission is not satisfied that the 'no net detriment' test is met, then an application must fail in accordance with the opening words of s 3.4.20(1) of the Act. The test is a mandatory precondition to approval. However, although s 3.4.20(1) of the Act 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.⁸ The Commission must decide whether to make the proposed amendment, with or without any changes from that proposed by the applicant, even where the applicant has satisfied the minimum threshold of the 'no net detriment' test.⁹
15. In considering the exercise of this discretion:

⁴ *Mount Alexander Shire Council* at [57] per Dwyer DP.

⁵ See *Romsey No. 2* at [352] per Bell J; *Mount Alexander Shire Council* at [58] per Dwyer DP.

⁶ *Mount Alexander Shire Council* at [60] per Dwyer DP.

⁷ 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 (**Bakers Arms Hotel**).

⁸ See *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel* at [126] per Code PM and Nelthorpe M; see also *Mount Alexander Shire Council* at [97] and following per Dwyer DP (with respect to s. 3.3.7).

⁹ *Gambling Regulation Act 2003* (Vic), section 3.4.20(2).



- (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;¹⁰ 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.¹¹

16. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council*¹² that, if all of the mandatory considerations under the Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval - other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.

MATERIAL BEFORE THE COMMISSION

17. The Applicant provided the Commission with the following material in support of its Application:
- (a) form titled *Amendment to venue operator licence – vary gaming machines* dated 4 December 2015;
 - (b) form titled *Application for approval to modify a gaming machine area in an approved venue* dated 4 December 2015;
 - (c) report titled *Social and Economic Impact Assessment*, prepared by Urbis (**Urbis**), dated December 2015 (**Urbis Report**);
 - (d) report titled *Expert's Report in Respect of Application to Vary the Number of Gaming Machines from 38 to 50*, prepared by ShineWing Australia Pty Ltd (**ShineWing**), dated 21 December 2015 (**Expenditure Report**);
 - (e) Witness Statement of Mr Adam Rudd, Director of the Applicant, dated 24 December 2015; and
 - (f) copy of public notice advertised in The Age newspaper on 29 December 2015.
18. A letter from the Council to the Commission dated 23 February 2016 advising it did not oppose the Application.

¹⁰ *Mount Alexander Shire Council* at [98] per Dwyer DP.

¹¹ *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire Council* at [99] per Dwyer DP; *Bakers Arms Hotel Pty Ltd* at [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 at [7] per Warren CJ, Maxwell P and Osborn AJA.

¹² Loc.cit at [98].



19. The following material, prepared by Commission officers, was provided to the Applicant and was considered by the Commission:
- (a) report titled *Economic and Social Impact Report*, dated April 2016; and
 - (b) report titled *Pre-Hearing Inspection and Compliance Report*, dated 1 April 2016.

DECISION AND REASONS FOR DECISION

Background

20. The Shire of Moira is a rural municipality. The Premises are located approximately 260km north of Melbourne in the Victorian regional centre of Cobram. The town is on the Murray River across from the New South Wales town of Barooga.
21. The Premises are located across the road from the Cobram/Barooga Visitors Information Centre on the corner of Station Street and Main Street. This location is at the edge of the commercial precinct in Cobram. The area immediately surrounding the Premises consists of a mix of residential, retail and non retail/services premises. The Premises are currently owned by Blossom Holding Pty Ltd and have been leased by the Applicant since September 2007.
22. There is only one other gaming venue in the Shire of Moira, being the Numurkah Bowls and Golf Club. The Shire of Moira consists of two Statistical Local Areas ("SLA") being Moira-East and Moira-West. The Premises and the Numurkah Golf and Bowls Club are both located in the Moira-West SLA. In the last six years there have been two changes to the number of gaming machines operated within the Shire of Moira, being the introduction of 38 EGMs at the Premises during the 2013 financial year and an increase of 26 EGMs at the Numurkah Golf and Bowls Club during the 2013 financial year.
23. The Shire of Moira has 98 gaming machines with attached entitlements and an adult population of 22,380. It has less gaming machines per 1000 adults than the Non-Metro Victoria average of 6.68. EGM density for the 2015 year was 4.4 EGMs per 1000 adults. With the approval of the Application, the figure for the 2016 financial year will be 4.9 EGMs per 1000 adults. This is a 12.2% increase.
24. The Shire of Moira has an average gaming expenditure of \$173.00 per adult, which is 48.3% less than the rural average (\$335.00) and 68.7% less than the State average (\$553.00). Applying the estimate of increased gaming expenditure as received from the Applicant, approval of this Application is expected to result in an increase in average gaming expenditure per adult of 6.3%.



Reasons for Decision

25. Pursuant to section 3.4.20 of the Act, the Commission must be satisfied of the following two matters before it can grant the Application:
- (a) that the regional limit for EGMs for the Shire of Moira will not be exceeded by the increase in the EGMs; and
 - (b) that the net economic and social impact of the increase in EGMs will not be detrimental to the well-being of the community of the Shire of Moira (the '*no net detriment test*').

A. Regional limit

26. A regional limit of 219 EGMs applies for the Shire of Moira.¹³
27. At the time of this decision, there is only one other operational gaming venue in the Shire of Moira – the Numurkah Golf and Bowls Club which operates 60 EGMs. Accordingly, along with the Applicant's existing 38 EGMs there are 98 EGMs in the Shire of Moira.
28. Approval of the Application will result in the total number of EGMs in the Shire of Moira increasing to 110.
29. This number is within the regional limit, and accordingly, the Commission is satisfied that the first element of s 2.4.20 is fulfilled.

B. 'No net detriment' test

30. 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

Gaming expenditure not associated with problem gambling

31. As the economic category includes consumption, then to the extent that gaming expenditure is not associated with problem gaming, it has been recognised that such expenditure can be

¹³ 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 region or 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.



treated as an economic positive.¹⁴ As Bell J notes in *Romsey No. 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.¹⁵

32. The Commission was provided with written evidence from Mr Tim Stillwell of ShineWing Australia, in the Expenditure Report and oral evidence at the public hearing, in relation to the anticipated expenditure arising from the introduction of an additional 12 EGMs at the Premises. In summary, Mr Stillwell's evidence was that:

- (a) the Shire of Moira has only two active gaming venues and therefore shows very low EGM density and net gaming expenditure per adult in comparison with the State of Victoria and average for Country Victoria. There are no other gaming venues located within a 10 kilometre radius of the Premises within Victoria;
- (b) Cobram is located across the Murray River from the township of Barooga in New South Wales where there are three venues currently operating EGMs within a 5 kilometre radius of the Premises. A large number of tourists visit the region which significantly influences the gross gaming expenditure derived by the venues in Barooga;
- (c) based on anecdotal evidence and analysis of recent trends in gaming expenditure, Mr Stillwell concludes that the level of additional gross gaming expenditure generated from an increase in EGMs at the Premises is anticipated to be between \$182,402 and \$246,664 per annum in the first 12 months of trade post installation of the additional 12 EGMs;
- (d) of this additional expenditure, Mr Stillwell concludes that 10% will be transferred expenditure from within the State of Victoria with the remaining expenditure being new expenditure to the State of Victoria;
- (e) the expected NMR at the Premises for the first 12 months of trade is \$118.00, which is below the average for country hotel venues of \$241.00;
- (f) based upon the adult population published by the VCGLR for 2015, the average net amount of gaming expenditure per adult in the Shire of Moira will be \$183.00 with a

¹⁴ See *Romsey No. 2* at [351] per Bell J.

¹⁵ See *Romsey No. 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.



density of 4.92 gaming machines for every 1000 adults which is below the average for country Victoria of \$483 and 6.68 and for the State of \$553.00 and 5.65 respectively.

33. The Commission was also provided with written evidence from Mr Quick of Urbis, in the Urbis Report and oral evidence at the public hearing, in relation to the social and economic impacts of the grant of the Application. Mr Quick's evidence to the Commission was that gaming expenditure, as outlined in the Expenditure Report, not associated with problem gambling constitutes an economic benefit to the local municipality.
34. In assessing the extent of this benefit, the Commission has had regard to the evidence outlined in paragraphs [61]-[64] below with respect to problem gambling. The Commission finds that the portion of new expenditure not attributable to problem gambling is an economic benefit.
35. Various factors suggest that the extent of any increase in problem gambling is likely to be low including that it is a relatively small venue with low levels of EGM expenditure and that the increase in expenditure is expected to be quite low. Further, the Premises are located in an area not particularly vulnerable to problem gambling and the Applicant has a strong compliance history for responsible service of gaming.
36. The Commission accepts that the increase in gaming expenditure not associated with problem gambling is an economic benefit. With reference to the above, a low weight is given to this benefit by the Commission.

Community contributions

37. In determining the net economic and social impact of applications of this nature, both the Commission¹⁶ and VCAT¹⁷ have regularly treated community contributions as a positive benefit. Mr Rudd gave evidence to the Commission that since 2013 the Applicant has contributed more than \$20,000 per annum to local community groups. It is noted that the Applicant undertook to donate \$20,000 per annum as part of its application for premises approval in 2011. Mr Rudd told the Commission that, in the current financial year the Applicant has already distributed in excess of \$22,000. Mr Rudd anticipates that the figure will be closer to \$30,000 come financial year end.

¹⁶ See, for example, Application by Richmond Football Club [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

¹⁷ See, for example, *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms Hotel*.



38. Mr Rudd told the Commission that, should the Application be approved, the Applicant intends to increase its cash community contributions to no less than \$40,000 per year. During the course of his oral evidence Mr Rudd mentioned numerous local community groups that the Applicant currently donates money and in-kind contributions to including sporting clubs, APEX, the local hospital, schools, kindergartens, homeless groups and the Country Fire Association. Mr Rudd told the Commission that the Applicant spends at least \$20,000 on in-kind donations such as the use of the Premises and food and beverage vouchers. Mr Rudd told the Commission that the Applicant has created a conference room which community groups are able to use.
39. Mr Quick gave evidence that such contributions are an economic benefit to the community.
40. The Commission accepts that the additional community contributions are an economic benefit to the community. The Commission accepts also that these additional community contributions would not occur without the grant of the Application. In determining the weight to be given to this benefit, the Commission had regard to the relatively small amount of the contributions, balanced against the lower levels of gaming expenditure at the Premises and the increased value of such donations in a smaller rural community. This economic benefit is accorded a low weight.

Expenditure on capital works

41. Mr Rudd gave evidence to the Commission that the additional EGMs are sought to enable the Applicant to undertake renovation works at the Premises. He stated "*in essence, the additional revenue generated by the additional 12 EGMs will be spent on further employment, extensions and renovations to the hotel.*"
42. The Premises currently has a main bar area, sports bar, a small and large function room, kids play room and bistro in operation. The Premises also operates a Duncan's Drive-thru Bottle Shop. The Premises caters for a large number of functions either in its Bistro, Piano Bar or the Harvest Room.
43. Should the Application be granted, the Applicant intends to renovate the Piano Bar and the Drive-thru Bottle Shop. Mr Rudd anticipates that the cost of the renovations will be approximately \$500,000.
44. The Piano Bar is described by Mr Quick as being "*in desperate need of renovation, with old and worn furniture and carpets and an inadequate bar.*" It was submitted that this renovation would provide the local area with a quality function room for larger events. The Applicant has



determined that the quality of the drive-thru needs to be improved to match the remainder of the Premises. The Applicant intends to rebrand it as a Bottle-O with an express lane, parking lane and a walk in shop and also improve its façade.

45. The Urbis Report is silent on the costs of the renovation, and the economic impact expected to flow to the local municipality as a consequence. Nor was oral evidence given by Mr Quick in this regard. Under the heading of "value of development works" Mr Quick states the following in the Urbis Report, which the Commission does not accept amounts to a description of an economic benefit:

"Installing EGMs will ensure the restoration and redevelopment of the venue can proceed. The renovations will bring the remainder of the Hotel up to standard making it more attractive to residents and visitors to Cobram. They will ensure the Cobram community has access to high quality and modern facilities right on their doorstep. Without approval of this Application, these works will not proceed and the future improvement of the venue is limited."

46. During the course of his oral evidence, Mr Rudd told the Commission that the renovation would be overseen by a local builder, using local tradespersons. Mr Rudd described to the Commission that, when undertaking the previous renovation at the Premises, the Applicant sourced "99 percent" of supplies from the local hardware store and used local tradespersons. Mr Quick told the Commission during oral evidence that such works is an economic benefit to the local community.
47. The Commission accepts the oral evidence that the proposed renovations will have a positive economic impact on the local municipality through the cost of the works. In determining the weight to be ascribed to this benefit, the Commission has had regard to the Applicant's commitment to use local tradespersons to undertake works, and to source materials from local suppliers. The Commission is further satisfied that the renovation will only occur if the Application is granted. This economic benefit is accorded a low weight.

Ongoing effects as a result of renovation works

48. In the Urbis Report, Mr Quick states that supply contracts will increase because of the Premises' renovations. This is said to be due to the increase in the demand for food, beverage and products related to the operation of the bistro and bar area. He noted further that benefits such as this are magnified in a small community.
49. Mr Rudd described to the Commission during his oral evidence that it is anticipated that the renovations to the Piano Bar will attract additional patrons, as the room could be used for



private functions such as birthday and engagement parties. There are no other facilities in the township of Cobram for functions. Also, Mr Rudd expects that, once renovated, the Piano Bar could be utilised as a "Friday night after 5" or cocktail bar, and also as an additional space to serve food. Mr Rudd explained that during busy holiday periods such as Christmas and Easter, often patrons looking to eat at the Premises are not able to do so, as the existing restaurant is at capacity.

50. The Commission accepts that the renovations are likely to result in an increase of expenditure at the Premises, which will in turn increase local supply contracts. The Commission is further satisfied that the renovations will only occur if the Application is granted. In determining the weight to be ascribed to this benefit, the Commission has had regard to the efforts of the Applicant to use local suppliers. The Commission ascribes this positive economic benefit a moderate weight.

Employment creation

51. The Premises currently employs 37 permanent part-time staff, a further nine to 12 casual staff during the busy season and has four directors/owners. All but nine of these employees reside within the Shire of Moira and the remainder live in the neighbouring town of Barooga.
52. Mr Rudd told the Commission during his oral evidence that the Applicant is one of the biggest employers in the local community, probably in the top five. Mr Rudd also described to the Commission that the Applicant has taken on a disabled employee, which was arranged through a local community disability support group. Mr Rudd described to the Commission that this community focused attitude to employment by the Applicant is something he is proud of. Mr Rudd gave evidence that, after the renovations are completed the Applicant will require an additional five to eight equivalent full-time positions both within the gaming room and across the balance of the Premises.
53. In the Urbis Report, Mr Quick states that the majority of these employment opportunities will go to residents of Cobram and the Shire of Moira.
54. The Commission accepts the evidence given on behalf of the Applicant that if the Application is granted, and the renovation works are undertaken, then this is likely to result in the creation of the equivalent of five to eight full-time equivalent positions at the Premises. In light of the Applicant's community-focused attitude, and where the current staff reside, the Commission considers it likely that these new employees will also predominantly reside in the local area.



55. Accordingly, the Commission regards the additional employment as a positive economic benefit to which it gives a moderate weight.

Retain spending in Victoria

56. In the Urbis Report, Mr Quick states that the Premises are out performed by larger venues in the New South Wales town of Barooga. Mr Rudd described to the Commission that often patrons dine at the Premises and then leave to gamble at venues across the border. Mr Rudd believes that this occurs because of the demand for a greater variety of gaming machines, which the Premises does not currently have on offer. Mr Rudd believes that the additional EGMs are required to meet this current demand, to encourage patrons to visit the Premises and for those existing patrons, to remain there rather than move to venues located in New South Wales.
57. Mr Quick echoes these beliefs in the Urbis Report stating that if gambling facilities at the Premises are increased, the Premises will become a more attractive option for residents of the area and visitors/tourists. It is through this Application that the Applicant hopes to increase its appeal and recover a proportion of the market share.
58. The Commission accepts that, as outlined above at [31]-[35] gaming expenditure not associated with problem gambling is an economic benefit. The Commission also accepts that, should patrons stay longer in the Premises to enjoy recreational gambling, they are likely to spend additional money in the Premises on food or beverages. The Commission regards this additional spending in Victoria as a positive economic benefit for the Shire of Moira to which it gives a low weight.

Possibility of increased incidence and impact of problem gambling

59. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an economic disbenefit.¹⁸ In assessing the extent of this disbenefit, the Commission recognises that it does not include transferred expenditure because such expenditure cannot exacerbate problem gambling.¹⁹

¹⁸ 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* at [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.

¹⁹ See *Bakers Arms Hotel* at [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.



60. In assessing the extent of this disbenefit the Commission has had regard to the expenditure evidence set out in paragraph [32] above.
61. The extent to which it can be considered that the 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 of the community in the area surrounding the Premises.
62. In the Urbis Report Mr Quick details the features of the socio-economic characteristics of the surrounding areas as follows:
- (a) the Shire of Moira has an older population with approximately 22% of the residents over the age of 65 years. This can be compared with the non-metro Victorian average of 18%. Further, the percentage of residents between the ages of 18 to 39 is significantly lower than the average which suggests the population of the Shire of Moira is likely to age further in the future;
 - (b) the Shire of Moira has established housing stock with a very high level of home ownership, being 44% of households;
 - (c) household incomes across the Shire of Moira are 10% to 14% lower than the non-metropolitan average. This is a result of lower average per capita income since the average household size in the Shire of Moira is aligned to the benchmark;
 - (d) the level of disadvantage in the area to the west of the Premises is explained by Mr Quick as being influenced by the Oasis Village. The Oasis Village is predominantly home to people who have retired and often register no or low incomes. This heavily impacts on the SIEFA rankings; and
 - (e) in the area immediately surrounding the Premises there is a retail and commercial precinct. These areas have very few residents and therefore impact on the extent of the disadvantage rating.
63. In considering the extent to which any new expenditure may give rise to problem gambling, the manner in which gambling is to be conducted at the Premises is also a relevant factor. It was evident from Mr Rudd's oral evidence to the Commission that he understands the requirements of the gaming industry and regulatory compliance. Mr Rudd told the Commission that he assumes and undertakes the Applicant's responsible service of gaming obligations in a serious manner. Mr Rudd detailed to the Commission the Applicant's responsible service of gambling



systems that are implemented at the Premises, including staff training on the responsible gaming policy and the Applicant's participation in the AHA Self Exclusion Program. Mr Rudd advised the Commission that Laree Hyde, who is the Applicant's Responsible Service of Gaming Officer, has a *"terrific rapport with the regular clientele and is a great asset to the business"*.

64. Mr Rudd told the Commission that the Premises has not had any major instances of problem gambling behaviour. This is supported by the Pre-Hearing Inspection and Compliance Report which shows that the Applicant has a strong compliance history. Since 2009, inspections in gaming and liquor have yielded no enforcement action or any issues of concern. When VCGLR Inspectors visited the Premises on 24 February 2016, they found that the Premises had a *"friendly, family atmosphere. Company Director, Adam Rudd, and his staff were accommodating and demonstrated an awareness of their obligations in both liquor and gambling compliance."*
65. Mr Quick noted in the Urbis Report that problem gambling does have an economic cost relating to the provision of services, financial losses of the gamblers themselves and other support services which deal with the problems of gamblers and their families and friends. He conceded that while a certain level of problem gambling exists in the region, in this instance the change in the level of problem gambling will be negligible in the Shire of Moira. Mr Quick concluded also that the economic cost attributable to problem gambling as a consequence of the Application would also be negligible.
66. The Commission finds that this Application will result in new expenditure of approximately \$182,402 to \$246,664 in the first 12 months. It accepts that a proportion of this expenditure will be associated with problem gambling. Further, the Commission finds that the area surrounding the Premises does not present as particularly vulnerable to problem gambling and is satisfied that the potential for an increase in problem gambling is low. The Commission is also satisfied that the Applicant has in place appropriate systems, policies and procedures to endeavour to ensure compliance with its responsible service of gambling obligations. As such, while the Commission finds that there is an economic disbenefit associated with problem gambling as a result of this Application, it places a low weight on this factor.

Diversion of trade from other gaming venues

67. Mr Quick sets out in the Urbis Report that the diversion of trade from other gaming venues is a potential economic disbenefit flowing from the grant of this Application.



68. In relation to this disbenefit, Mr Quick states:

"The closest gaming facility is less than a 10 minute drive away from the Premises. However, it is outside the Moira Shire. It is likely that the increase in the gaming offer at the Premises will predominantly divert trade from outside the Shire. This means there will be limited adverse effects to other venues in the Moira Shire."

69. As outlined above, Mr Stillwell anticipates that only 10% of transferred expenditure will be from within Victoria. This is supported by Mr Rudd's anecdotal evidence that many patrons will travel over the border to New South Wales to gamble.

70. The Commission finds that the diversion from other gaming venues is a potential economic disbenefit. However, in the circumstances of the current Application, that its impact is negligible and accordingly no weight is given to this factor.

Tax paid to the Government will be reduced

71. Mr Quick identified in the Urbis Report that a reduction in tax payable to the Government as a consequence of the granting of this Application is a potential economic disbenefit.

72. Mr Quick stated in the Urbis Report that *"the government will receive a lower share of gaming revenue in the Shire of Moira through taxes because EGM taxation is calculated per machine."* He opines that *"[t]his is a relatively insignificant disbenefit resulting from this Application due to the small change in the level of tax."* Mr Quick opines further that this disbenefit to the local community is also limited, as the State revenue base is split across all municipalities, rather than being returned to the municipality it is derived from.

73. While the averaging of taxation across the number of EGMs at a particular premises, may result in a reduction of tax and become a potential economic disbenefit, the Commission finds that in the circumstances of the current Application its impact is negligible. Accordingly, no weight is given to this factor.

Finding on economic impact

74. 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 positive economic impact to which it ascribes a low to moderate weight.



Social Impacts

75. The material before the Commission, together with the evidence adduced at the public hearing, details a range of social benefits and disbenefits associated with the Application.

Improved facilities enabling a greater range of services

76. The proposed renovations which will occur if this Application is granted, as detailed above, will result in an improvement of social opportunities for visitors to the Premises. The renovation will allow the Premises to serve a wider patronage, including visitors from outside of the Shire of Moira. Access to improved facilities is an outcome which the Commission²⁰ and VCAT²¹ have regularly determined is a positive social impact associated with applications of this nature.

77. Mr Quick states in the Urbis Report that he believes the social benefit of the improved facilities will be over and above the economic value of the work. In particular, he notes that this Application will enable the further renovation of the Premises and the restoration of the hotel's historical features. He notes also that the renovation of the upstairs function room will allow the Premises to continue to attract more locals and visitors from outside of Cobram, enhancing the prospects of increasing tourism to the region.

78. The Commission accepts that the introduction of the EGMs at the Premises will enable the Applicant to renovate and develop its existing facilities, enabling a greater range of services. The Commission regards access to such improved facilities and a greater range of services as a positive social impact upon which it places low weight.

Increased gaming opportunities for those who enjoy gaming

79. Mr Quick detailed in the Urbis Report that the increased investment in EGMs results in a social benefit for those who enjoy gaming, through the increase in variety of available machines.

80. The Commission finds that granting approval for the Application will better serve the needs of gaming patrons through providing additional variety in the EGMs available. However, given there is currently ready access to EGMs in gaming venues in the Shire of Moira and in New South Wales, the Commission considers this to be a negligible social benefit and hence one on which it places no weight.

²⁰ See, for example, *Application by Glenroy RSL* [2015] VCGLR (22 October 2015) (Commissioners Cohen and Versey).

²¹ See, for example, *Bakers Arms Hotel*.



Increased community contributions

81. As outlined above, the Applicant made assurances to the Commission that, should the Application be granted, it will increase contributions to various local community groups to no less than \$40,000 per annum (previously \$20,000).
82. The Commission recognises that this increase of \$20,000 in community contributions may have both an economic and social impact. The social impact from such contributions is often positive, as the funds can be put towards 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 the Commission does not conflate this benefit with the economic benefit associated with such contributions.
83. In the Urbis Report, Mr Quick notes in relation to the proposed community contributions:

"While there is an economic value of those activities undoubtedly, the social value created far exceeds a dollar value. The ability of the Club in a small country town to contribute to local community and sporting groups, promote social interaction and general well-being represents a very important social benefit of this application".

84. The Commission accepts that the additional community contributions have a social benefit to the Shire of Moira. It also accepts that the additional community contributions will not occur if the Application is refused. The Commission considers that the community contributions and the impact they will have on local community organisations to be a social benefit which is given a low weight.

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

85. 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, family breakdowns and other social costs. Accordingly, the Commission accepts that there is a potential for negative social costs through possible increased problem gambling expenditure.
86. Mr Quick notes that excessive gambling can have adverse impacts on people's health, jobs, finances, emotional states and relationships. Mr Quick made reference to the Productivity Commission Inquiry Report into Gambling 2010 which detailed potential harms caused by gambling across a range of social and economic indicators. With reference to this report, Mr Quick concluded that the incremental change to problem gambling and negative social impacts resulting from this application are expected to be negligible.



87. The Commission refers to and relies upon the evidence set out in paragraphs [61]-[67] above with respect to the economic impact of problem gambling on the community.
88. The Commission finds that the area surrounding the Premises does not present as particularly vulnerable to problem gambling and is satisfied that the potential for an increase in problem gambling is low. Consequently, the Commission finds that the social disbenefit associated with problem gambling as a result of the Application is a low risk, and thus a negative social impact, on which it places a low weight in this Application.

Net economic and social impact

89. The '*no net detriment test*' in s 3.4.20(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. This test will be satisfied if, following the weighting of any likely impacts, the Commission is satisfied that the net economic and social impact of approval on the well being of a relevant community will be either neutral or positive.²²
90. After consideration of the material before it, including the evidence provided at the public hearing and weighed as outlined above and summarised in tabular form at Appendix 1 of these Reasons for Decision, the Commission has concluded that there is likely to be a net positive social and economic impact to the well being of the community and the municipal district in which the Premises are located if the Application is approved.

Other relevant considerations

91. On the material that has been put before it, the Commission has determined that the '*no net detriment test*' has been satisfied and that the total number of EGMs will be under the relevant regional limit. The Commission notes that there remains a discretion to determine whether or not to approve the Application.
92. The Commission is satisfied that the Applicant will continue to act in accordance with its obligation, to take all possible measures to prevent problem gambling. Further, the Commission is not aware of any other matter that would warrant it to exercise its discretion to refuse to grant this Application. Accordingly, the Commission is satisfied that it should approve the Application.

The preceding paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy, Deputy Chair and Ms Helen Versey, Deputy Chair.

²² *Mount Alexander Shire Council* at [52] per Dwyer DP.

Appendix One

Summary of social and economic impacts

Economic impacts

	Impact	Paragraph Reference	Comments relevant to weight
Benefit	Gaming expenditure not associated with problem gambling	[31] – [36]	<p><i>The portion of new expenditure not attributable to problem gambling is an economic benefit.</i></p> <p><i>The Premises are a relatively small venue with low levels of existing expenditure and increased expenditure is expected to be quite low.</i></p> <p><i>The Premises are located in an area that is not particularly vulnerable to problem gambling and the Applicant has a strong compliance history for responsible service of gambling.</i></p> <p><i>Low weight.</i></p>
	Community contributions	[37] – [39]	<p><i>The proposed community contribution of an additional \$20,000 per year is an economic benefit to the community.</i></p> <p><i>The relatively low level of community contributions is balanced against the relatively low level of gaming expenditure at the Premises and the increased value of such donations in a smaller rural community.</i></p> <p><i>Low weight.</i></p>
	Expenditure on capital works	[41] – [47]	<p><i>The cost of the renovation works is an economic benefit.</i></p> <p><i>The Applicant's focus on using local tradespersons to undertake works and local suppliers for materials.</i></p> <p><i>Low weight.</i></p>
	Ongoing effects as a result of renovation works	[48] – [50]	<p><i>The renovations are expected to increase the number of visitors to the Premises and create an increase in supply contracts for local suppliers that the Applicant uses.</i></p> <p><i>Moderate weight.</i></p>



	Employment creation	[51] – [55]	<p>It is expected that, upon completion of the renovation, five to eight full time equivalent positions are likely to be created.</p> <p>These employees are likely to be from the local community. The Applicant has history of community-focused attitude in regard to employees.</p> <p>The additional employment is a positive economic benefit.</p> <p>Low weight.</p>
	Retain spending in Victoria	[56] – [58]	<p>Gaming expenditure not associated with problem gambling is an economic benefit.</p> <p>Patrons currently leaving the Premises to gamble in New South Wales. Increased expenditure at Premises on food and beverage likely should patrons stay to enjoy recreational gambling.</p> <p>Low weight.</p>
Disbenefit	Possibility of increased incidences and impact of problem gambling	[59] – [66]	<p>A portion of expenditure at the Premises will be associated with problem gambling which is an economic disbenefit.</p> <p>The area surrounding the Premises is not particularly vulnerable to problem gambling. The Applicant has appropriate systems to ensure compliance with responsible service of gambling obligations.</p> <p>Low weight.</p>
	Diversion of trade from other gaming venues	[67]	<p>Diversion of trade from other gaming venues is a potential economic disbenefit.</p> <p>Only 10% of transferred expenditure expected to be from Victoria. In the circumstances of this application, the impact is negligible.</p> <p>No weight.</p>



	Tax paid to the Government will be reduced	[71]	<p>A reduction in tax may be a potential economic disbenefit.</p> <p>Small change of level of tax in the circumstances of this application.</p> <p>No weight.</p>
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Social impacts

	Impact	Paragraph Reference	Comment relevant to weight
Benefit	Improved facilities enabling a greater range of services	[76] – [78]	<p>The introduction of additional EGMs at the Premises will enable the Applicant to renovate and improve facilities at the Premises, enabling a greater range of services.</p> <p>Positive social impact.</p> <p>Low weight.</p>
	Increased gaming opportunities for those who enjoy gaming	[79] – [80]	<p>Increased gaming opportunities can be a positive social benefit.</p> <p>Gaming patrons are currently able to access a variety and number of EGMs in other gaming premises in close proximity in Victoria and New South Wales. Negligible social value.</p> <p>No weight.</p>
	Increased community contributions	[81] – [84]	<p>Community contributions and its impact on local community organisations is a social benefit to the Shire of Moira.</p> <p>Low weight.</p>



Disbenefit	Possibility of increased incidence and the impact of problem gambling on the community	[85] – [88]	<p>A proportion of total gaming expenditure at the Premises will be associated with problem gambling which is a social disbenefit.</p> <p>The area surrounding the Premises does not present as particularly vulnerable to problem gambling. Potential for increase in problem gambling is low.</p> <p>Low weight.</p>
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