

DECISION AND REASONS FOR DECISION

In the matter of an application by Cook Country Hotels Pty Ltd under section 3.3.4(1) of the *Gambling Regulation Act 2003* for approval of the premises known as the Huntly Hotel, located at 592 Midland Highway, Huntly, Victoria 3551 as suitable for gaming with forty (40) electronic gaming machines.

Commission: Ron Ben-David, Presiding Deputy Chair
Andrew Scott, Deputy Chair
Chris O'Neill, Commissioner APM

Appearances: James Stoller appeared as counsel assisting the Commission, instructed by April Corker
Nicholas Tweedie SC appeared with Stephanie Mann for the Applicant, instructed by BSP Lawyers
John Rantino appeared for the Responsible Authority (City of Greater Bendigo)

Date of Hearing: 19 and 20 June 2024

Date of Decision: 19 July 2024

Date of Reasons: 19 July 2024

Decision: The Application is granted subject to the conditions set out in Appendix B.

Signed:

A handwritten signature in black ink, appearing to be 'Ron Ben-David', written over a light blue horizontal line.

Dr Ron Ben-David
Presiding Deputy Chair

REASONS FOR DECISION

INTRODUCTION

1. On 24 October 2023, Cook Country Hotels Pty Ltd. (the **Applicant**) applied to the Victorian Gambling and Casino Control Commission (the **Commission**) for approval of the Huntly Hotel, 592 Midland Highway, Huntly (the **Premises**) as suitable for gaming with forty (40) electronic gaming machines (**EGMs**) (the **Application**).
2. The responsible authority is the City of Greater Bendigo (the **Council**). On 20 May 2023, the Council informed the Commission that it opposed the Application and made a submission to that effect, supported by expert evidence.
3. The Commission held a public inquiry into the Application on 19 and 20 June 2024.¹ The Commission considered all material submitted to it, both before and during the hearing.
4. The Commission has determined to grant the Application, having concluded that the statutory preconditions for approval are met and that no discretionary basis exists for refusing the Application.
5. Critical to its decision is the Commission's finding that it is satisfied that the net economic and social impact of the approval of the Application will not be detrimental to the well-being of the municipal district in which the premises are located. This finding, in turn, is based on the Commission's assessment that if the Application is approved, the Applicant will conduct its EGM operations in accordance with best practice for the responsible service of gambling (**RSG**) and in a way that minimises the risks of gambling related harm to a level that is as low as is reasonably practicable. The Commission's conclusion in this respect is based on the evidence and submissions of the Applicant. The harm minimisation measures proposed, or agreed to, by the Applicant will be enforced by the conditions imposed by the Commission in approving the Application. Those conditions are detailed in Annexure B to this statement of reasons.
6. The reasons for the Commission's decision are set out below.

¹ *Victorian Gambling and Casino Control Commission Act 2011 (Vic) (VGCCC Act)*, s 28(2)(e).

THE LEGISLATION AND THE COMMISSION'S TASK

The Commission's mandated objectives and the main objectives of the *Gambling Regulation Act 2003*

7. The Commission is established under the *Victorian Gambling and Casino Control Commission Act 2011* (Vic) (the **VGCCC Act**). The VGCCC Act provides that the objectives of the Commission relevantly include:
 - (a) to maintain and administer systems for the licensing, supervision, and control of gambling businesses for the purpose of fostering responsible gambling conducted or operated by the gambling business;²
 - (b) to minimise gambling harm and problem gambling.³
8. The Commission must determine the Application in accordance with the relevant provisions of the *Gambling Regulation Act 2003* (the **GR Act**) and the objectives of the Commission (as determined by the legislature).
9. The objectives of the Commission reflect the main objectives of the GR Act which include "to foster responsible gambling to:
 - (a) minimise harm caused by problem gambling; and
 - (b) accommodate those who gamble without harming themselves or others".⁴
10. The main objectives of the GR Act are reflected in the provisions that regulate gaming machines in Chapter 3 of the GR Act. Section 3.1.1 of the GR Act sets out the purpose of Chapter 3 which mirrors the main objectives of the GR Act, referred to above, with respect to fostering responsible gambling.

Relevant considerations under the GR Act

11. The Application is made pursuant to section 3.3.4(1) of the GR Act.
12. Section 3.3.7 of the GR Act is titled "matters to be considered in determining applications". It is the critical provision against which the Application must be assessed.
13. Section 3.3.7(1) provides that the Commission must not grant the Application 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 VGCCC Act, section 8A(a)(iii).

³ VGCCC Act, section 8A(b).

⁴ GR Act, section 1.1(2)(a).

14. The third requirement, listed above, has been described as the “no net detriment” test. The relevant legal principles regulating the application of the no net detriment test are well settled and have been helpfully set out by the Victorian Civil and Administrative Tribunal⁵ (**Tribunal**) and by the Court of Appeal.⁶
15. These authorities establish that the no net detriment test requires the Commission to be positively satisfied that there is no net detriment arising from the approval of the Application through positively and objectively establishing that the net economic and social impact will not be detrimental. The municipal district means the district under the Council.⁷
16. In determining the Application, the GR Act provides that the Commission must:
 - (a) consider whether the size, layout and facilities of the Premises are or will be suitable: s 3.3.7(2);
 - (b) consider any submission made by the Council: s 3.3.7(3);
 - (c) refuse to approve the Application, or any application under section 3.3.7(1) of the GR Act, unless the gaming machine area is wholly indoors: s 3.3.7(5).
17. The Commission must also consider any Ministerial decision-making guidelines.⁸
18. Relevantly, on 16 October 2013, Ministerial decision-making guidelines were published in respect of premises that provide children’s play areas (the **Ministerial Play Area Guidelines**).⁹

Determination of the Application

19. The Commission must determine the Application by either granting or refusing to grant approval of the Premises with 40 EGMs as suitable for gaming.¹⁰
20. If the Commission determines that the no net detriment test has not been met, the Application must be refused. However, even if the Commission determines that the no net detriment test has been met, it nonetheless retains a discretion as to whether to grant approval.¹¹
21. In exercising its discretion, the Commission must have regard to the purposes of the GR Act and in particular the purposes of Chapter 3 which addresses the regulation, supervision, and control of

⁵ *Branbeau Pty Ltd v Victorian Commission for Gaming Regulation* [2005] VCAT 2606 at paragraph 51; *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275 at paragraph 352 and *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation* [2013] VCAT 101 at paragraph 52.

⁶ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2008] VSCA 45 at paragraph 43.

⁷ The GR Act, under section 1.3, provides that municipal district has the same meaning as in the *Local Government Act 2020* (Vic). Section 3 of the *Local Government Act 2020* (Vic) defines municipal district to mean “the district under the local government of a Council”.

⁸ VGCCC Act, section 9(4).

⁹ [Victoria Government Gazette, No. S361, 16 October 2013.](#)

¹⁰ GR Act, section 3.3.8(1)(a). Section 3.3.8(1)(b) also provides that the Commission must determine an application by either granting or refusing to grant approval for 24-hour gaming on the premises on any one or more days. This provision does not apply to this Application because the Application does not seek approval for 24-hour gaming on the Premises.

¹¹ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation* [2013] VCAT 101, [97]; *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32], *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126].

gaming machines.¹² The Commission may also have regard to other factors, in the exercise of its discretion, such as policy considerations drawn from the GR Act as a whole.¹³ However, if all the mandatory considerations under the GR Act favour approving the Application, the Commission's discretion would ordinarily favour approval, other than in rare or exceptional cases.¹⁴

Conditions on approval

22. If the Commission grants the Application, section 3.3.9(1) of the GR Act provides for mandatory conditions of every approval of premises for gaming.
23. Section 3.3.9(1) of the GR Act also empowers the Commission to grant approval subject to any other conditions that the Commission thinks fit, provided the condition is not inconsistent with a provision of the GR Act.

The role of the Council

24. As noted above, the Commission must consider any submissions of the Council prior to deciding the Application.
25. In the Application, the Council filed a submission with a social and economic impact assessment and a community consultation report, instructed a solicitor to appear at the hearing and provided the Commission with comprehensive written and oral closing submissions.
26. The Council's approach reflects its "special status" under the GR Act. The Commission acknowledges Council's special status, and notes the submission from the Council that (notwithstanding a change to the legislation cited by the then-President) states:

As the President of the Tribunal in *Branbeau*¹⁵ emphasised, a council's special status under the Act stems in large part from the fact that the Local Government Act 1989 "provides that the primary objective of a council is to endeavour to achieve best outcomes for the local community having regard to the long term and cumulative effects of decisions...a council must have regard to the social, economic and environmental viability and sustainability of the municipal district and overall quality of life of the local community".
27. In respect of the Council's approach of objecting to the Application, the Commission accepts the submissions of the Council as to the differences between the Application and the Council's decision on the Applicant's planning permit in respect of the proposed redevelopment of the Premises.¹⁶ The Commission agrees with the Applicant that the fact that a planning permit has been granted is of some relevance (in that the granting of the planning permit for the redevelopment of the Premises illustrates that the proposed redevelopment is not speculative). However, the

¹² *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation* [2013] VCAT 101, [98].

¹³ See *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation* [2013] VCAT 101, [99], *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32], and *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [26].

¹⁴ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation* [2013] VCAT 101, [98].

¹⁵ *Branbeau Pty Ltd v VCGLR* [2005] VCAT 2006.

¹⁶ Council's closing submissions, paragraphs 30 to 38.

Commission does not accept that the Council's decision to grant the planning permit but to oppose the Application is illustrative of any inconsistency of approach, given the different tests applicable to a decision on a planning application and a decision on the Application.

MATERIAL BEFORE THE COMMISSION

28. The materials submitted by the Applicant in support of the Application included the following:
 - (a) a social and economic impact assessment prepared by Ratio dated 5 October 2023 (the **Ratio Report**) and a supplementary report dated 13 June 2024 (the **Second Ratio Report**);
 - (b) an expert's report on possible expenditure prepared by SW Accountants and Advisors dated 19 October 2023 (the **SW Report**);
 - (c) a witness statement of Peter John Cook for the applicant dated "October 2023" and a supplementary statement from Mr Cook dated "June 2024";
 - (d) a Planning Permit Application prepared by Ratio;
 - (e) an RSG compliance report prepared by DNS Specialist Services dated 25 August 2023 (the **DNS Report**); and
 - (f) a letter from Mr Don Porritt with an expert declaration, both dated 13 June 2024.
29. The materials submitted by the Council in support of its submission that the Application should be refused included the following:
 - (a) an economic and social impact submission;
 - (b) a social and economic impact assessment prepared by SGS Economics and Planning dated 20 May 2024 (the **SGS Report**); and
 - (c) a community consultation report prepared by Insync dated May 2024.
30. The following reports, prepared by officers of the Commission, were provided to the Applicant and to the Council and were considered by the Commission:
 - (a) an economic and social impact report;
 - (b) a pre-hearing inspection and compliance report;
 - (c) a pre-hearing size, layout and facilities report; and
 - (d) an intelligence report.
31. The authors of the Ratio Report (Ms Peterson), the SW Report (Mr Stillwell), and the SGS Report (Ms Noesgaard) undertook an expert witness conclave on 7 June 2024 and produced a joint report following that conclave.¹⁷
32. The Commission also received and considered two letters (from the same member of the local community and in almost identical terms) objecting to the Application.
33. The following witnesses gave oral evidence at the hearing:
 - (a) Mr Cook (director of the Applicant);

¹⁷ The joint report is titled Joint Witness Statement of Experts, and was signed by Ms Noesgaard on 11 June 2024 and by Ms Peterson and Mr Stillwell on 12 June 2024.

- (b) Ms Colleen Peterson (Ratio);
 - (c) Mr Tim Stillwell (SW Accountants and Advisors);
 - (d) Mr Danny Nixon-Smith (DNS Specialist Services). Mr Nixon-Smith was not the author of the DNS Report but gave evidence as to the opinion expressed therein; and
 - (e) Ms Jo Noesgaard (SGS Economics and Planning).
34. The hearing concluded with the Applicant and the Council filing written closing submissions and making oral submissions. The Commission has considered all of the evidence before it, and all submissions of the Applicant and the Council, in reaching its decision.

RELEVANT BACKGROUND FACTS

The Applicant and the proposal for the Premises

35. The Applicant was approved as a venue operator licensee on 22 June 2023. The Applicant's involvement in running the Premises commenced as tenant under a lease in 2018. The Premises was not operating as a hotel at the time the lease commenced, as it had ceased trading in 2017 under a previous tenant. Under the terms of the lease, the Premises underwent a significant redevelopment comprising a refit of the existing facilities and the addition of a children's play area, family bistro, and covered beer garden.
36. In around June or July 2023, the Applicant exercised an option to purchase the Premises. The certificate of title indicates that since June 2023 the Applicant has held the freehold of the Premises, subject to a mortgage that has been in effect since July 2023.
37. Mr Cook is the sole director of the Applicant. He has a long history of experience in the hospitality and gambling industry in Victoria, having been involved as a director of the Cook, Beaumont and Partners Group until 2018. In giving evidence before the Commission Mr Cook impressed as a thoughtful, experienced, respectful and thorough witness committed to Huntly and to establishing the Premises in accordance with best practice RSG measures.
38. The Application seeks to introduce 40 EGMs to the Premises. The Applicant contends that the introduction of EGMs will facilitate the further significant redevelopment of the Premises to one that offers a broader range of entertainment and recreational activities to patrons and members of the local community.
39. The evidence of the Applicant is that the introduction of EGMs will make it financially viable to conduct renovations that will allow for increase of the building footprint and expand the Premises' offering, including by the:
- (a) Construction of a new and dedicated function area, including an outdoor terrace, bar area and male and female bathrooms. The newly created function space will cater for "all-weather" functions and will have a 350-patron capacity.
 - (b) Relocation and expansion of children's playroom.

- (c) Relocation and expansion of the existing bistro to include a dedicated family bistro area. This includes the provision of an outdoor terrace. The overall bistro capacity will increase to 400 seats (an increase of approximately 125 seats).
 - (d) Construction of a gaming lounge with 40 EGMs including a seated area and outdoor terrace.
 - (e) Expansion of the existing sports bar/tavern to accommodate up to 234 patrons (an increase of 150 patrons).
 - (f) Construction of carparking to accommodate 82 vehicles (an increase of 47 car parks).
40. As part of the redevelopment, the Applicant will also construct a 24-room double storey motel on land directly opposite the Hotel at 579 Midland Highway, Huntly. This part of the proposed redevelopment is subject to a separate planning process.
41. The redevelopment will provide three additional uses (the function facility and gaming lounge at the Premises, and the motel) and an improvement of existing uses at the Premises (most significantly the improvement to dining options at the Premises).
42. In response to a request for information (**RFI**) from the Commission, Mr Cook filed his supplementary witness statement, in which he stated that the proposed redevelopment would not go ahead, in any respect, if the Application is not approved.
43. The Commission, via the RFI and questions asked of Mr Cook at the hearing, interrogated that evidence. The Commission is satisfied with the detailed account given by Mr Cook in the RFI and in evidence on this question and is satisfied that if the Application was refused the redevelopment would not proceed.

Proposed community contributions

44. The Applicant says that it would contribute \$80,000 to the community each year if the Application is approved.
45. The way in which the Applicant proposes to distribute this sum to the community has changed over the course of the application process. The Applicant proposes to distribute \$80,000 by way of community contribution per annum, by distributing:
- (a) \$50,000 for the establishment and operation of a Men's Shed, in a well-researched and developed plan which the Commission accepts addresses a need in the local community, will likely be well attended, and will have a significant benefit for those members of the community who attend the service;
 - (b) \$20,000 to the Central Victorian Fire Service Preservation Society to enable it to lease a permanent premises, undertake restoration projects and for the ongoing running of the society's museum; and
 - (c) \$10,000 to a community chest, to be distributed in accordance with the decision of a committee established for that task.

Huntly and the City of Bendigo

46. The Premises is located at 592 Midland Highway, which is a major connecting road outside of Bendigo. The Premises is located slightly more than 10km north of the Bendigo CBD.
47. Huntly is currently a small, commuter town separate from, but close to, Bendigo. Huntly has been identified as a key growth area for Greater Bendigo. As identified in the SGS Report:¹⁸
- It is a designated Activity Centre that is to provide a range of goods and services, including some social and civic uses, to support the daily/weekly needs of the suburban catchment, including for residents of the smaller surrounding townships...
48. The Premises is located within an existing commercial area, and an area which provides services and resources for local residents to use. The Commission finds that it is highly likely that community members will generally use the commercial area of Huntly frequently, likely on a daily basis. The commercial uses in this area are likely to increase as Huntly grows. The Premises is located at the southern boundary of the commercially zoned area of Huntly. While the commercial uses of the immediate vicinity are likely to increase in the near future, there is no evidence to support any suggestion that the commercial zoning in the immediate vicinity of the Premises is likely to extend to the south of the Premises. As such, the Premises is likely to remain at the southern boundary of Huntly's commercial area.
49. The expert witnesses of the Applicant and the Council were largely in agreement on the demographics of the community local to the Premises. As detailed in the joint expert report, the experts reached "broad agreement" on the following factors:
- it is a growth area, high number of dwellings owned with financial support, generally low levels of social housing, low levels of unemployment, levels of housing stress generally in alignment with those seen in comparison catchments, and SEIFA noting that where the venue is located has an average level of disadvantage, however some areas to the south and east of the venue are more disadvantaged.
50. Having considered the expert evidence, including its own reports, the Commission finds that the Huntly community is accurately characterised by the experts in the passage cited above.
51. In terms of the disagreement between the experts on the question of demographics, the joint expert report notes:
- Where the demographics differ is that the [SGS] Report indicates that majority of households have a medium to low level of household income, followed by a medium to high. Peterson considers the median weekly household income and notes that this is high compared to surrounding areas. Peterson does however also note at the Huntly catchment has a higher median weekly mortgage repayment.
52. In respect of this evidence, the Commission agrees with the analysis in the SGS Report that the majority of households have a medium to low level of household income, followed by medium to high levels in the same category. The Commission accepts that the levels are somewhat higher

¹⁸ Paragraph 44.

compared to some surrounding areas. The Commission also accepts that the Huntly catchment has a higher median weekly mortgage repayment rate than Greater Bendigo and regional Victorian averages.

EGM municipal limit and density

53. Greater Bendigo City has been assessed to have a municipal limit of EGM entitlements of 870.¹⁹
54. There are currently:
 - (a) eleven venues operating EGMS in the Council area with an average NMR for the 2022 calendar year of \$244.75, the closest of which are just over 10km from the Premises;
 - (b) 662 EGMs currently operating in the Council area (if the Application is approved, that will increase the number of EGMs to 702).

The Premises

55. The Premises is located on a corner site at the intersection of Midland Highway and Pasley Street in Huntly. Midland Highway is the main arterial road that runs through Huntly and connects Huntly with Bendigo and Epsom.
56. Most of Huntly's commercial uses are on Midland Highway, to the north of the Premises, with the nearest major commercial centre in Epsom on the Midland Highway to the south of the Premises. Many residents in the surrounding area are likely to travel to Bendigo, as the nearest major centre, for work, leisure, retail and to access services.
57. The expert witnesses for the Council and for the Applicant agreed that the likely primary catchment for the Premises would be within a 5km radius, and the secondary catchment 10km. The Commission has assessed the Application on the basis that these are the most likely primary and secondary catchments, and that the net economic and social impact of the approval of the Application is to be properly assessed by primarily considering the impact on residents of this part of the Council area.

REASONS FOR DECISION

58. The Commission cannot grant the Application, under the GR Act, unless it is satisfied of three matters:
 - (a) the Applicant has authority to make the Application;
 - (b) the Premises will be suitable for gaming on completion of building works; and
 - (c) if the Application is approved, there will be no net detriment to the well-being of the community.
59. These matters are addressed below, after three preliminary evidentiary issues are addressed.

¹⁹ [Victoria Government Gazette, No. S 318, 20 September 2017.](#)

A preliminary evidentiary issue: the expert witnesses' experience and site visits

60. Much was made by counsel for the Applicant of the relative experience of the Applicant's primary expert (Ms Peterson) compared with the experience of the Council's primary expert (Ms Noesgaard).
61. The Commission was not persuaded by the Applicant's cross-examination or submissions on the relative experience of the expert witnesses.
62. In this respect, the Commission accepts that Ms Peterson has undertaken numerous socio-economic impact assessments specifically directed to EGM venues and accepts her evidence that she has inspected around half of EGM venues in Victoria. The Commission also accepts that Ms Noesgaard has not previously given evidence before the Commission, or in respect of a socio-economic impact assessment of an EGM venue and has not inspected the Premises. However, Ms Noesgaard has experience and qualifications as a social planner and is qualified to give an expert opinion on the socio-economic impacts of the approval of the Application on the local community. As such, the Commission has assessed the content and substance of each witness' evidence and has not been influenced to any extent by the relative experience of Ms Peterson and Ms Noesgaard.
63. Further, the Commission was not persuaded by the Applicant's submission to the effect that Ms Noesgaard's evidence should be given less weight because she had not visited the Premises for the purpose of preparing her evidence. The Commission itself has decided not to undertake a site-visit to assess the Application. Plainly, it has formed the view that it need not visit the Premises to properly determine this particular Application. It follows that it does not consider Ms Noesgaard needed to visit the Premises to give evidence on the social and economic impacts of the approval of the Application. Indeed, in the circumstances of this Application, including where the Premises will undergo a substantial redevelopment before any EGMs can be installed, the Commission does not consider Ms Peterson was in a materially better position than Ms Noesgaard to assess the Application by virtue of having visited the Premises.

A second preliminary evidentiary issue: assessment of the SGS's quantitative analysis

64. In the SGS Report, Ms Noesgaard assessed the Applicant's proposal using a traditional qualitative assessment, as well as a quantitative assessment. Ms Noesgaard expressed the view that the qualitative approach has several limitations, expressed as follows:²⁰
 - No consistent way to compare the scale of impacts across categories.
 - Inherently more vulnerable to subjective bias and difficult to understand assumptions.
 - Susceptible to 'double counting' and/or not focused on the incremental impact of the application.
 - The impact of timing and length of benefits or detriments cannot be clearly considered.

²⁰ SGS Report, paragraph 1.2(4), page 3.

65. The Commission agrees that there are some advantages to a quantitative assessment over a qualitative assessment. Those advantages include that the general transparency of assumptions underpinning the quantitative opinion supports greater scrutiny of their reasonableness by the Commission.
66. However, as submitted by the Applicant, a quantitative assessment is only a useful tool by which the net community impact of an application can be assessed if the assumptions upon which the quantitative assessment is based are reliable. In this case, the Commission is not satisfied that it can rely on one of the core assumptions underpinning the SGS quantitative analysis. It follows that the results of the quantitative assessment undertaken by SGS have not been used by the Commission to inform its assessment of the no net detriment test.
67. The assumption underpinning the SGS quantitative analysis which the Commission is satisfied is unreliable is the assumption that EGM expenditure attributable to problem gambling is -\$1.96 million. The Commission's concerns, in this respect, are not ameliorated by the fact that the SGS quantitative assessment has applied a +/- 5% margin for this assumption.
68. SGS's assumption, underpinning this figure, is that 35.8% of new EGM expenditure from the proposed venue is likely to be attributable to problem gambling. This assumption is derived from SGS:
- (a) opining that the Victorian *average* figure of EGM expenditure on problem gambling is 35.8%; and
 - (b) concluding that the Premises (if the Application would be granted) would not be significantly better or worse than the State average, and that it could therefore be assumed that 35.8% of EGM expenditure at the Premises would be attributable to problem gamblers.
69. The Commission is satisfied that the case for making each of these assumptions has not been adequately provided by SGS, and that accordingly the results of the SGS quantitative model cannot be relied upon by the Commission in undertaking its own assessment of the Application. The Commission has not approached its consideration of the Application by adopting a quantitative model for assessment.
70. In respect of the first underlying assumption, the Commission is not satisfied that the evidence establishes that the figure of 35.8% is properly characterised as a "state average". So much was conceded by Ms Noesgaard in cross-examination. It follows that the starting point adopted by SGS cannot be adopted by the Commission.
71. Further, and in any event, the Commission is not satisfied that the evidence establishes SGS' second underlying assumption: that, presuming there is a State-average proportion of EGM expenditure attributable to problem gambling, that problem gambling at the Premises would likely fall at or around that State-average. The 35.8% starting point adopted by SGS was the total proportion of EGM expenditure estimated to be attributable to problem gambling for a single year from all EGM expenditure at all venues in Victoria, including at the Melbourne Casino. Even if

35.8% were the correct starting point, the Commission is not satisfied that the evidence establishes that the proportion of problem gambling likely to occur at the Premises would be at or around 35.8%. In this regard, the Commission notes that the many harm-minimisation measures proposed for the Premises are unlikely to be present at many other venues in the State, such that the Commission could not conclude that the proportion of expenditure on problem gambling at the Premises would be the same as the State-average, whatever that average may be. No assessment has been undertaken by SGS as to how any of the harm minimisation measures present in this case would affect (individually or cumulatively) the likely proportion of gaming expenditure at the Premises that would be attributed to problem gambling. It follows that the Commission is not satisfied that the figure of 35.8% (or any other figure it has been able to identify) can be adopted as the likely proportion of expenditure that will be attributed to problem gambling. It also follows that the Commission has not been able to conduct a reliable quantitative assessment of the Application, or to adopt SGS' quantitative assessment.

72. The Commission also notes that significant attention was paid by counsel for the Applicant, at hearing, to SGS' assessment of "consumer surplus" in the qualitative assessment. For the reasons set out below at paragraphs 109 to 114, while the Commission has some concerns in respect of the way "consumer surplus" is characterised and quantified in the SGS quantitative analysis, this is not an issue the Commission needs to conclusively determine. That is because, as set out above, the Commission has already concluded that it cannot rely on the result of the SGS quantitative analysis in light of the way it approaches the question of the likely expenditure on problem gambling at the Premises.
73. Thus, the Commission has not adopted a quantitative assessment when considering the question of net detriment.
74. However, that is not to say that the Commission has disregarded the SGS quantitative assessment altogether. It has had regard to each aspect of SGS' quantitative assessment (as well as SGS' qualitative assessment and how its quantitative analysis informed SGS' qualitative assessment) in undertaking its own qualitative assessment below.

A third preliminary evidentiary issue: assessment of a base case

75. Ms Noesgaard's quantitative assessment applies what it describes as a "base case scenario", setting out SGS's view that "something broadly similar in nature would ultimately materialise in the town at a future point in time".
76. As set out above, the Commission has determined not to adopt a quantitative analysis in considering the question of net detriment in this Application. Nonetheless, the Commission has considered SGS' "assessment of a base case scenario" when undertaking its own qualitative assessment of the social and economic impacts of the approval of the Application.
77. In this regard, while the Commission agrees with Ms Noesgaard that other venues, such as restaurants and cafes, will likely be developed as Huntly grows, this is not a factor which has

affected the Commission's consideration of the Application. That is, the Commission is not satisfied that SGS has provided adequate evidence to support its opinion that a similar alternative development with similar community benefits is likely to occur in the next ten years, should the Application be refused.

Section 3.3.7(1)(a) of the GR Act: the Applicant has authority to make the application

78. In its initial application, the Applicant conveyed to the Commission that it was not the owner of the Premises, but that it had the owner's consent to make the Application. Nonetheless, the Applicant attached to the Application a certificate of title which showed that the Applicant was the registered owner of "Crown Allotment 95 Township of Huntly and Crown Allotment 96 Township of Huntly" and had been since June 2023. In the Application, it was not expressly stated that Crown Allotment 95 and 96 comprised the Premises.
79. Accordingly, the Commission's solicitor requested a clarification from the Applicant. The Applicant's solicitors responded, stating that they were instructed that the Applicant initially occupied the Premises as tenant under a lease, but that the Applicant purchased the freehold for the Premises (subject to a mortgage) in July 2023.²¹ The Applicant's solicitor provided a further copy of the certificate of title for Crown Allotment 95 and 96, along with a title plan which shows that Crown Allotment 95 and 96 do comprise the land on which the Premises are situated.
80. Thus, the Commission is satisfied that the Applicant is the owner of the freehold title for the Premises and has authority to make the Application within the meaning of s 3.3.7(1)(a) of the GR Act.

Section 3.3.7(1)(b) of the GR Act: the Premises will be suitable for gaming machines after building works

81. Having regard to the final version of the plans submitted by the Applicant following the hearing (dated 27 June 2024), the Commission finds that the Premises, on completion of the proposed building works and with the conditions it proposes to impose on granting the approval, will be suitable for gaming.
82. Issues that were of concern to the Commission in this respect in earlier iterations of the plans have been remedied in the final version.²² The exception being the proposed courtyard adjacent to, and

²¹ The Commission notes that the certificate of title indicates that the Applicant obtained the freehold in June 2023, and the mortgage was registered in July 2023. Nothing turns on this issue, the relevant matter is that the certificate establishes that the Applicant owns the freehold for the Premises.

²² The Commission notes that it would not have been satisfied that the Premises would have been suitable for gaming had the Applicant maintained reliance on previous iterations of the plans, including because in earlier iterations of the plans the smoking terrace adjacent to the gaming room was only accessible directly from the gaming room, and because in the absence of the screens subsequently included in the plans the EGMs would have been visible to patrons in the family bistro and sports bar respectively.

only accessible from, the gaming room.²³ During the Hearing, the Applicant agreed to remove the courtyard from the proposed plan of the Premises.

83. The proposed design of the Premises as agreed to by the Applicant in the hearing and in subsequent correspondence is critical to the Commission's conclusion that the premises will be suitable for the management and operation of gaming machines on completion of building works within the meaning of s 3.3.7(1)(b) of the GR Act. Thus, the Commission has determined to grant the Application subject to conditions. Those conditions include requirements in respect of the design of the Premises that the Commission considers are of particular importance in ensuring the suitability of the Premises. Those design elements will, in the Commission's view, ensure the minimisation of harm that may arise from the Application being granted.
84. The Commission also considers that the design of the proposed children's play area complies with the Ministerial Play Area Guidelines.²⁴

Section 3.3.7(1)(c) of the GR Act: the no net detriment test is satisfied

85. The Commission, as outlined above, is required to be satisfied that there is no net detriment to the well-being of the community of the municipal district arising from the approval of the Application.
86. While the Commission is required to assess the impact on the whole of the community of the local Council area, as the Tribunal has observed, "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".²⁵
87. It follows that the primary impact of approving the Premises will be on persons living or working in an area within a 5-kilometre radius of the Premises with secondary impacts on those living and working within the broader catchment of a 10-km radius of the Premises. Lesser impacts are likely in relation to persons living or working within the City of Bendigo outside of that radius.
88. The Applicant contends that the social and economic impacts on the well-being of the community, if the Application is approved, would comprise a net benefit to the community (alternatively, would not comprise any net detriment). In support of its position, the Applicant primarily (but not exclusively) relies on:
- (a) Mr Cook's statements and evidence;
 - (b) the Ratio Report (and supplementary report) and the evidence of Ms Peterson;
 - (c) the SW Report and the evidence of Mr Stillwell; and

²³ Commission Direction made under s 3.5.27 of the *Gambling Regulation Act 2003* dated 13 July 2004 states that "It must not be necessary for a patron of an approved venue to pass through a gaming machine area in order only to enter or leave the venue or gain access to a facility, such as toilets or a smoking area."

²⁴ The design meets each of the five requirements set out in the Ministerial Guideline: the play area is located as far away as practicable from the gaming machine area; there is no line of sight from the play area into the gaming area (and vice versa); the location of the play area does not permit sounds of the gaming area to be heard in the play area; the play area is not directly accessible from the gaming machine area; the design of the play area is conducive to being monitored by Premises staff.

²⁵ *Branbeau Pty Ltd v Victorian Commission for Gaming Regulation* [2005] VCAT 2606 at paragraph 51.

- (d) the DNS Report and the evidence of Mr Nixon-Smith.
89. Conversely, the Council contends that, if the Application is approved, it would result in a net detriment to the community. In support of its position, the Council primarily (but not exclusively) relies on the SGS Report and the evidence of Ms Noesgaard.
90. Each of the economic and social impacts identified and weighed by the Commission are summarised in Annexure A.
91. On balance and as detailed below, the Commission considers that the net economic and social impacts of the approval of the Application, on the community within the Council area will be neutral, having regard to the licence conditions approved by the Commission (see Annexure B) which will ensure the minimisation of the risk of harm from gambling. Thus, the Application satisfies the no net detriment test.

Social and Economic benefits of which will flow from approving the Application

The availability of new and improved facilities for the use of the community

92. The Commission has assessed, cumulatively, the social and economic impacts on the community of the approval of the Application on:
- (a) the increased opportunity for recreational gambling among members of the community;
 - (b) the improved entertainment options for members of the community; and
 - (c) the benefits flowing to the community from the availability of motel accommodation in Huntly.
93. In the Commission's view, these factors, considered cumulatively, comprise a low-moderate benefit to the community.
94. In reaching the conclusion that these benefits, considered cumulatively, confer a low-moderate benefit on the community, the Commission acknowledges that it has adopted a rating which is lower than that considered appropriate by both Ms Noesgaard and Ms Peterson.
95. As with the impacts of problem gambling and other gambling related harm discussed at paragraphs 120 to 134 below (where the Commission has also adopted a lower rating than the parties' experts) the Commission considers that the parties' experts have overstated the likely positive effect of these matters on the community as a whole.
96. In this regard, the joint expert report details that:
- (a) Ms Noesgaard assesses these impacts, separately, as comprising a low and moderate benefit respectively: assessing a moderate benefit from increased opportunity for recreational gambling and a low benefit for improved entertainment options more broadly, but not assessing the impact of the motel;
 - (b) Ms Peterson assesses these impacts, separately, as comprising a low and moderate benefit respectively: assessing a low benefit from increased opportunity for recreational

gambling, a moderate benefit for improved entertainment options more broadly, and a low benefit from the construction of the motel.

97. The Commission considers that the most significant social benefits flowing from the Applicant's proposed development are in respect of the increased entertainment options for members of the community, and in particular the new function area which will be of broad community benefit, with some additional community benefit arising from the other improved facilities at the Premises. The Commission considers that these new and improved facilities will likely be widely used by members of the community, who will thereby derive some social benefit from the approval being granted and the hotel redevelopment proceeding.
98. The new Motel facilities will be a largely neutral factor for members of the community, who are unlikely to use the accommodation themselves, but who may derive some indirect benefit from the availability of nearby accommodation for use by friends and family.
99. In the Commission's opinion, the increased opportunity for recreational gambling is a factor of some marginal benefit. However, given there are already 11 other venues operating EGMs in the Council area, some of which are not much further than 10km from the Premises, this is not a significant factor.
100. On balance, the Commission considers that the new and improved facilities would represent a low-moderate benefit to the community of the Greater City of Bendigo, with the benefit predominantly arising from the new and improved facilities which will be developed if the Application is approved.

Community contributions

101. SGS characterises the community contributions as comprising a low benefit, while Ratio characterises them as conferring a moderate benefit.
102. In the Commission's view, the proposed community contributions constitute a confined, and therefore low, benefit to the community.
103. The Commission agrees with the submissions of the Applicant that the community contributions are well thought out and developed, particularly in relation to the proposed contributions to the establishment and running of the Men's Shed program. Those contributions will likely have a significant impact on the individuals who use that service. Nonetheless, the overall number of members of the community who are likely to directly benefit from the community contributions are relatively small.
104. The money donated to the Central Victorian Fire Service Preservation Society will also confer a benefit on community members who are members of that society, and some benefit to those who visit the museum. While this benefit will be real, it is in the Commission's assessment less significant (in terms of the money contributed and the likely effect of that contribution) than the Men's Shed distribution. The Commission also considers that the remaining money distributed via the community chest will likely have some, albeit minor, community benefit.

105. Having regard in particular to the significant benefits flowing to a relatively small number of community members from the contributions to the two recipient organizations, the Commission concludes that a low benefit will flow from the community contributions proposed by the Applicant.

Employment-related benefits

106. The expert witnesses of the Applicant and the Council considered employment related benefits in slightly different ways, but in the end reached similar views when employment related benefits are considered in totality:
- (a) Ratio concluded that additional employment from the proposal was a low social benefit, while SGS did not assess the social benefit of any change in employment;
 - (b) SGS considered the value-add labour surplus associated with capital works as a marginal benefit, while Ratio did not consider this aspect independently; and
 - (c) Both SGS and Ratio considered the net economic impact on employment: Ratio concluded this comprised a negligible benefit, while SGS considered it to be a marginal benefit.
107. The Commission accepts that there will likely be some economic and social benefits flowing to the community arising from additional employment if the Application is approved. However, these benefits are not significant in the overall context of the local economy and are therefore not significant matters in the Commission's consideration of the Application.
108. Accordingly, the Commission has considered each of the different employment-related benefits detailed above together. Adding these discrete factors together, the Commission considers the employment related benefits are properly characterised as a low benefit of the proposal. In this regard, the Commission has in effect adopted the SGS rating of "marginal benefit" for each of "value add labour surplus associated with capital works" and the economic "net impact on employment" and also given some rating of marginal benefit to the social impact of that marginal economic employment benefit.

Consumer surplus - gaming expenditure not associated with problem gambling

109. A curious aspect of the hearing of the Application was the treatment by the Applicant of the question of the impact on the community of what was described by Ms Noesgaard in the SGS Report as "consumer surplus – gaming expenditure not associated with problem gambling". Ms Noesgaard rated this aspect as a "moderate benefit" to the community. Ratio, on the other hand, did not consider this aspect independently. Rather, Ms Peterson considered this aspect within the category "increased opportunity for recreational gambling" which it rated as conferring a "low benefit" on the community.
110. That is, the Council's assessment of this aspect of the Application was more positive to the Applicant than the Applicant's own evidence. Nonetheless, and somewhat confoundingly,

significant efforts were expended by the Applicant in seeking to impugn the reliability of Ms Noesgaard's assessment of this aspect of community impact.

111. In respect of this issue, the Commission's reasons can be expressed with brevity. Consumer surplus is the difference between the price that customers of the Premises will be willing to pay for the services it provides and the price those customers actually pay, particularly recreational gambling (in this case, the relevant "price" is sometimes represented by net player loss). The Commission agrees with Ms Noesgaard that there will be some consumer surplus from the approval of the Application. However, the Commission agrees with the Applicant that Ms Noesgaard's evidence is not persuasive in respect of the quantification of consumer surplus. The Commission does not accept Ms Noesgaard's evidence that the value of time saved in traveling to the venue for recreational gambling (as opposed to a further venue) is an appropriate proxy by which consumer surplus can be calculated.
112. Thus, neither party has estimated consumer surplus in a way that enables the Commission to make findings on the level of consumer surplus, if any, which will result from the approval of the Application.
113. Given the lack of clarity in the evidence available to the Commission as to the level of consumer surplus inherent in approving the Application, the Commission has concluded that consumer surplus confers only a marginal benefit to the community. To avoid double-counting (in circumstances where the increased opportunity for recreational gambling has been considered by the Commission separately, as detailed above) this is not a factor which has any bearing on the Commission's ultimate conclusion that the social and economic impacts on the community of the granting the Application are neutral.
114. However, the Commission notes that even if it had accepted Ms Noesgaard's assessment of moderate impact in this category, this would not have assisted the Council's position. Rather, this would have been a factor which slightly assisted the Applicant's contention that the no net detriment test had been met.

Increased competition among gaming venues in Bendigo

115. The Commission accepts, as a general proposition, that there will be some element of increased competition among gaming venues in Bendigo from the approval of the Application.
116. However, given there are already eleven gaming venues in Bendigo, and given the wide variety of those venues (in terms of number of EGMs, type of venue and the facilities that are available), the Commission considers the impact of this aspect on the community to be nil to marginal. Accordingly, this is not a factor which has had any real bearing on the Commission's ultimate conclusion that the social and economic impacts on the community of the granting the Application are neutral.

Expenditure on associated suppliers

117. Under this category, the Commission has considered two aspects of the assessments undertaken by the expert witnesses:
- (a) supply contracts (rated by SGS as of a low benefit and by Ratio as of negligible benefit); and
 - (b) complementary expenditure (rated by SGS as of marginal benefit and by Ratio as of negligible benefit).
118. The evidence of the Council's witness afforded this aspect a more generous rating to the Applicant than the Applicant's own evidence, although the differences between the experts are insignificant.
119. In the Commission's assessment, taking these factors together, the impact on the community of supply contracts and complementary expenditure is of marginal benefit. Given the marginal nature of the impact of this category, this is not a factor which has had any bearing on the Commission's ultimate conclusion that the social and economic impacts on the community of the granting the Application are neutral.

Social and economic disbenefits or detriments which will flow from approving the Application

Social and economic disbenefits related to gambling-related harm and problem gambling

120. The Commission assesses the social and economic harm which may result from gambling-related harm and problem gambling as the most significant disbenefit to the community from its decision to approve the Application. This is consistent with the evidence of Ms Noesgaard and Ms Peterson, who characterised this aspect of the application as follows:
- (a) the increased incidence of problem gambling on the community was considered by Ms Peterson to comprise a moderate social disbenefit and by Ms Noesgaard to comprise a high social disbenefit;²⁶² and
 - (b) the gaming expenditure associated with problem gambling was assessed by Ms Noesgaard to likely result in a high economic detriment to the local community and by Ms Peterson as a low disbenefit.
121. In terms of the risk of harm arising from the increased incidence of problem gambling on the community, the SGS Report states:
- 204. Problem gambling can be caused by both venue and demographic catchment factors. Based on an analysis of this application, the catchment area and the risk assessment completed for the proposed venue, this venue would not worse, or better, than an average EGM venue in Victoria.
 - 205. Studies show that problem gambling imposes substantial social costs on the

²⁶ Ms Noesgaard also considered the impact on community health/connectedness in this context and in reaching this conclusion. Ms Peterson analysed this issue separately, and considered it to comprise a "negligible disbenefit". The Commission has adopted Ms Noesgaard's approach, and considered this issue as part of the social and economic disbenefit of the proposal.

community (Productivity Commission, 2010; Victorian Competition and Efficiency Commission, 2012; Victorian Responsible Gambling Foundation, 2017). While the separation of social and economic costs of problem gambling is problematic, social costs can generally be associated with the distress associated with problem gambling and felt by individuals, their families, their friends, and surrounding communities.

206. Analysis in Section 5 and 6 highlights the potential cost to the community resulting from these social impacts and highlights the ongoing nature of these. For this reason, SGS has rated this impact as high.

122. In terms of gaming expenditure associated with problem gambling, the SGS report states:

226. The Victorian Responsible Gambling Foundation (2017) estimated that the proportion of EGM expenditure attributable to problem gambling is 35.8 per cent for Victoria. This inquiry found a total cost of \$2.4 billion (2015). With Victoria containing around one quarter of the Australian population, this is broadly consistent with the National upper estimate completed by the Productivity Commission.

227. The above studies indicate that problem gambling imposes a sizeable cost on the Victorian community. As a result, any proposal that may lead to an increase in the number of problem gamblers should be weighed with this in mind. Despite the existence of a responsible gambling policy, a proportion of the increased expenditure generated is likely to be attributable to problem gamblers particularly in a catchment which presents potential vulnerability indicators as detailed in Section 5.

228. In SGS' view, the approval of this application will generate a significant quantity of new expenditure.

229. In light of the above, SGS judges that a venue in Romsey [sic] has the potential to drive an increase in problem gambler behaviour in the region, with potentially serious consequences given its scale, location, opening hours, and the vulnerability of certain population cohorts across the region. The significance of this impact is supported by the quantitative SEIA findings.

123. Table 10 of the SGS Report details Ms Noesgaard's opinion on venue and catchment specific factors which it assesses as mitigating or exacerbating the risk of expenditure from problem gambling, in comparison with what SGS opines is "a typical Victorian EGM venue/location". In respect of these criteria, Ms Noesgaard's opinion can be summarised as follows:

- (a) whether the Premises is a destination or convenience venue: exacerbating;
- (b) whether the Premises is a new or existing venue: exacerbating;
- (c) the opening hours: neutral;
- (d) the size of the venue: neutral;
- (e) the venue design: neutral;
- (f) staff and RSG procedures: neutral;
- (g) socio-economic status of the catchment: exacerbating;
- (h) labour force characteristics: neutral;
- (i) financial stress of the catchment: exacerbating;

- (j) access to services: exacerbating;
 - (k) social capital and resilience: exacerbating.
124. Ratio, on the other hand, assesses many of these factors as mitigating or neutral factors:
- (a) Ms Peterson opines that the venue is a destination venue not a convenience venue; that hours of operation are proposed to be “moderate”; the gaming size is modest and provides high levels of surveillance; the design accords with best practice; RSG factors are strong; households in the catchment have higher disposable income than average for country Victoria and Greater Bendigo; levels of social and capital resilience are high (all mitigating); and
 - (b) Ms Peterson opines that the social/economic status of the community within the Premises’ catchment is a neutral factor.
125. The Commission notes that there is some dispute between the Council and the Applicant on factors relating to likely levels of EGM expenditure, the proportion of problem gambling expenditure likely to be undertaken by residents of the City of Bendigo, and the likely rate of transfer of EGM expenditure from existing EGM venues. While there is some difference between the parties on these questions, the differences are not material to the Commission’s assessment of the Application. In this respect, the Commission has commenced its approach to the assessment of net detriment by accepting the Council’s figures and assuming them to be accurate. Because the Commission has determined, even accepting the Council’s figures, that the net economic and social impact of the approval of the Application is neutral, it does not need to determine whether the figures of the Council or the Applicant (which are more favourable to the Applicant) are accurate figures. Suffice to say, given their similarities, the Commission agrees with the reasonableness of the parties’ estimate. Thus, the Commission has assumed for the purposes of its assessment:
- (a) an average EGM expenditure of \$3,533,200 (being an average NMR of \$242 or average losses per machine of \$88,330), increasing annually as posited by SGS;
 - (b) a notional transfer rate of 40%, falling to 20% over a 20-year period; and
 - (c) 100% of problem gaming expenditure will be undertaken by members of the community of the City of Greater Bendigo.
126. Having considered all of the evidence and submissions, the Commission has concluded that approving the Application will cause an increase in the risk of problem gambling and gambling related harm, and that this is properly characterised as a low-moderate disbenefit of approving the Application.
127. In this respect, the Commission acknowledges that it has attributed this aspect of impact a less severe detrimental weighting to the Application than the Applicant’s own expert witness, Ms Peterson (the Ratio Report attributes moderate social disbenefit and low economic disbenefit to this aspect).

128. However, as was the case with the parties' assessment of the benefits flowing to the community from the new and improved facilities available from the proposed re-development of the Premises and development of the motel described at paragraphs 39 to 42 above, the Commission has concluded that both the Applicant and the Council have overstated the overall impact of this aspect on the community.
129. In this respect, the Commission has formed the view that this aspect of the impact on the community is properly characterised as a low-moderate disbenefit (rather than a moderate or higher disbenefit) because the Commission considers that the harm minimisation measures that will be in place will reduce the risks of gambling-related harm that might otherwise be present to a level that is as low as is practicable. As set out above, those harm minimisation measures will be enforced by the Commission by granting the approval of the Application subject to numerous conditions. The Commission's assessment is made after hearing all of the evidence, during and subsequent to the hearing on harm minimisation conditions to which it was prepared to agree, and which had not been available to be considered by Ms Peterson and Ms Noesgaard when they prepared their expert reports.
130. The Commission acknowledges that the approval of the Application will cause some community detriment. It is inevitable that some proportion of the gaming expenditure at the Premises will come from problem gamblers, or otherwise come from individuals who are harmed by their gambling, and that at least some of that expenditure would not have occurred at other venues were the Application not granted. The Commission also accepts that this is likely to cause significant harm to the individuals directly affected, and to their families and friends.
131. However, the Commission considers the overall number of individuals likely to be detrimentally affected by problem gaming and other gambling related harms (both on a social and economic basis) will be low. This conclusion is based on the Commission's finding that the Applicant will conduct its gaming operations in a way consistent with best practice in terms of harm minimisation and based on the Commission's assessment of the relatively low level of indicators of vulnerability of the local community to gambling related harms including problem gambling. The Commission is satisfied that the Applicant will conduct its operations in this way based on the Applicant's evidence and submissions, in line with the conditions imposed by the Commission in approving the Application. The Commission believes that these particular conditions are likely to be more effective in minimising harm than mere compliance with the letter of the law.
132. In particular, the Commission has concluded that:
- (a) The question of whether the Premises is a destination or convenience venue is finely balanced. The Premises is within a commercial area of Huntly, and in an area that community members are likely to use on a daily basis. It is close to an IGA supermarket and other retail outlets. It is on the main road from Huntly to the larger retail areas in Epsom, and to the nearby regional centre of Bendigo. It can be expected that community

members within the catchment area will likely drive past the Premises on a daily basis. This last observation can impact in two different ways. First, because this is a busy thoroughfare, a large number of people would therefore be travelling in vehicles past a hotel that was not previously an EGM venue, and who now might choose to attend it. Second, and in juxtaposition, such people who are en route elsewhere would need to make the conscious effort to divert, park and enter the Premises. Further, the Premises is not in a location (such as a shopping centre) where community members are likely to be able to walk into the Premises while undertaking other day to day activities. Other, perhaps most, patrons of the Premises will likely need to make a conscious decision to make a dedicated trip; to drive to, park at and attend the Premises. Finally, it is noted that it is on the southern edge of this area, meaning the likelihood of foot traffic past the venue is lower than it would be if the Premises was in the middle of it. On balance, the Commission considers the Premises cannot be accurately characterised as either a destination or convenience venue. It has elements of both. This, in these particular circumstances, has a neutral impact and neither exacerbates nor reduces the risk of gambling harm.

- (b) The Premises is an existing hotel but will be a new EGM venue. The Commission considers this to be an exacerbating factor, but not a significant one when the broader context is considered. Importantly, there are already a large number of venues with EGMs, and a large number of EGMs, within the City of Greater Bendigo. The overall net impact of the approval of the Application on the total number of EGM venues and the total number of EGMs in the City of Greater Bendigo is relatively small. It is also of note that, while the Premises has not operated EGMs in the past, the sole director of the Applicant has experience in EGM operations, as does the key management staff member presently employed by the Applicant.
- (c) Crucially, a number of factors mitigate the risks of problem gambling and other gambling related harm that might otherwise exist:
 - i. The venue design and the relatively low number of EGMs constitute a significant harm minimisation feature of the Applicant's proposal. The most recent plans for the Premises ensure that the gaming lounge is not easily accessible from the street without entering the main hotel. Importantly, this reduces anonymity for those gambling as well as ensuring those individuals see the broader offering of the Premises.
 - ii. With recent changes to the plans for the Premises the EGMs will not be visible from other parts of the Premises and individuals will need to leave the gaming lounge to access a smoking terrace.

- iii. The relatively small number of machines and the layout of the gaming room and the Premises more broadly will help to reduce the anonymity of patrons and increase the opportunities for interaction with staff and for patrons to be (and to know that they are being) observed while gambling.
 - iv. The opening hours for the gaming lounge are relatively modest.
 - v. The sports bistro will be open at all times that the gaming lounge is open.
 - vi. RSG procedures will be in place and are consistent with best practice.
 - vii. The local nature of the Premises will likely assist to reduce the anonymity many problem gamblers seek and will help to reduce all aspects of gambling related harm.
- (d) In terms of the local community, the Commission agrees with the position put by the Applicant that the catchment-specific evidence is either a neutral or mitigating factor, rather than an exacerbating factor as contended for by the Council. That is, that the socio-economic characteristics of the local community are such that the community is not relatively vulnerable to the detrimental effects of problem gambling, but are in an average or better than average position.
- i. While there are some pockets of disadvantage within the catchment area, the Huntly township overall has an average socio-economic score. This is a neutral factor.
 - ii. The low levels of unemployment in the catchment area mean that labour force characteristics are a mitigating factor.
 - iii. Levels of financial stress are in line with the City of Greater Bendigo, although there is limited evidence as to the likely changes in levels of financial stress as the catchment continues to grow. The Commission considers levels of financial stress may grow as the population grows. However, at present Huntly has higher levels of disposable income than the regional Victorian and City of Greater Bendigo averages. On balance, this is a neutral factor.
 - iv. Presently, levels of social and capital resilience in the City of Greater Bendigo are high. The Commission has seen no evidence that establishes that these levels of resilience are likely to decrease as Huntly grows, although it accepts this is a possible effect of a rapidly growing population on the outskirts of a regional city. Without the possibility of future change, this would be a strong mitigating factor. Having regard to that possibility, this is a mitigating factor although not a strong one.

133. The Commission has also considered the impact of the approval on community health and connectedness. Given the low levels of community opposition to the Application (as set out below)

and given the lack of evidence submitted by either party on this question, this is a factor which, while of marginal relevance, has not been given significant weight by the Commission.

134. Weighing each of the matters set out above, and considering the submissions and evidence of Council and the Applicant, the Commission concludes that the levels of economic and social harm attributable to problem gambling and other gambling related harm in approving the Application will be reduced to a level that is as low as reasonably possible given the Applicant's commitments to minimising harm from gambling (as reflected in licence conditions). Accordingly, while the approval of the Application will result in gambling related harm (including problem gambling) and thus have a negative impact on the community, that impact is reduced to a level that the Commission considers is properly characterised as having a low-moderate negative impact on the community.

Community attitude to the Applicant's proposal

135. On the question of the community attitude to the Applicant's proposal, the Commission has considered the evidence adduced by the Applicant (including the evidence of Ratio and Ms Peterson, the evidence of DNS and Mr Porritt), the Council (including the evidence of SGS and Ms Noesgaard, and the Insync Report), and the objection received by a member of the community. The Commission has also had regard to the submissions of the Council as the democratically elected representative of the local community.
136. The Commission notes, in respect of this issue, that both the SGS Report and the Ratio Report characterised community attitude as a low disbenefit of the proposal.
137. The Commission agrees this is the correct characterisation: community attitude is a low disbenefit of the proposal. The Commission has given significant weight, on the question of community attitude, to the agreed position between the Applicant and the Council. Having regard to that agreed position, the Commission's reasons for concluding that the community attitude is properly characterised as comprising a low disbenefit of the approval of the Application need only be brief. In summary, the Commission concludes this is the proper characterisation based on:
- (a) the agreed position of the Council and the Application;
 - (b) the results of the survey commissioned by the Applicant's expert, which included results that: 74% of respondents supported the proposed redevelopment of the Premises, including the installation of 40 EGMs; 52% of respondents opposed the construction of a new lounge with 40 EGMs while only 24% supported this component; and 67% of respondents said that if the proposed development was approved in full and went ahead, it would make life in Huntly better. Despite these generally positive responses, SGS acknowledges "there is a general level of concern regarding gaming within the community generally."²⁷

²⁷ SGS Report at paragraphs 178-179.

- (c) the results of the survey commissioned by the Council, which included the following results that: in respect of the overall impact of 40 EGMs in Huntly on the respondent, 50.23% said the impact would be mostly negative; 65.95% said the overall impact of 40 EGMs would be mostly negative; 65% said they did not support the application; while just under a third (31.76%) supported the application;
- (d) the fact that only one individual member of the community objected to the Application (albeit the Commission noted that individual's strong objection).

Diversion of trade from other commercial facilities

138. Even presuming 100% of the expenditure on EGMs at the Premises will come from residents of the City of Greater Bendigo, and that the likely expenditure will be in the range set out by SGS and Ms Noesgaard, the Commission considers this to be a factor neither of prime importance nor of substantial extent in its impact on the community.
139. The Commission considers that any trade diversion from other businesses will be widely distributed, with no evidence suggesting that any specific business will be significantly affected. Further, the Commission notes that it is difficult to determine if, and to what extent, that expenditure would necessarily have been spent elsewhere in the local community. Consequently, the Commission assigns this consideration a nil-to-marginal weight.

Conclusion: neutral impact on the community

140. In the Commission's view, the most significant matters weighing on its consideration of the Application are:
- (a) on the one hand, the social and economic benefits that will be conferred on the community by the availability of the new and improved facilities that will be created if the Application is approved (assessed by the Commission as being a low-moderate benefit of approval of the Application); and,
 - (b) on the other, the social and economic disbenefit related to gambling harm and problem gambling which will result from the approval of the Application (assessed by the Commission as being a low-moderate disbenefit of approval of the Application).
141. Balancing these most significant factors is a difficult task. The Commission fully appreciates that the effects of gambling related harm and problem gambling can be very significant upon those individuals directly or indirectly affected. However, the Commission considers that the risk of those effects, in this case, are reduced to a level that is as low as possible given the harm minimisation measures in place. Having regard to those measures, as enforced by the conditions imposed by the Commission in approving the Application, the Commission is satisfied that the risks of direct or indirect effects of gambling related harm if the Application is approved have been reasonably mitigated.

142. On the other hand, the facilities that will be created and improved if the Application is approved will be enjoyed by many members of the community.
143. On balance, the Commission considers that these two significant factors balance each other out. That is, considering these important factors alone, the impact on the community of granting the Application is neutral: the low-moderate negative impacts of gambling related harm and the low-moderate benefits from the new and improved facilities are balanced.
144. The second most significant factors are the community contributions, on the one hand, and community attitude, on the other. Community attitude can be a significant factor in the Commission's assessment of an application such as the present. Here, however, given the low disbenefit attributed to this factor by the Council, and the fact that only one community member filed an objection (albeit a powerful one) it is a factor which does not take on as much significance in this application as it otherwise might. In the Commission's view, the disbenefit attributable to the community attitude is balanced out in this case by the low benefit attributable to the community contributions.
145. The remaining matters (employment-related benefits, consumer surplus, increased competition, and expenditure on associated suppliers on the one hand) and diversion of trade from retail facilities on the other, are not factors which have a significant impact in the Commission's consideration of the Application. While there are a greater number of those factors in the "benefits" than "disbenefits" column, given their relative unimportance (when compared to the more significant factors set out above) those matters do not change the Commission's weighting. On balance, and considering all of the factors set out above cumulatively, the Commission is of the view that the net economic and social impact of granting the approval on the community of the municipal district in which the Premises is located will be neutral. It follows that these impacts will not be detrimental within the meaning of s 3.3.7(1)(c) of the GR Act.
146. **Discretion**
147. Having considered the principles underlying the GR Act, and placing particular importance on the harm minimisation principle, the Commission has determined to grant the Application.
148. The Commission has not identified any circumstances that would warrant the refusal of the Application notwithstanding the mandatory considerations under the GR Act have been met by the Applicant. Indeed, having regard to the conditions imposed on the approval of the Application, the Commission considers the harm minimisation principles underpinning the GR Act are advanced by granting the Application subject to the conditions imposed.

DECISION

149. Having regard to the foregoing, the Commission has decided to approve the Application, subject to the conditions set out at Annexure B.

Annexure A – Summary of social and economic impacts

The following table is a summary of the economic and social benefits and detriments considered by the Commission in reaching its decision. The table is to be read in conjunction with the main body of the Commission's reasons for decision (**Reasons**).

	Impact	Weight
Benefits	Benefit of money spent on the facilities and the availability of the facilities (paragraphs 92 – 100) <ul style="list-style-type: none"> - Increased opportunity for recreational gambling - Improved entertainment options for residents - Construction of the motel 	Low to moderate
	Community contributions (paragraphs 101 -105)	Low
	Employment-related benefits (paragraphs 106 – 108) <ul style="list-style-type: none"> - Additional employment - Net impact on employment - Value-add labour surplus 	Marginal to low
	Consumer surplus – gaming expenditure not associated with problem gambling (paragraphs 109 – 114)	Marginal
	Increased competition among gaming venues in the City of Greater Bendigo (paragraphs 115 – 116)	Nil to marginal
	Expenditure on associated suppliers (paragraphs 117 – 119) <ul style="list-style-type: none"> - Complementary expenditure - Supply contracts 	Marginal
Total weight of social and economic benefits	Low	
Detriments	Social and economic disbenefits related to gambling harm and problem gambling (paragraphs 120 – 134) <ul style="list-style-type: none"> - Increased incidence of problem gambling on the community - Gaming expenditure associated with problem gambling - Impact on community health and connectedness 	Low to moderate
	Community attitude (paragraphs 135-137)	Low
	Diversion of trade from retail facilities (paragraphs 138 – 139)	Nil to marginal
Total weight of social and economic detriments	Low	

Annexure B – Conditions of approval

Conditions of the decision of the Commission, dated 19 July 2024 to grant the application by Cook Country Hotels Pty Ltd (**Venue Operator**) for approval of the premises, known as ‘Huntly Hotel’ and located at 592 Midland Highway, Huntly VIC 3551 (**the Premises**) as suitable for gaming with 40 electronic gaming machines are as follows:²⁸

These conditions are imposed on the approval under section 3.3.9 and on the venue operator licence under section 3.4.17 of the *Gambling Regulation Act 2003* (Vic).

Condition 1 – Risk Assessment and Risk Register

- 1.1 Prior to the installation of any electronic gaming machines (**EGMs**) at the Premises, the Venue Operator (**VO**) must appoint a suitably qualified independent third party to:
 - 1.1.1 conduct a Risk Assessment to identify the risks related to gambling harm and criminal influence associated with the operation of EGMs at the Premises.
 - 1.1.1.1 the Risk Assessment must consider at least the people, systems and processes in place at the Premises.
 - 1.1.2 develop a Risk Register in relation to the Premises’ people, systems and processes and how harm minimisation and criminal influence in gambling will be managed at the Premises.
 - 1.1.2.1 the Risk Register must identify the treatments and controls that will address each risk, along with the steps that the VO must take to implement those treatments and controls; and
 - 1.1.2.2 the steps set out in 1.1.2.1 must then be enshrined in the VO’s operating manual.
- 1.2 Prior to appointing the suitably qualified independent third party, the VO must provide the details of that third party (including qualifications and experience) and the proposed scope of the Risk Assessment to the Commission for approval.

Condition 2 – Compliance with risk register

- 2.1 No later than 1 month after the development of the Risk Register in accordance with Condition 1, and every 6 months after that date, the VO must provide a written attestation to the Commission confirming the following:
 - 2.1.1 that the VO has made all necessary enquiries to be satisfied that all the identified treatments and controls have been, and continue to be, implemented; and
 - 2.1.2 that the VO has reviewed the Risk Register to ensure that any new risks or changes to risks have been identified and that the Risk Register has been updated to ensure the treatments and controls are effective to address those risks.
- 2.2 The written attestation is to be made by an office holder of the VO.

Condition 3 – Compliance with other obligations

- 3.1 At all times any EGMs are in operation at the Premises, the VO must ensure that:
 - 3.1.1 the service of any food and beverage to patrons whilst seated at the EGMs at the Premises will not occur;

²⁸ The conditions of approval are imposed under section 3.3.9 of the *Gambling Regulation Act 2003* for the premises approval.

- 3.1.2 minimum staffing levels are maintained as follows:
 - 3.1.2.1 from 10:00 AM until 1:00 AM the following day, a minimum of 2 staff on duty in the gaming room, one of which must have completed Victorian Government Responsible Service of Gaming (**RSG**) Module 2 and Module 4 training;
 - 3.1.2.2 from 10:00 AM until 10:00 PM, a minimum of 1 responsible gambling officer (**RGO**) on duty in the gaming room at all times the gaming room is operational;
 - 3.1.2.3 after 10:00 PM until 1:00 AM the following day, a minimum of 2 RGO's are to be on duty in the gaming room at all times the gaming room is operational; and
 - 3.1.2.4 a person aged over 18 years who is appropriately qualified and trained as a manager is in charge of hotel operations at the Premises.
- 3.1.3 all staff rostered in the gaming room are trained in YourPlay and able to assist patrons to enrol with YourPlay and set pre-commitment levels for EGM time and spend;
- 3.1.4 a full-time RGO is employed at the Premises to coordinate the Premises' self-exclusion program, and to implement and maintain harm minimisation training for staff. The RGO must have completed RSG Module 2 and Module 4 within the last 2 years;
- 3.1.5 at all times the gaming room is in operation, at least 1 staff member who has completed RSG Module 2 and Module 4 training is on duty;
- 3.1.6 staff are prohibited from using EGMs at the Premises at any time and for 1 month following the cessation of their employment at the Premises.
- 3.1.7 patrons are prohibited from reserving an EGM in order to use another EGM.
- 3.1.8 patrons are prohibited from reserving an EGM for longer than 10 minutes.
- 3.1.9 EGMs are not to be made available for gaming before 10:00 AM or after 1:00 AM on any day.
- 3.1.10 the sports bar will be open for all hours that the gaming room is open and will provide a full range of services including food that is more than pre-packaged snacks at all hours.
- 3.2 No later than 1 month following the installation of any EGMs at the Premises and every 12 months after that date, the VO must provide a written attestation to the Commission confirming that they have made all necessary enquiries to be satisfied that the requirements in 3.1 above are being complied with. The written attestation is to be made by an office holder of the VO.
- 3.3 The written attestation must specify each of the systems, policies and procedures that have been developed and implemented to ensure continued compliance with each of the requirements in Condition 3.

Condition 4 – Risk of criminal influence

- 4.1 Prior to the installation of any EGMs at the Premises, the VO must ensure that:
 - 4.1.1 all office holders of the VO, the nominee, managers and all gaming room staff have completed Anti-Money Laundering (**AML**) and Counter Terrorism Finance (**CTF**) Training within the last 12 months;
 - 4.1.2 adequate systems, policies and procedures have been developed and implemented at the Premises to ensure all staff are appropriately trained in identifying and mitigating this risk.
- 4.2 Every 12 months after the installation of any EGMs at the Premises, the VO must provide a written attestation to the Commission confirming that they have made all

- necessary enquiries to be satisfied that the requirements in 4.1 above are being complied with. The written attestation is to be made by an office holder of the VO.
- 4.3 The written attestation must specify each of the systems, policies and procedures that have been developed and implemented to demonstrate compliance with Condition 4.1.2.

Condition 5 – Community benefit

- 5.1 The VO will establish the Huntly Hotel Foundation (**the Fund**) and make contributions with a total cash value of \$80,000.00 per annum indexed to CPI (**the Contribution**) to be allocated as follows:
- 5.1.1 the sum of \$50,000 per annum for the purposes of the establishment and ongoing operation of a Men's Shed in Huntly (**Men's Shed Contribution**); and
 - 5.1.2 the sum of \$20,000 per annum to the Central Victorian Fire Preservation Society in Huntly to be used for the purposes of preservation and display of historical fire engines and associated vehicles and equipment (**Preservation Contribution**); and
 - 5.1.3 the balance, namely \$10,000 to be made available for distribution as set out below (**the Community Chest**).
 - 5.1.4 If for any reason the full allocation is not required in relation to either the Men's Shed Contribution or the Preservation Contribution, those funds are to be allocated to the Community Chest.
 - 5.1.5 contributions allocated to the Men's Shed Contribution or the Preservation Contribution that are unspent three years after being allocated are to be reallocated to the Community Chest.
- 5.2 The Community Chest will be distributed each year to not-for-profit community groups and sporting organisations providing services and facilities to residents within the City of Greater Bendigo, with a focus on the township of Huntly and surrounds.
- 5.3 The Community Chest will be distributed as determined by a Committee (**the Committee**) established by the Venue Operator, comprising:
- 5.3.1 two representatives of the VO; and
 - 5.3.2 two representatives of the City of Greater Bendigo Council, or in the event that the City of Greater Bendigo Council is unwilling to provide a representative, a community representative nominated by the VO. In the alternative, the City of Greater Bendigo Council may elect to provide one representative with a second to be drawn from within the Huntly community.
- 5.4 The Committee will advertise annually in a newspaper circulating in the City of Greater Bendigo area for submissions from not-for-profit community and sporting organisations, providing services and facilities to residents within the City of Greater Bendigo and/or the township of Huntly regarding the distribution of the Community Chest contribution to be made by the VO each year. The Committee will assess requests for cash contributions in accordance with guidelines to be established by the Committee.
- 5.5 If for any reason the Men's Shed is unable to be established or continued, then the Men's Shed Contribution is to be distributed to the Community Chest. If the Central Victorian Fire Preservation Society is unable to be continued, then the Preservation Contribution is to be distributed to the Community Chest.
- 5.6 If any of the Contributions are not distributed each year in accordance with Condition 5, the operation of EGMs at the Premises must cease immediately for as long as any of the Contributions (or part thereof) remains outstanding.
- 5.7 The VO must keep detailed financial records of the Contribution (including but not limited to the offers made to community groups) and must provide:

- 5.7.1 financial accounts evidencing the Contribution being allocated upon request of the VGCCC;
- 5.7.2 records evidencing that the Men's Shed Contribution and Preservation Contribution have been fully expended or reallocated to the Community Chest as required by 5.1.5 upon request of the VGCCC.
- 5.7.3 a yearly attestation to the VGCCC, signed by a director of the VO that the Contributions have been made.
- 5.8 The VO must ensure the Motel referred to in 7.3.2 continues to operate so long as any of the EGMs are in operation at the Premises unless otherwise approved by the Commission.

Condition 6 – The Works

- 6.1 The Premises Approval does not take effect until the Commission has notified the VO in writing that the Premises have been inspected for the purpose of section 3.3.7(1)(b) of the *Gambling Regulation Act 2003* and the Commission is satisfied that the Premises are suitable for the management and operation of EGMs.
- 6.2 Prior to the installation of any EGMs at the Premises, the Works (as defined in condition 7.3.1) must be substantially completed to the satisfaction of the Commission. The commencement of the operation of any of the EGMs at the Premises must not occur until after the Commission has notified the VO in writing under Condition 6.1.
- 6.3 The 'Works' are defined to include:
 - 6.3.1 As to the Hotel, substantially completed to the satisfaction of the Commission within 2 years from the date of this approval and prior to the commencement of the operation of any of the EGMs; and
 - 6.3.2 As to the Motel, substantially completed to the satisfaction of the Commission by the date that is 18 months after the commencement of the operation of any of the EGMs at the Hotel.
(collectively **the Works**)
- 6.4 The Works must generally accord with the floor plans of the Premises prepared by MAX (the Works), as provided to the Commission on 27 June 2024.
 - 6.4.1 The windows for the gaming machine area must allow natural light into the Premises, but not visibility of the EGMs from the exterior of the Premises.
- 6.5 If the Works set out in Condition 6.3.1 are not completed by the date that is 2 years from this approval, then the Premises Approval will lapse.
- 6.6 If the Works set out in Condition 6.3.2 are not completed by the date that is 18 months after the commencement of any of the EGMs at the Hotel, the operation of all EGMs at the Premises must cease immediately until the Works are complete.
- 6.7 The VO must notify the Commission within 7 days if the VO forms the view that it is probable or reasonably likely that the Works will not be substantially completed by the dates contemplated in condition 6.3.
- 6.8 The Commission may, on the request of the VO, agree to extend the time for completion of the Works. Any request for an extension of time must:
 - 6.8.1 be made no later than the date that is 3 months prior to the applicable date referred to in condition 6.3;
 - 6.8.2 demonstrate compliance with condition 6.2; and
 - 6.8.3 include an explanation as to why the Works have not been substantially completed.

Condition 7 – Breach of conditions

- 7.1 Where the Commission determines that the VO has not complied with one or more of the conditions, the Commission may require the VO to cease operating any EGMs at the Premises until it is satisfied that:
 - 7.1.1 such failure is rectified to the satisfaction of the Commission; and
 - 7.1.2 the VO has carried out the relevant and necessary action and/or implemented the relevant and necessary systems, processes and procedures to prevent the occurrence of a future breach.