



Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by Hogans Shamrock Hotel Pty Ltd for amendment of its venue operator's licence to vary the number of electronic gaming machines at the approved premises at Shamrock Hotel, Cnr Pall Mall and Williamson Street, Bendigo, from forty-five (45) to sixty-five (65) gaming machines.

Commission:

Mr Ross Kennedy, Deputy Chairman
Ms Kate Hamond, Commissioner

Appearances:

Ms Sarah Porritt of Counsel on behalf of the Applicant
(instructed by Bazzani Scully Priddle Lawyers)

Mr Ragu Appudurai of Russell Kennedy Lawyers on behalf of
the City of Greater Bendigo

Mr Cameron Warfe as Counsel assisting the Commission

Date of Hearing:

17 February 2014

Date of Decision:

1 April 2014

Decision:

That the application be granted, subject to the conditions outlined at paragraph 94 of these Reasons

Signed:

A handwritten signature in blue ink, appearing to read 'Ross Kennedy'.

Ross Kennedy

Deputy Chairman



REASONS FOR DECISION

INTRODUCTION

1. This is an application by Hogans Shamrock Hotel Pty Ltd (**the Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at Shamrock Hotel, Cnr Pall Mall and Williamson Street, Bendigo (**the Hotel**), from 45 to 65 EGMs.
2. The relevant municipal authority is the Greater Bendigo City Council (**the Council**). The Council opposed the application and was represented at the hearing of the application.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

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

¹ See section 1.1(2) of the Act.



take this submission into consideration when applying the no net detriment test. This recognises the special role of local government in representing the people of a community.²

6. The Commission understands that there is disagreement between the parties as to whether planning permission is required for the proposed increase in EGMs at the Hotel. During the hearing, it was conceded by the parties that the issue of planning permission was not a relevant factor in the Commission's consideration of the no net detriment test. As such, the Commission has not taken into account the issue of planning permission in the determination of this application, and states that the outcome of this application should not be viewed as evidence of the Commission's position in relation to the issue of planning permission in this matter.

CITY OF GREATER BENDIGO AND SHAMROCK HOTEL

7. The Hotel is situated at the corner of Pall Mall and Williamson Street, within the City of Greater Bendigo (**Greater Bendigo**). It currently comprises 28 accommodation suites, a variety of function spaces, a fine dining restaurant, a bistro/café, TAB/sports bar, gaming lounge, beer garden and a basement cocktail bar / jazz club.
8. Pall Mall is the main north-south thoroughfare through the Bendigo CBD, and is also the centre of the city's tourist precinct. The Hotel is surrounded by a number of cafés, restaurants and retail stores (including the original Myer store), and is located in the vicinity of a number of local landmarks, such as the Bendigo Law Courts, Rosalind Park and the Bendigo Tourism office.
9. Greater Bendigo is a regional Local Government Area (**LGA**) located approximately 150 kilometres north of Melbourne. Bendigo is Victoria's fourth largest city with an adult population of 83,100.
10. Greater Bendigo is subject to a municipal limit of 756 EGMs.³ Currently, there are 11 gaming venues within the municipality with approvals to operate a total of 614 EGMs. Approval of this application would increase the number of EGMs operating within Greater Bendigo to 634 and would not exceed the municipal limit.
11. Greater Bendigo has an EGM density of 7.39 EGMs per 1,000 adults, which is 3% lower than the regional average but 27% higher than the State average. Should this application be

² *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] - [249].
³ Pursuant to section 3.4A.5(3A)(b) of the Act, the Victorian Commission for Gambling and Liquor Regulation determined, in accordance with the criteria specified in the Minister for Gaming's Order on 15 August 2012, the



approved, the EGM density within Greater Bendigo would rise by 3.25% to 7.63 EGMs per 1,000 adults.

12. Greater Bendigo has an average gaming expenditure of \$546 per adult, which is 6% lower than the regional average and 1% lower than the State average. Applying the Applicant's estimate of increased gaming expenditure, approval of this application would result in an increase in expenditure across the municipality of 0.55%. Overall gaming expenditure within Greater Bendigo has decreased by 15.99% in real terms (indexed to CPI) over the past five years, which is in line with regional averages.
13. In terms of the social and economic profile of Greater Bendigo, the municipality is characterised by a broad range of disadvantage across the seven Statistical Local Areas (SLA): Central, Inner East, Inner North, Inner West, Eaglehawk, Strathfieldsaye and Part B. For example, based on 2011 census data, while the Strathfieldsaye SLA is ranked 193rd of 207 SLAs in Victoria on the SEIFA scale of disadvantage, the Eaglehawk SLA is ranked 5th and is also the most disadvantaged SLA within Regional Victoria.⁴
14. The Central SLA, where the Hotel is located, is ranked 15th of 207 SLAs, indicating that the Hotel is located in the top 10% of disadvantaged SLAs in Victoria.

THE MATERIAL BEFORE THE COMMISSION

15. The Applicant provided the Commission with the following material to establish the economic and social benefits that approval of the application would bring to the municipality:
 - a) Social and Economic Impact Assessment, prepared by Mr Rhys Quick of Urbis Pty Ltd (**Urbis**), dated October 2013;
 - b) Addendum to the original Social and Economic Impact Assessment, prepared by Mr Rhys Quick of Urbis, dated 11 February 2014;
 - c) Gaming Expenditure Expert's Report, prepared by Mr Tim Stillwell of Moore Stephens Accountants & Advisors (**Moore Stephens**), dated 23 October 2013;
 - d) Witness Statement of James Anthony Hogan, Owner of the Hotel, dated October 2013;

maximum permissible number of gaming machine entitlements under which gaming may be conducted in each region.

⁴ Socio-Economic Indexes for Areas (SEIFA) is a product developed by the ABS to assist in the assessment of the welfare of Australian communities. The SEIFA Index allows the ranking of regions/areas, providing a method of determining the level of social and economic well-being in each region.



- e) Witness Statement of James White Smith, General Manager of the Hotel, dated October 2013;
 - f) Witness Statement of Shaun Mathew Dewhirst, Gaming and Wagering Supervisor of the Hotel, dated October 2013; and
 - g) Further submissions dated 25 February 2014 with various attachments.
16. The Council provided the Commission with an economic and social impact submission under cover letter dated 31 January 2014. This submission was formally adopted by the Council at its meeting on 12 February 2014.
17. Additionally, the following material, prepared by Commission officers, was considered by the Commission:
- a) a statistical report titled Economic and Social Impact Report dated February 2014; and
 - b) a compliance report titled Pre-Hearing Inspection and Compliance Report dated 1 February 2014.

APPLICANT'S WITNESSES AND SUBMISSIONS

Mr Rhys Quick

18. The Applicant engaged Urbis to prepare a social and economic impact statement to accompany the application. Mr Rhys Quick, Director of Economics and Market Research at Urbis, gave evidence at the hearing of the application. In addition to the social and economic impact statement, Mr Quick also prepared an addendum report responding to issues raised in the Council's submission dated 31 January 2014.
19. Mr Quick told the Commission that despite the central and prominent location of the Hotel, it was not located in the major retail precinct of Bendigo or proximate to everyday uses. Although the location of the Hotel provided a level of convenience equivalent to any premises within a CBD, Mr Quick concluded that the Hotel was accessible but not necessarily convenient as required by the Council's responsible gaming policy.
20. Mr Quick referred to patron surveys conducted in the bistro and the gaming room at the Hotel to identify patron origins and noted that while only 16% of patrons to the bistro were from the wider Bendigo area, patrons to the gaming room consisted of 76% local participation. Mr Quick stated that this was not unusual for a regional setting, and there was still a significant



proportion of patrons to the gaming room from the Melbourne area and other major regional towns.

21. Mr Quick assessed the local area around the Hotel as containing small pockets of disadvantage not inconsistent with other major regional towns. In particular, Mr Quick noted that:
 - a) there was significant variation in the social profile of Greater Bendigo across the municipality, with the central area of Bendigo (in particular the Eaglehawk and Central SLAs) showing some signs of disadvantage;
 - b) Greater Bendigo had a SEIFA score of 983 and ranked 31st out of 80 LGAs in Victoria;
 - c) the most disadvantaged Statistical Areas 1 (**SA1s**) in the vicinity of the Hotel were explained by aged care facilities located proximate to the Bendigo Hospital, and the area of social housing; and
 - d) Long Gully, a suburb of Bendigo which exhibited the highest level of disadvantage within the Central SLA, was closer to other gaming venues (in particularly the Bendigo Stadium and Bendigo District RSL Club) and as such did not pose a significant issue for the Hotel.
22. In terms of EGM provision, Mr Quick told the Commission that there are 11 venues with a total of 614 EGMs within a 6km radius of central Bendigo and the Hotel. Mr Quick noted that although the number of EGMs per adult and expenditure per adult was higher than the non-metropolitan Victorian average, this was due to the fact that venues within Bendigo were required to service a much wider region than just the municipality alone. Mr Quick also noted that when compared with ten other regional municipalities, Greater Bendigo had the third lowest EGM density per adult and the second lowest average expenditure per adult.
23. In relation to the Council's submission dated 31 January 2014, Mr Quick referred to his response to that submission dated 11 February 2014 and made the following comments:
 - a) there is no conclusive evidence that the approval of the application would result in areas of disadvantage within Greater Bendigo (and specifically within the Central SLA) becoming more disadvantaged;



- b) the community survey relied on by Council is unreliable due to:
- its small sample size of 71 responses by a group unreflective of the broader demographic within Greater Bendigo;
 - the generic nature of the survey questions in relation to community attitudes to EGMs; and
 - the failure of the survey to identify the economic benefits of the application in relation to the proposed redevelopment of the Hotel; and
- c) in relation to the report commissioned by Ian Pinge in 2008:
- the report actually demonstrates that EGMs produce a net positive benefit to Bendigo in the amount of \$58 million or 312 jobs in net terms; and
 - the report's negative attitude towards investment in gaming is based on the conclusion that alternative industry investment (e.g. retail) would produce more beneficial economic outputs, and as such is irrelevant to the Commission's consideration of the no net detriment test.

24. Mr Quick stated that he considered there would be a minimal change to problem gambling in the event the application was approved. Mr Quick relied on the following facts:

- a) the Hotel offered a diverse range of services to the community, and gaming with 65 EGMs would remain an ancillary element of the Hotel's operation;
- b) the location of the Hotel made it accessible but not convenient, and even if the Hotel was considered convenient, the addition of extra EGMs would not change accessibility and would not induce further "convenience" gaming;
- c) the grant of the application would result in a very small increase in new gaming expenditure in Greater Bendigo of approximately 0.5%, and an increase in gaming expenditure does not necessarily translate into an increase in problem gambling; and
- d) the Hotel has successfully operated EGMs for some time and demonstrated its ability to monitor and manage problem gambling behaviour during this period.

25. As a result, Mr Quick concluded that the risk of increased problem gambling as a direct result of the application was likely to be very low.

26. Mr Quick provided the following summary of the identified economic and social benefits and



impact risks with the application:

a) Economic benefits

- Increase in general economic activity driven by the proposed redevelopment works in the amount of \$2.5 million
- Creation of six FTE jobs at the Hotel, in addition to a number of constructions jobs for the period of the redevelopment works
- Further flow-on economic effects with benefits to supplier industries and increased income generated by employees being injected into local businesses
- New gaming expenditure attributed to responsible gaming play, representing the value of the social benefit derived

b) Economic impact risks

- New gaming expenditure attributed to problem gambling, however noting the minimal impact of the application on problem gambling given the small increase in EGMs in a venue and municipality already offering gaming
- New expenditure being derived from other local businesses, however this is unlikely to affect those businesses' ability to trade or impact current staffing levels
- Diversion of trade from other gaming venues in Greater Bendigo

c) Social benefits

- Provision of improved facilities at the Hotel for the community and visitors
- Additional accommodation options at the Hotel
- Increased availability and variety in EGMs for gaming patrons

d) Social impact risks

- Impact on the perceived well-being of local residents opposed to additional EGMs at the Hotel (relative to the social benefit enjoyed by gaming patrons)
- Possible increase in problem gambling behaviour, despite the risk of such increase being assessed as very low



- Potential risk factors such as surrounding uses should be weighed against negating factors, such as the Hotel being removed from the core retail areas, modest increase in gaming expenditure, the existing nature of the Hotel, the Hotel's historical relationship with the community and its experience and procedures to minimise the risk of problem gambling

27. Based on an analysis of the social and economic profile of the municipality and the anticipated benefits and detriments of the application, Mr Quick concluded that an additional 20 EGMs at the Hotel would not produce a net detriment result on the Greater Bendigo community.
28. Under cross-examination, Mr Quick acknowledged that the assessment of social benefits and risks was a qualitative one and was a difficult task to assign a particular dollar value to such considerations. He also acknowledged the inherent difficulties in adequately comparing these types of factors against the more measurable economic benefits. However, Mr Quick noted that he had identified the social risk to the best of his ability as previous attempts to quantify the cost of problem gambling had proved inconclusive and ultimately did not assist the Commission in undertaking its role in assessing the no net detriment test.

Mr Tim Stillwell

29. The Applicant provided the Commission with an expenditure estimate prepared by Mr Tim Stillwell of Moore Stephens. Mr Stillwell's report is based on a peak utilisation analysis which is used to estimate likely EGM expenditure in gaming venues based on actual EGM usage rates and anticipated increase in trade in the event the application is granted. This method has been presented as evidence and accepted by the Commission on numerous occasions.
30. Mr Stillwell stated that Greater Bendigo was a mature gaming market with 614 EGMs across 11 venues, and with a level of gaming expenditure and expenditure per adult broadly in line with State averages. He also noted that although there was an increase of 0.94% in gross gaming expenditure within Greater Bendigo over the past five years, this actually represents a decrease in gaming expenditure by 15.99% when indexed to inflation.
31. Specifically, Mr Stillwell noted that the Hotel recorded an above trend performance during financial year 2012-13, however a below average trend for the period July to December 2013. Mr Stillwell stated that, on average, the Hotel's recent performance indicated that it was operating in line with State trends.
32. Mr Stillwell told the Commission that his analysis predicted that, should the application for



20 additional EGMs be approved:

- a) the average number of EGMs per 1,000 adults in Greater Bendigo would rise to 7.74 (compared with the State average of 5.87 and the Country Victoria average of 6.57);
- b) the additional expenditure of the Hotel would be between \$551,219 and \$649,811 in the first 12 months, of which 60% to 65% would be transferred from other gaming venues within Greater Bendigo; and
- c) the remainder of the revenue generated, or between \$192,927 and \$259,925, would be new expenditure to the municipality (an increase of approximately 0.5%) and result in:
 - a midpoint net machine revenue (**NMR**) at the Hotel of approximately \$195 per EGM (compared with the State average of \$314 and the Country Victoria average of \$269); and
 - an average net amount of gaming expenditure per adult for Greater Bendigo of \$557 (compared with the State average of \$558 and the Country Victoria average of \$464).

33. Mr Stillwell told the Commission that the transferred expenditure was predicted to come from a range of other gaming venues within Greater Bendigo, given their proximity of the Hotel. He also noted that in light of recent Commission data showing an overall increase in gaming expenditure for the period July to December 2013 within Greater Bendigo of only 1.3% despite a combined increase of 5.6% for three specific venues (Bendigo Stadium, The Foundry, and Kangaroo Flat Sports Club), his estimate of 60% to 65% for transferred expenditure could be considered quite conservative.

34. Overall, the Commission accepts Mr Stillwell's evidence and considers the estimates provided to be reasonable. The Commission notes that despite the elevated number of EGMs per 1,000 adults in the Central SLA and Greater Bendigo generally, the expected gaming expenditure is anticipated to remain in line with State and Country Victoria averages.

Mr James Hogan

35. Mr Hogan is a director of the Applicant and the beneficial owner of the Hotel. Mr Hogan provided a witness statement and gave evidence at the hearing of the application.

36. Mr Hogan has worked in the hospitality industry since 1975 and been involved in the ownership of hotel premises since 1981. In addition to the Hotel, Mr Hogan is the current



owner and operator of the Romsey Hotel in Romsey, and Hogan's Hotel Wallan in Wallan, which is approved to operate 45 EGMs.

37. Since purchasing the Hotel, Mr Hogan has invested approximately \$2 million in upgrading, modernising and maintaining the Hotel, which has included:
 - a) the addition of a fine dining restaurant called "The Victorian Wine Room", a New York styled wine bar called "Gold Dust", a sports bar and TAB facilities, and a beer garden;
 - b) the repositioning and refurbishment of the bistro/café and gaming room; and
 - c) the refurbishment and ongoing maintenance of the existing accommodation.
38. Mr Hogan stated that the above works has resulted in a quadrupling of the Hotel's turnover during this period.
39. Mr Hogan also told the Commission that he has hired a full-time maintenance officer in order to manage and maintain the Hotel as a Class 1 historical building. Mr Hogan estimated that the ongoing upkeep and maintenance costs for the Hotel would total approximately \$200,000 per annum.
40. According to Mr Hogan, the Hotel is a landmark destination venue for both locals and tourists to the Bendigo area. The Hotel is located across the road from the office of Bendigo Tourism, and the Bendigo Historical Trust conducts tours of the Hotel.
41. Mr Hogan stated that approval for additional EGMs would allow for the development of 5-star accommodation options at the Hotel, to be constructed in two phases:
 - Phase 1 – Construction of nine 5-star serviced apartments and a lap pool within the Pall Mall wing at a cost of \$2.5 million (excluding fit-out); and
 - Phase 2 – Construction of 5-star studio apartments on the fourth floor of the Shamrock building at a cost of \$750,000 - \$1 million.
42. Mr Hogan told the Commission that the redevelopment projects would not be feasible without the revenue to be derived from the additional 20 EGMs. Mr Hogan indicated that the Applicant was prepared to accept a condition on the approval of the application that any approval for 65 EGMs would lapse and revert to the existing 45 EGMs in the event that the Stage 1 redevelopment was not complete by 31 December 2016. At the request of the Commission, the Applicant provided a letter from the National Australia Bank dated 14 February 2014 confirming that funding for the redevelopment of the Hotel was contingent on the approval of



the additional EGMs.

43. Mr Hogan told the Commission that he would accept conditions being attached to the approval that would tie the approval for the extra EGMs to the successful completion of the Phase 1 works. The Applicant proposed the following conditions:

1. If the Works (as defined in this condition) are not substantially completed by **31 December 2016** or such later date as agreed to in writing by the Victorian Commission for Gambling and Liquor Regulation (**the Commission**), this approval will lapse and the maximum number of electronic gaming machines (**EGMs**) that may be operated at the Premises will revert to 45.

The **Works** comprise the following:

- (a) Addition of 9 five-star serviced apartments (each including 2 bedrooms, living area and amenities) on the first and second floor; and
- (b) Construction of a new lap pool on the first floor

as per the **attached** indicative plans prepared by Hay Partners Architects Pty Ltd dated 15 October 2013.

2. The Commission may, upon the request of the owner or operator of the premises, agree to extend the time for substantial completion of the Works as referred to in Condition 1. The request must be made not later than **30 November 2016**. Any request for an extension of time must include an explanation as to why the Works have not been substantially completed.

44. Mr Hogan expects that additional employment will be created as a result of the proposed redevelopment at the Hotel, indicating that the approval of the application and construction of Phase 1 was likely to result in the addition of 6 FTE positions at the Hotel, consisting of:

- Two gaming room / sports bar staff
- A receptionist
- A marketing officer
- A housekeeper
- A cleaner

45. In addition to the above, further local employment opportunities would be created through the construction phases of the Hotel's redevelopment. Mr Hogan told the Commission that he had engaged a local builder and expected that 100% of the trades for the redevelopment would be sourced from the local area.



46. In relation to his personal management of the Hotel, Mr Hogan told the Commission that he aimed to attend the Hotel at least once a week, or alternatively would meet his General Manager in Melbourne to discuss the operation of the Hotel. Mr Hogan was also connected to the Hotel's Point of Sale via the internet.
47. Mr Hogan indicated that there was a need for additional and 5-star accommodation options within Bendigo. The occupancy rates at the Hotel's current accommodation options were on average 80-85%, often increasing to 100% on Saturday nights. Mr Hogan noted that there were currently no 5-star accommodation options in Bendigo, and the introduction of such accommodation would not only cater for an existing market, but also provide an incentive for targeted audiences (e.g. Chinese tourists, travelling retirees) to visit Bendigo and the surrounding areas. In this regard, Mr Hogan provided letters of support for the redevelopment from Ms Kathryn Mackenzie, Executive Manager of Bendigo Tourism, and Mr Drew Grove, Commercial Manager of The National Trust Australia.
48. The Commission further notes that the Government's strategic priorities for the Goldfields Tourism Region include action to develop high end accommodation and continue building food and wine offerings.⁵
49. Mr Hogan estimated that the Applicant provides approximately \$25,000 per annum in cash and a further \$20,000-25,000 of in-kind donations to local community and sporting groups. Mr Hogan indicated that he would like to see those contributions increase in line with the increased revenue generated by the additional EGMs, and would continue to assess all requests for assistance on a case by case basis.
50. At the Commission's request, the Applicant provided a break-down of the current cash and in-kind community contributions for the previous 12 month period. That information showed that the Hotel provided a total of \$69,200 in community contributions during 2013, consisting of:
- a) cash donations in the amount of \$36,903;
 - b) vouchers in the amount of \$23,302; and
 - c) free or discounted room hire and food in the amount of \$8,995.
51. In relation to the responsible service of gaming (**RSG**), Mr Hogan stated that he had a very experienced management team in place, and all gaming room staff hold the requisite RSG qualifications and participate in in-house induction and training sessions. Mr Hogan also told

⁵ *Victoria's Regional Tourism Strategy 2013-2016*, page 31.



the Commission that the Hotel has a close relationship with Mr Trevor Rice from St Luke's as part of Bendigo Gamblers Help.

52. The Hotel is further assisted in its RSG obligations through the conduct of routine RSG compliance audits by Frontier Hospitality Cooperative Limited (**Frontier Hospitality**), of which Mr Hogan is a director. Frontier Hospitality is a non-for-profit cooperative of hoteliers and gaming venue operators that specialises in providing gaming services to its members.
53. Under cross-examination, Mr Hogan conceded that although there was a chance of an increase in problem gambling in the event of a successful application, he did not believe the Hotel currently had any serious occurrences of problem gambling and was confident that an additional 20 EGMs would not significantly increase the risk of problem gambling at the Hotel.

Mr James Smith

54. Mr Smith is the General Manager of the Hotel and has considerable experience within the hospitality industry at various venues in Victoria. Mr Smith has held the position of General Manager of the Hotel for two and a half years.
55. Mr Smith indicated that the Hotel is an iconic and tourist-focused business that offers a broad range of services and facilities to its customers, such as casual and formal dining options, accommodation rooms and the gaming lounge. All services offered by the Hotel were consistently busier at times when major tourist events were in Greater Bendigo (e.g. the Grace Kelly Exhibition held from March to June 2012).
56. Mr Smith considered that there was a strong demand for additional accommodation at the Hotel to support these periods of increased tourist activity in Greater Bendigo, and told the Commission that this had been confirmed during discussions of the Bendigo Tourism Board, of which he is a member.
57. Mr Smith told the Commission that the Hotel employed seven full-time staff and 12 part-time staff in the gaming room, where there had been a low staff turnover with most staff at the Hotel having remained employed with the Applicant for a significant period. All staff hold up-to-date RSG certifications and conduct regular refresher training.
58. Mr Smith told the Commission that the gaming room often reaches capacity, particularly on Friday and Saturday nights (due to the Hotel's location and normal weekend trends) as well as during members' sessions on Thursday night and Sunday afternoon. He indicated that there



was a clear demand for additional gaming machines at the Hotel, as patrons would often depart the Hotel for other nearby gaming venues if a particular type of EGM was not available for use.

59. Mr Smith reiterated Mr Hogan's evidence in relation to the Hotel's RSG obligations, noting that the Hotel operates under the AHA Responsible Gambling Code of Conduct and confirming the Hotel's close relationship with Mr Rice at St Luke's. Mr Smith told the Commission that Mr Rice attends the Hotel every couple of weeks and often comments positively about the Hotel's ongoing commitment to RSG. In addition, the Hotel hosts Mr Rice at a bi-annual meeting, during which Mr Rice provides gaming room staff with RSG updates and refresher information.
60. Mr Smith stated that the Hotel currently has 119 self-excluded patrons on their Self Exclusion Board, of which approximately half a dozen continue to use other facilities within the Hotel without issue. Mr Smith told the Commission that all staff are required to review the Self Exclusion Board and list of "high risk" patrons before the commencement of each shift, and are well trained to deal with situations of unauthorised gaming room access by these patrons.
61. In response to the Commission's concerns that the Hotel had not been participating in the Bendigo Liquor Accord, Mr Smith told the Commission that either he or another representative of the Hotel had attended approximately 10-12 Accord meetings over the last two and a half years. At the Commission's request, the Applicant provided further evidence in this regard in its submissions dated 25 February 2014. The submission indicated that a representative of the Hotel had attended meetings of the Accord on 12 occasions between 15 June 2011 and 18 September 2013, despite the representative's attendance not always being noted on the minutes of meetings. The Applicant also provided an email dated 21 February 2014 from Ms Vanessa Wait, Safe Communities Officer from the City of Greater Bendigo, confirming that the Hotel is an active member of the Accord and had attended more than the necessary number of meetings for the Hotel.
62. With regard to community contributions, Mr Smith told the Commission that the Hotel receives regular requests for support or donations from local charities and community groups, and the Hotel provides free or discounted room hire and/or food to a portion of those organisations on at least a dozen occasions per year. The Applicant's further submissions dated 25 February 2014 outlines the Hotel's in-kind contributions and indicates that the Hotel has provided free or discounted room hire and/or food on approximately 30 occasions during 2013.
63. Mr Smith confirmed that the Thursday operating hours for the gaming room outlined in



Mr Quick's report were incorrect and were 8am to 3am in accordance with the Hotel's liquor licence. However, Mr Smith stated that the gaming room would often be closed earlier than 3am depending on patron demand.

64. Mr Smith did not believe that the Hotel has an issue with problem gaming and believes that he and his staff are well equipped to manage and monitor the use of an additional 20 EGMs at the Hotel.

Mr Shaun Dewhirst

65. Mr Dewhirst is the Gaming Manager of the Hotel, and has been involved in the hospitality industry for 20 years. Mr Dewhirst has previous experience at various gaming venues in both metropolitan and regional Victoria.
66. In his role as Gaming Manager, Mr Dewhirst is aware of the specific demand for certain types of EGMs during peak periods and that patrons will either wait until those EGMs are available or leave the Hotel for an alternate gaming venue (such as the City Family Hotel or the Rising Sun Hotel).
67. In relation to the gaming survey conducted for the purposes of Mr Quick's report, Mr Dewhirst told the Commission that he interpreted the instructions given to him (whether rightly or wrongly) to include the adjacent lounge area when counting the number of people within the gaming lounge. As such, he instructed his gaming staff to undertake the survey in this manner. Mr Dewhirst indicated that people within the lounge area were generally waiting for a specific EGM to become available, taking a break from utilising the gaming room, or otherwise waiting while their partner or friends utilised the gaming room.
68. Mr Dewhirst confirmed that Mr Rice of St Luke's would visit the Hotel on average every fortnight and they would discuss any new issues or educational opportunities in relation to RSG, as well as conduct bi-annual meetings for gaming staff to refresh their understanding of RSG obligations. The last meeting was held in October 2013, with the next meeting scheduled for April or May 2014.
69. Given the low turnover of gaming staff at the Hotel, Mr Dewhirst indicated that his staff had a very good understanding and relationship with their regular patrons, which assisted in their ongoing monitoring and management of unauthorised or problem gambling at the Hotel. Mr Dewhirst told the Commission that the instances of dealing with problem gamblers or assisting those patrons who wished to be self-excluded were very rare.



70. In summary, Mr Dewhirst believes that due to the experience of the gaming staff and the policies and procedures in place at the Hotel, the high standard of RSG at the Hotel would not be compromised by the addition of 20 EGMs.

THE COUNCIL'S SUBMISSION AND POSITION

71. At its meeting on 12 February 2014, the Council elected to oppose the application, adopted the submission previously provided to the Commission on 31 January 2014 and instructed solicitors to appear at the hearing of the application.
72. The Council's submission concluded that the anticipated economic and social impacts of the proposal would be detrimental to the municipal district. In coming to this conclusion, the Council noted that:
- a) the application is inconsistent with a majority of the decision making guidelines relevant to the City of Greater Bendigo Gaming Policy;
 - b) a social impact survey indicated that a majority of respondents did not want additional EGMs at the Hotel as there would be a negative impact on current positive levels of well-being, happiness and contentment;
 - c) the addition of 20 EGMs could exacerbate problem gambling and increase social disadvantage;
 - d) the Hotel is located within a prohibited gaming area under clause 52.28 of the Greater Bendigo Planning Scheme and would therefore be unlikely to receive planning approval for the additional EGMs; and
 - e) a 2008 report by Ian Pinge indicated that significantly higher social benefits could be generated for the municipality if the anticipated new expenditure was invested in an alternate sector.
73. During oral submissions, Mr Appudurai contended that the Applicant had a "burden of persuasion" to positively satisfy the Commission that there will be no net detriment as a result of the application. As such, it was insufficient for the Commission to be satisfied that there may be no net detriment, or that certain impacts may occur or may be positive.
74. Mr Appudurai also referred to paragraphs 71-72 of *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101 and submitted that community apprehension about EGMs is a relevant consideration in balancing the social



impact of the application. Mr Appudurai conceded that the social impact survey in this matter was not conducted in the most rigorous fashion, however it remained for the Commission to decide how much weight it would give to the survey's findings.

75. In relation to the condition proposed by the Applicant, Mr Appudurai noted the temporal disconnect between the anticipated economic and social benefits associated with the proposed redevelopment activities, and the immediate economic and social detriments identified in this matter. As a result, there is a risk that the Commission's balancing of those impacts would be adversely affected if the future benefits do not, in fact, materialise.

LIKELY ECONOMIC IMPACT OF APPROVAL

76. There is often a large degree of overlap between economic and social impacts of applications to operate EGMs. The Commission considers it useful for the purpose of balancing community benefits and detriments that a thorough analysis and identification of the economic and social impact on the community be undertaken.
77. The Commission accepts that approval of this application is likely to result in an increase in gaming expenditure at the Hotel of between \$551,219 and \$649,811 over the first 12 months. The Commission also accepts Mr Stillwell's evidence that 60% to 65% of this expenditure is projected to be transferred from other gaming venues within Greater Bendigo. In light of the mature nature of Greater Bendigo's gambling experience, the Commission accepts that the risk of an increase in problem gambling is relatively low given the modest amount of anticipated new expenditure.
78. Further, any economic costs are likely to be offset by the economic benefit associated with the stimulus an increase in expenditure will bring to the municipality. The Commission considers gaming expenditure (excepting that associated with problem gambling) to be legitimate consumption expenditure undertaken by a majority of users that are enjoying a recreational activity. The Commission notes that the Productivity Commission considers this associated consumer surplus to be the largest source of benefit from gaming.⁶
79. The Commission considers that the proposed redevelopment of the Hotel will offer a significant economic benefit to the community. Even if only Phase 1 of the redevelopment was to be considered relevant to the assessment of this application, the Commission is satisfied that the estimated \$2.5 million value of Phase 1 (out of a total estimated cost of \$3.2 million) represents a major economic benefit to the community.



80. The Commission considers an increase in employment at the Hotel to be a slight economic benefit. The Commission notes that only two of the six anticipated FTE positions (i.e. gaming staff) will be realised in the short-term, with the remaining positions dependent on the completed construction and operation of the additional accommodation at the Hotel in years to come.
81. In addition, employment impacts are traditionally viewed (e.g. by the Productivity Commission) as transfers. Based on the level of anticipated transferred expenditure, the Commission considers it likely that a mixture of new and transferred staff positions will be created, resulting in only a minor economic benefit to the community.
82. Overall, the Commission considers that there will be a positive economic impact on the Greater Bendigo community if the application were to be approved.

LIKELY SOCIAL IMPACT OF APPROVAL

83. Wherever accessibility to EGMs is increased, there is always a risk of an increase in problem gambling, which leads to other costs such as lost productivity, increased health and social service requirements and other social costs. Accordingly, the Commission accepts that there is a potential for negative social cost of the application through possible increased problem gambling expenditure. However, the Commission accepts the Applicant's evidence that the level of potential is low.
84. The Commission is satisfied that the potential for an increase in problem gambling is minimal. The Commission considers that the Applicant is an experienced venue operator with an appropriate attitude towards harm minimisation and RSG strategies. Further, the Commission was not presented with any evidence to demonstrate that the operation of this venue is conducive to problem gambling and has been given no reason to conclude that an additional 20 EGMs will dramatically change the operation and RSG performance of the venue. The Commission would encourage the Applicant to further develop its relationship with Mr Rice at St Luke's, and continue to facilitate and encourage attendance at staff training sessions conducted by Mr Rice on a routine basis.
85. While it agrees that community apprehension regarding the impact of EGMs is a relevant factor, the Commission finds that the social impact survey conducted by the Council to be of limited assistance given the scope of the survey and the failure of the survey to accurately set



out the totality of economic and social benefits likely to arise from the application. As such, the Commission gives little weight to the survey's findings.

86. The Commission finds that the introduction of 5-star accommodation as part of the proposed redevelopment of the Hotel, as well as the ongoing maintenance of the heritage features of the Hotel, will create a moderate social benefit to the community through the development of diverse accommodation options for visitors to Bendigo and the encouragement of tourism generally to the Bendigo area.
87. The Commission also finds that the increased number of EGMs at the Hotel will better serve the needs of gaming patrons through meeting the demand for EGMs during peak periods of utilisation, as well as providing gaming patrons with a wider variety of EGMs from which to choose. Overall, the Commission considers this to be a minor social benefit of the application.
88. In relation to community contributions provided by the Hotel, the Commission considers that some of the \$69,200 identified as donations of cash or in kind contributions could be better classified as promotional expenditure for the Hotel. Despite this, the Commission considers the level of community contributions and the impact on local community organisations to be a small social benefit. The Commission notes that many of the current recipients are sporting or community clubs which provide little direct assistance to disadvantaged groups within the Bendigo region. The Commission encourages the Hotel to give future consideration to increasing the diversification of its community contribution recipients to provide more direct assistance to those in most need of such support in the Bendigo region.
89. The Commission also considers that approval of this application will strengthen the viability of this Hotel which is iconic to the township of Bendigo. While the level of this benefit is difficult to assess, there is clearly a social benefit to the community, and those who visit Bendigo, of having an iconic and historic Hotel with a diverse offering of services and strong community presence.
90. After considering the social benefits of the proposal and balanced against the detriments, the Commission considers that, on the balance, the likely social impact of the proposal will be neutral.

CONCLUSION

91. The no net detriment test in section 3.4.20(1)(c) of the Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely



impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.⁷

92. After consideration of the material put forward by both the Applicant and the Council, it is concluded that the social and economic impacts of the proposal are likely to be positive.
93. On the material that has been put before it, the Commission is satisfied of the other matters in section 3.4.20(1). The Commission is also satisfied that the Applicant understands and will continue to act in accordance with its obligations to, so far as is reasonable, take measures to prevent problem gambling. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the application.
94. The Commission was provided with draft conditions that the Applicant would be willing to accept should the application be approved. The Commission considers it necessary to impose conditions in this case, and notes the Council's submission regarding the temporal disconnect between the immediate detriments of this application and the future benefits from the Hotel's proposed redevelopment. As such, the Commission will impose an amended version of the Applicant's proposed conditions to further strengthen the link between the approval of this application with the proposed capital works. The conditions are as follows:

1. This approval will lapse and the maximum number of electronic gaming machines (**EGMs**) that may be operated at the Premises will revert to 45 if the Works (as defined in this condition) are either:
 - (a) not substantially commenced by **31 December 2014**, or
 - (b) not substantially completed by **31 December 2016**,

or such later dates as agreed to in writing by the Victorian Commission for Gambling and Liquor Regulation (**the Commission**).

The **Works** comprise the following:

- (a) addition of nine 5-star serviced apartments (each including 2 bedrooms, living area and amenities) on the first and second floor; and
- (b) construction of a new lap pool on the first floor,

as per, or of at least a similar scale and purpose to, the indicative plans prepared by Hay Partners Architects Pty Ltd dated 15 October 2013.

⁷ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd & Anor* (2008) 19 VR 422, 435.



2. The Licensee must satisfy the Commission that the Works have substantially commenced and substantially completed by way of written confirmation, which is to include the provision of a progress report of the Works. Such confirmation is to be received by the Commission no later than the relevant dates outlined in Condition 1, or such later date as agreed to in writing by the Commission. Failure of the Licensee to provide the Commission with written confirmation by the required dates will result in this approval lapsing and the maximum number of EGMs that may be operated at the Premises reverting to 45.
3. The Commission may, upon the request of the Licensee, agree to extend the time for substantial commencement or completion of the Works as referred to in Condition 1. The request must be made not less than **thirty (30) days** before the due date of each relevant written confirmation outlined in Condition 2. Any request for an extension of time must include an explanation as to why the Works have not been sufficiently commenced or completed as appropriate.

***The preceding paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy,
Deputy Chairman and Ms Kate Hamond, Commissioner***