



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 Supreme Tanti Pty Ltd, for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises, the Mornington on Tanti, 917 Nepean Highway, Mornington, from twenty-three (23) to forty (40) gaming machines.

Commissioners: Miss Gail Owen, Deputy Chairman
Mr Des Powell, Commissioner

Appearances: Ms Nicola Collingwood of Counsel (instructed by Mr Dale Curtis, Tresola Legal) for the Applicant

Ms Erin Tucker, Maddocks Lawyers, for the Mornington Peninsula Shire Council

Mr Scott May as Counsel Assisting the Commission

Date of Hearing: 23 and 26 March 2015

Date of Decision: 5 May 2015

Date of Reasons: 5 May 2015

Decision: The application is granted subject to the conditions set out in paragraph 115.

Signed:

A handwritten signature in black ink, appearing to be 'Gail Owen', written over a horizontal line.

Gail Owen
Deputy Chairman

REASONS FOR DECISION

INTRODUCTION

1. On 8 December 2014, Supreme Tanti Pty Ltd (the **Applicant** or **Licensee**) applied to amend its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Mornington on Tanti Hotel (the **Hotel**), located at 917 Nepean Highway, Mornington. The Applicant sought to vary the number of EGMs permitted to be operated at the Hotel from 23 to 40.
2. The relevant municipal authority is the Mornington Peninsula Shire Council (**Council**). Council made a submission in opposition to the application (**the Council submission**) and was represented at the hearing.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Section 3.4.18 of the *Gambling Regulation Act 2003* (**the Act**) enables a venue operator to apply to the Commission to amend the conditions of a licence, including the number of EGMs permitted to be operated at a venue. In considering an application, the Act lists matters to which the Commission must have regard.¹
4. Relevantly, section 3.4.20(1)(c) of the Act contains the 'no net detriment test', which requires the Commission to weigh the likely positive economic and social impacts of an application against the likely negative economic and social impacts. The test will be satisfied if, following the weighing process, the net economic and social impact of approval on the well-being of the relevant community will be either neutral or positive.²
5. The Act recognises that gaming on EGMs can cause harm to some communities and to some members of some communities, despite the fact that EGM gaming is a lawful recreational activity when conducted in accordance with the Act. It is for this reason that the Act includes safeguards

¹ See section 3.4.20 of the Act.

² *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435.

to ensure that an appropriate balance is struck between accommodating responsible gambling and minimising the harm caused by problem gambling.³

THE MATERIAL BEFORE THE COMMISSION

6. The Applicant filed the following documents in support of its application:
 - 6.1. a completed application form to increase the number of EGMs at the Hotel, dated 8 December 2014;
 - 6.2. a completed application form for approval to modify a gaming machine area in an approved venue and indicating the proposed layout of EGMs if the application were approved, dated 8 December 2014;⁴
 - 6.3. a social and economic impact assessment report prepared by Mr Nick Anderson, NBA Group Pty Ltd, dated 19 December 2014 and an addendum report dated 18 March 2015;
 - 6.4. an expenditure report prepared by Mr Tim Stillwell, Moore Stephens Accountants and Advisors, dated 5 December 2014;
 - 6.5. a witness statement by Mr Gianni Grollo, Director of Supreme Tanti Pty Ltd, dated 17 November 2014;
 - 6.6. a witness statement by Mr Anthony Peate, Operations Manager of the Supreme Hotel Group (the **Group**), dated 17 November 2014;
 - 6.7. a witness statement by Mr Leigh Barrett, Managing Director of Leigh Barrett and Associates Pty Ltd, dated 24 November 2014; and
 - 6.8. a witness statement by Mr Dean Normington, Venue Manager of the Hotel, dated 17 March 2015.
7. Council filed the following documents in relation to the application:
 - 7.1. a social and economic impact submission dated March 2015;

³ See *Gambling Regulation Act 2003*, s 1.1(2).

⁴ The Commission notes that approval to modify a gaming machine area is the subject of a subsequent approval process.

- 7.2. letters in support from the Cities of Frankston and Casey, dated 9 and 12 February 2015, respectively;
 - 7.3. a letter and witness statement by Ms Lisa Elliot, Manager of the Mornington Community Information and Support Centre;
 - 7.4. a witness statement by Mr Glenn Capuano, demographer and client manager, id consulting, dated 2 March 2015; and
 - 7.5. a statement by Mr Alvin Efklides, Manager – Operations, Gambler's Help Southern dated 20 March 2015.
8. The Commission also had before it three reports prepared by Commission officers, being:
- 8.1. a statistical economic and social impact report dated March 2015;
 - 8.2. a pre-hearing inspection and compliance report dated 12 February 2015; and
 - 8.3. an inspection and compliance report dated 9 April 2015.

THE MORNINGTON PENINSULA SHIRE

9. Based on the material before the Commission:
- 9.1. the Hotel is located within the Local Government Area (**LGA**) of the Mornington Peninsula Shire (the **Shire**), approximately 50 kilometres south-east of Melbourne;
 - 9.2. the Shire comprises three statistical local areas (**SLAs**), Mornington Peninsula (S) – West, South and East. The Hotel is located in the West SLA;
 - 9.3. in terms of social and economic disadvantage, the City is ranked as the 58th least disadvantaged of all 79 Victorian LGAs according to its SEIFA ranking.⁵ However, the level of disadvantage varies within the

⁵ The Socio-Economic Indexes for Areas (**SEIFA**) is a product developed by the Australian Bureau of Statistics which ranks areas in Australia according to their relative socio-economic advantage and disadvantage. The ABS selects indicators such as education, employment, income, families and housing and combines them to provide an index score for each area and ranks all areas in Australia to enable comparison to be made.

Shire and within the West SLA. Within a 2.5km radius of the venue, 14.5% of statistical areas (**SA1s**) are in the first quintile of disadvantage, which includes the Mornington North area. By contrast, 17.7% of SA1s within that same radius are in the fifth quintile of disadvantage (i.e. are relatively less disadvantaged); and

- 9.4. other economic indicators suggest that levels of disadvantage are somewhat mixed within the Shire - equivalised household income in the City is 11.01% lower than the metropolitan average and the Shire has higher proportion of individuals on government pensions (particularly age pension recipients). By contrast, the Shire has lower rates of unemployment, homelessness and crime compared with metropolitan averages.⁶

GAMING EXPENDITURE IN THE SHIRE

10. Within the Shire, 17 gaming venues operate 821 EGMs. The Shire has a municipal limit of 1,127 EGMs.

11. The Shire is generally characterised by higher levels of gaming expenditure, EGM density and gaming venues per adult than metropolitan averages. Based on the material before the Commission:

- 11.1. the City has an EGM density of 6.79 machines per 1,000 adults, the 7th highest of 31 metropolitan LGAs. This level of EGM density is approximately 23.3% more than the metropolitan average and 16.6% more than the state average.⁷ Similarly, the Shire has the fewest adults per venue than any metropolitan LGA, with 7,109 adults per venue, which is 33.5% and 20.2% less than the metropolitan and state averages; and

⁶ Equalised household income for the immediate surrounding area is \$764.05 as compared with the Metropolitan average of \$858.61. The LGA has over 21,000 recipients of age pensions, exceeding other types of welfare payments. The unemployment rate for the LGA is 5.53%, less than the metropolitan average (6.59%) (at September 2014). The LGA has the lowest rate of homelessness of all metropolitan regions. The LGA is the 11th lowest crime rate (per 100,000 residents) of metropolitan LGAs, as contained in the report prepared by Commission officers.

⁷ The metropolitan average being 5.51 gaming machines per 1,000 adults, and the state average being 5.82 gaming machines per 1,000 adults.

11.2. gaming expenditure in the City for the 2013/14 financial year totalled approximately \$79.04m, an average expenditure per adult of \$654, higher than both metropolitan and state averages.

12. However, trend analysis of gaming expenditure in the City indicates that gaming expenditure has decreased by 13.32% in real terms⁸ over the past five years, which is a rate of decrease exceeding the metropolitan average (12.77%).

THE MORNINGTON ON TANTI HOTEL

13. The Hotel is located at 917 Nepean Highway, Mornington. The Applicant purchased the Hotel in December 2012. The Hotel employs 36 staff, 11 of whom are full time and mainly employed from the local area.

14. The Hotel, following recent renovations, comprises a bistro (with capacity for 200 patrons), a children's playground, 21 accommodation suites, function rooms, conference facilities and a sports bar, as well as a gaming room with 23 EGMs. The Hotel is permitted to operate between 9am to 1am (Sunday to Wednesday) and 9am to 3am (Thursday to Saturday).

THE APPLICANT'S EVIDENCE

Mr Dean Normington, Venue Manager

15. Mr Dean Normington gave evidence about the current operations of the Hotel and its responsible service of gaming (**RSG**) practices. Mr Normington only commenced employment at the Hotel in September 2014 but has worked in the gaming industry for over 15 years.

16. Mr Normington explained that since commencing at the Hotel he has taken steps to enhance its current operation including improving entertainment offerings and engaging with other local tourist businesses.

Responsible Service of Gambling (RSG)

17. Mr Normington told the Commission that he was recruited by the Applicant as a result of his previous experience in the RSG during his time at the ALH

⁸ i.e. adjusted to CPI

Group and explained that, on commencement, the Applicant indicated that RSG was an important part of his role.

18. Mr Normington stated that the gaming room team of five staff have all received RSG training. On commencement, Mr Normington introduced a specific RSG board in the cashier's station to remind staff members about RSG messages and ensure all RSG material was available. Staff are encouraged to use the RSG register to record incidents and notify him immediately.
19. Mr Normington told the Commission that CCTV footage of the gaming room can be viewed by staff at the cashier's station. After cross-examination, Mr Normington conceded that there had been some instances of minors accessing the gaming room but that, should the additional EGMs be granted, the Applicant intends to have more staff circulating the gaming room during peak periods.
20. Mr Normington told the Commission that, since he arrived at the Hotel, he has engaged with the local Gambler's Help provider and organised training sessions in December 2014. Three staff were able to attend that session and a further training session has been set down for April 2015.
21. Mr Normington gave evidence that the venue utilises the services of Leigh Barrett and Associates Pty Ltd to ensure compliance with regulatory and code-of-conduct requirements, to identify gaps and suggest remedies.

Patron demand for EGMs and function facilities

22. Mr Normington told the Commission that there is strong patron demand and that the 23 EGMs are insufficient to meet this at peak periods, particularly for popular EGMs. Mr Normington stated that it was not realistic to replace "unpopular" EGMs with more popular ones due to cost implications, although conceding there was no regulatory requirement prohibiting the Hotel from doing so.
23. Mr Normington explained that the current conference/function room at the Hotel is small and can only seat 40 to 50 patrons and is designed primarily for

conferences. The Hotel has received requests for celebratory functions (that could coincide with the Hotel's accommodation) but cannot properly cater for them due to the size and layout of the current room and, accordingly, Mr Normington has had to reject multiple bookings.

24. Mr Normington explained that the proposed function room would create a new indoor/outdoor function space able to hold over two hundred patrons and believes there would be strong demand for it as there is no similar offering in Mornington.

Patron Survey and sources of patrons

25. Mr Normington told the Commission that he was asked by the Applicant to undertake surveys to indicate from which suburbs gaming patrons are drawn. Mr Normington explained that patrons who approached the cashier's station in early 2015 were asked (on a voluntary basis) to indicate the location of their residence on a map. Secondly, an analysis of the details of customers who received payments over \$1000 (which must be paid via cheque) occurred. Both results indicated that few of the patrons lived in the Mornington North area.⁹
26. Under cross-examination, Mr Normington conceded that the survey relied on patrons approaching the cashier and therefore did not capture all patrons in the gaming room. Mr Normington also conceded that, although it was his personal opinion that few Mornington North residents use the gaming room, he could not be certain.

Mr Anthony Peate, Operations Manager

27. Mr Peate is the Group's Operations manager (the Hotel is one of 12 hotels in the Group) and gave evidence about the Group's RSG practices and reporting structures.
28. Mr Peate told the Commission that the Group employs Leigh Barrett and Associates Pty Ltd to deal with compliance and staff training, including in relation to RSG, where the Group "relies heavily" on Mr Barrett's services. Mr

⁹ Between 1.8% and 3.5%.

Peate stated that he instructs Mr Barrett to conduct six monthly reviews and random audits on all venues. All recommendations stemming from reviews and audits are implemented.

29. Mr Peate told the Commission that managers prior to Mr Normington were “moved on” due to various performance and compliance-related issues. Mr Peate explained that the reason Mr Normington was employed was partly due to his wealth of experience in relation to gaming.
30. Mr Peate explained that, in terms of the Group’s reporting structure, Mr Normington would normally report upwards to Mr Peate and, in turn, Mr Peate would communicate with the Directors (including Mr Grollo). Mr Peate told the Commission that venue managers are given autonomy to operate the business as if it were their own, except with respect to expenses over \$300, which would require Mr Peate’s approval.
31. After questioning by the Commission, Mr Peate conceded that RSG issues are not specifically set as agenda items that Mr Peate discussed with Mr Normington.
32. Mr Peate also gave evidence that, in his view, the proposed renovations (including the function room) would not be possible without the additional revenue that will arise from the additional EGMs.

Mr Gianni Grollo, Director of the Applicant

33. Mr Grollo is a director of the Group as well as the director of Supreme Tanti Pty Ltd. Mr Grollo gave evidence concerning communications within the Group, the Hotel’s debt levels as well as past and proposed renovations, proposed community contributions and RSG issues.
34. Mr Grollo told the Commission that he has “hands on” involvement in the Group’s hotels and visits the Hotel approximately once per week but has visited more frequently when the Hotel undertook recent renovations. Mr Grollo explained that he speaks to Mr Peate daily and that matters with respect to the Hotel are discussed as required.

35. Mr Grollo gave evidence that when the Group purchased the Hotel, the building was in a poor state. The Group spent approximately \$1m in renovating the venue and incurred significant debt in doing so.

Proposed renovations

36. Mr Grollo told the Commission that, as part of this application, a further renovation at a cost of \$500,000 will occur. This renovation will provide a large function room with external decking, an additional staircase, a new bar, flooring and soundproofing. At present, the works cannot be completed as the Hotel would not be able to afford them. Mr Grollo stated that the existing function/conference room simply does not cater for the Hotel's needs.
37. Under cross-examination, Mr Grollo conceded the proposed renovations did not appear in his witness statement but that he and the Group are "absolutely committed" to these works and the Applicant is willing to submit to conditions to that effect.
38. Mr Grollo stated that although the renovations would cost \$500,000, it is likely that the value to the community would exceed this figure as the Group is able to utilise its own contractors hence lowering the cost and increasing value for money. Under questioning, Mr Grollo estimated that whilst the Group uses its own contractors, it would use local contractors to perform works (as it has with other projects) and estimated local labour would be utilised for 60% of the project.
39. Mr Grollo stated that, should the application not be approved, the Applicant would not be able to perform any new capital works at the Hotel, as other venues within the Group are cross subsidising the repayments required at the Hotel.

RSG issues at the Hotel

40. In relation to RSG issues, Mr Grollo conceded that the Hotel's engagement with Gambler's Help Southern was "not enough" but noted that the business is only two years old and that the Hotel had experienced significant turnover

of managers. However, Mr Grollo noted that Mr Barrett had been engaged since the Group took over the Hotel.

41. After questioning by the Commission concerning how the Group intends to deal with RSG given its recent expansion, Mr Grollo stated that the Group intends to employ a full time auditor/compliance officer to liaise with Mr Barrett and venues in relation to compliance matters.

Mr Leigh James Barrett (Leigh Barrett and Associates)

42. Mr Barrett gave evidence to the Commission concerning the Hotel's regulatory compliance and RSG practices.
43. Mr Barrett stated that he was engaged by the Hotel in October 2012. The Hotel has significantly improved its RSG compliance from his early engagement to the most recent audit. He stated that all recommendations he has made have been accepted by the Hotel.
44. Mr Barrett explained that, in his observations, the majority of patrons attending the Hotel use the rear entrance (which has more parking) and would therefore need to access the gaming room via other areas in the Hotel (such as the Bistro). In Mr Barrett's view, this makes the gaming room "hard to find" and is a "significant protective factor" to reduce potential impulse gambling.
45. Mr Barrett told the Commission that the layout of the gaming room is "good", as staff have lines of sight from the gaming bar area to the gaming room entrances and a large monitor faces staff and displays CCTV images of the room. Mr Barrett noted that it is possible one entrance (the inner lounge area) is not always visible from the entire cashier's area and agreed that minors could enter without immediate detection. He has subsequently recommended opaque sliding doors be installed with a button at adult height to reduce the risk of minors entering the gaming room.
46. According to Mr Barrett's observations, there are always at least two dedicated staff working on the gaming floor. Further, Mr Barrett noted that research indicates patrons with potential gambling problems will favour larger

venues to be afforded anonymity. After questioning by the Commission, Mr Barrett considered that, even with the addition of 17 EGMs, the venue would be small by comparison to nearby venues.

47. Mr Barrett explained that whilst he advocates venue engagement with Gambler's Help, he noted that the local Gambler's Help service chooses not to jointly participate in the sessions he runs. Mr Barrett explained that his consultancy delivers four training sessions per year at the Hotel. After questioning, Mr Barrett considered that good practice would require quarterly communication with, and twice-yearly staff training from, Gambler's Help.
48. In questioning Mr Barrett, Counsel for the Council noted that Mr Barrett's statements contained direct quotes attributed to staff in the Hotel which were exactly repeated in statements Mr Barrett had put before the Commission in hearings concerning other venues. Under re-examination, Mr Barrett agreed that the questions he asks venue staff (for example, the interaction of staff with patrons) are asked routinely, as they are fundamental to RSG practice.

Mr Nick Anderson, Managing Director NBA Group Pty Ltd

49. Mr Anderson is a qualified town planner with experience in town planning and urban development and has appeared before the Commission previously. Mr Anderson gave evidence concerning the expected social and economic impact of the application.
50. Mr Anderson told the Commission that the catchment area of the Hotel is unique as the Shire comprises a mix of populated areas and relatively unpopulated areas, a higher percentage of unoccupied dwellings and a mix of advantaged and disadvantaged areas.
51. Mr Anderson stated that there is a mixture of socio-economic standing within the local area – areas such as Mt Eliza and Mt Martha are relatively advantaged while the majority of Mornington would be classed as “mid-range”. Mr Anderson noted that the Mornington North area represents a “pocket of disadvantage” and, given its SEIFA ranking, can be presumed to be a low socio-economic area.

52. Mr Anderson considered the main social and economic benefits of the proposal were:

52.1 the proposed community contributions of \$50,000 annually. Mr Anderson noted that while the Hotel has increased community contributions since the Applicant took over the Hotel, it has done so mainly in-kind, so the proposed cash amount is an important benefit;

52.2 the proposed renovation costing \$500,000 – noting that while the proposed renovation is not as detailed as having master plans in place, the venue does have a proposal to this effect. Mr Anderson conceded that the \$500,000 renovation was not part of his original instructions and that until final plans are drawn the precise level of benefit is difficult to ascertain. Mr Anderson concluded that the renovation, while not introducing new facilities, was a “significant enhancement”. On re-examination, Mr Anderson considered that if the renovation were specified with particularity, and as part of a condition of the approval, he would attribute a higher positive weighting; and

52.3 new employment, being two staff in gaming-related roles and two new staff following completion of the renovations.

53. Mr Anderson stated that, in his view, the Hotel would not be a source of convenience or impulse gambling. He also noted the gaming market is a mature one, the venue will remain small and the Hotel is located in a bulky goods precinct and not a convenience/retail shopping area.

54. Mr Anderson was asked his view on holiday houses in the area. Mr Anderson noted that when individuals own holiday housing it acts to improve the community profile. Individuals who own such housing tend to be of a higher socio-economic profile and improve the local community when they visit and spend there. Mr Anderson noted Council’s own documentation states that the Shire experiences a 30% increase in population in peak tourist periods.

55. In relation to patron demand, while the survey indicated that that the Hotel experienced 16 peak periods within a four week period (at 70% EGM utilisation), Mr Anderson did not place much weight on the level of demand.

Mr Anderson explained that at 23 EGMs the Hotel is a 'very small venue' but with 40 EGMs it would be more competitive with other venues.

56. Under cross examination, Mr Anderson agreed that the Hotel is the closest to Mornington North and a pedestrian crossing exists across Nepean Highway which would allow access. However, in Mr Anderson's view, other venues may be more accessible by foot or car. Additionally, while Mr Anderson conceded that the surveys undertaken were necessarily limited as they relied on individuals approaching the Cashier's area, agreeing to participate and identifying their location on a map, he had not placed great weight on the surveys and considered them a guide only. However, Mr Anderson noted that the analysis of cheque payments gave a similar result – being relatively low patron numbers from Mornington North.
57. Mr Anderson concluded that, in his view, the application would not be detrimental to the well-being of the local area or Shire.

Mr Timothy Stillwell, Moore Stephens Accountants and Advisors

58. The Applicant called Mr Stillwell to give evidence as to the expected gaming expenditure at the Hotel should the application be approved. Mr Stillwell has extensive experience in the accounting and gaming industries.
59. Mr Stillwell noted that the Shire's is operating well below the municipal limit for gaming machines (821 EGMs operating against a limit of 1,127) and gaming expenditure has declined at a faster rate in the Shire than the state average. In relation to the West SLA, where the Hotel is situated, Mr Stillwell explained that the area has similar EGM density and per-adult expenditure to state averages (particularly when tourist effects are taken into account).
60. Mr Stillwell noted that other gaming venues nearby (namely Steeples and the Grand Hotel) contribute over 50% of the total expenditure in the local area and are far larger venues than the Hotel.
61. Mr Stillwell stated that adding 17 EGMs to the Hotel would change its character as it would increase product choice and place the Hotel on a sounder footing to compete with its larger competitors.

62. Based on anecdotal evidence of prior EGM increases and his view that the Hotel's gaming offer would be more competitive, Mr Stillwell estimated that 50% of the additional expenditure would be transferred from other venues.
63. Based on an analysis of the recent trend gaming expenditure, Mr Stillwell concluded that the level of additional gross gaming expenditure generated from the application would be between \$645,096 to \$727,445 per annum in the first 12 months of trade. Mr Stillwell noted that this would be an increase of 0.4% of total gaming expenditure across the LGA.

THE COUNCIL'S EVIDENCE

Mr Peter Sibly, Mornington Peninsula Shire Council

64. Mr Sibly holds a Masters in Planning and Environment and is the Council's Team Leader of its Social Planning and Community Development area. Mr Sibly was involved in preparation of the Council's Economic and Social Impact Submission and gave evidence on Council's view of the Application.
65. Mr Sibly explained that one of Council's key concerns was that approval of the application would generate an increase in problem gambling-related issues in the surrounding disadvantaged areas (including Mornington North). Mr Sibly noted that these areas are highly disadvantaged with four SLAs sitting in the most disadvantaged category according to SEIFA ranking.
66. Mr Sibly stated that approval of the application will lead to increased gaming expenditure and that Council has responded to various requests for community assistance in the local area. After questioning by the Commission, Mr Sibly conceded that there was no direct data linking such requests to problem gambling, but that there was some anecdotal evidence of families presenting with problem gambling as a major cause of disadvantage.
67. Mr Sibly told the Commission that the Council's community survey indicated overwhelming community opposition to the application and that the existing number of EGMs is sufficient. On cross-examination, Mr Sibly conceded that the majority of survey respondents stated that their wellbeing would be unaffected by the application.

68. Mr Sibly stated that Council is concerned about increased EGM density in the Mornington area and that the Hotel's current family-focussed environment will be threatened. Further, he explained that pedestrian access to the Hotel is possible from the Mornington North area and that he has observed patrons crossing the Nepean Highway at peak periods.
69. Mr Sibly also told the Commission that he was unaware of the proposed renovation works until the hearing and that the works would have some impact on the assessment, as the economic benefits would be higher and "improved quite considerably" from those in the Applicant's original submissions, but that Council had not been made aware of the proposed renovation.

Mr Glenn Capuano, .id Consulting

70. Mr Capuano is a consultant with .id consulting. Prior to this he worked at the Australian Bureau of Statistics on the 2001 and 2006 censuses and has worked extensively with census data.
71. Mr Capuano told the Commission that he agreed with much of what Mr Anderson stated in his report but that he believed the representation of the socio-economic characteristics of the Shire in Mr Anderson's report are somewhat "higher" than is actually the case.
72. Mr Capuano stated that in the immediate vicinity of the Hotel there is a lower level of unoccupied dwellings than suggested by Mr Anderson and it is likely there are few holiday homes in the immediate area. Further, Mr Capuano stated that he disagreed with statements that an increase in childless couples in the Shire would indicate white-collar middle management workers. In Mr Capuano's view this would almost certainly be due to an increase in the number of older retirees.
73. Under cross-examination, Mr Capuano agreed that the Shire has a SEIFA ranking generally similar to the Victorian average and the area surrounding the Hotel has a diverse mix of both advantaged and disadvantaged areas.

Ms Lisa Elliot, Mornington Community Information and Support Centre

74. Ms Elliot is the manager of the Mornington Community Information and Support Centre (the **Centre**), which is a community-based organisation that aims to take care of vulnerable people in the community by providing food vouchers, budgeting support and financial assistance.
75. Ms Elliot stated that she made a submission to Council as she was concerned about vulnerable people in community as the Centre provides services to many of the residents in the immediate vicinity of the Hotel. Ms Elliot gave an example of a local person who sought the Centre's assistance and disclosed, on a confidential basis, that she had gambled her money on EGMs. Under cross-examination, Ms Elliot stated that she was not aware whether this person had attended the Hotel.
76. Ms Elliot stated that she often sees Mornington North residents walk past the Hotel on the way to the main shopping strip in Mornington (Main Street). In Ms Elliot's view, individuals from the Mornington North community could not afford to spend more on gaming. Further, Ms Elliot stated that the Centre's ability to assist individuals has been greatly affected following funding cuts.

Mr Alvin Efklikes, Bentleigh Bayside Community Health

77. Mr Efklikes has 21 years' experience in the gaming industry, with five years at Bentleigh Bayside Community Health.
78. Mr Efklikes states that he does not usually give evidence to the Commission in relation to EGM applications but that, after being approached by Council in relation to the Applicant's witness statements concerning the level of engagement with Gambler's Help, he felt it appropriate to respond.
79. Mr Efklikes stated since purchasing the Hotel in late 2012, the Applicant had no communication with Gambler's Help Southern until late 2014 when the Hotel's manager approached Gambler's Help to organise training. Mr Efklikes agreed that since that time the Applicant has engaged with Gambler's Help.
80. Mr Efklikes denied that Leigh Barrett and Associates Pty Ltd had contacted Gambler's Help in relation to the Hotel but agreed that his organisation had

made a decision to not conduct joint training with Mr Barrett's consultancy. Mr Efklides had no opposition to working with Mr Barrett so long as it was clear there was no affiliation.

81. Mr Efklides noted that, in his opinion, Gambler's Help Southern training is "exceptional", being an informative, practical approach. He could not comment on Mr Barrett's training, as he does not know what it entails.
82. Under cross-examination, Mr Efklides noted that, aside from not engaging with Gambler's Help Southern, he was not aware of the actual RSG compliance of the Hotel.

SUBMISSIONS MADE BY THE APPLICANT

83. The Applicant, in summary, submitted that there will be significant community benefits realised by the Application, including:
 - 83.1 community contributions of \$50,000 per annum, indexed to CPI and in addition to the existing contributions;
 - 83.2 renovations to create a quality indoor and outdoor function space at the first level of the Hotel to satisfy growing demand in the community and an upgraded sports bar, at a cost of over \$500,000;
 - 83.3 an additional two to four full time staff; and
 - 83.4 increased opportunities for recreational gaming.

The Applicant offered to be bound by a condition to secure the benefits referred to at paragraphs 83.1 and 83.2.

84. The Applicant submitted that the risk in problem gambling is "overestimated", as the socio economic profile of the municipality is mixed. Whilst the Council has expressed concerns about the nearby Mornington North area, the Applicant submitted that the evidence (patron surveys, existence of the Nepean Highway, other proximate venues and excellent RSG practices) reduce this concern.

85. The Applicant submitted that that approval of the application will have only a marginal impact on expenditure per adult and density in the municipality, representing an increase of approximately 0.4% in the LGA's overall gaming expenditure. The Applicant also submitted that the Hotel maintains diligent compliance with RSG, is a quality establishment offering a full range of entertainment options (aside from gaming) and is a destination (rather than convenience) location. The Applicant noted that it has been open in describing the difficulties of securing a competent Hotel manager since 2012 but has now recruited a manager (Mr Normington) who takes RSG seriously.
86. The Applicant submitted that, with respect to the Council's arguments, the community survey conducted by Council is limited to 49 respondents and noted a high percentage of respondents had stated that granting the application would not affect their personal wellbeing. The Applicant submitted that Mr Anderson's socio-economic impact assessment report should be preferred to Council's as it properly considers the benefits of the application.

SUBMISSIONS MADE BY THE COUNCIL

87. The Council submitted that the proposed community contributions represent only a modest benefit to the community and are likely to have a low impact, despite Mr Anderson stating that he gave them greater weight than any other benefits.
88. Council argued that the capital works proposed has significantly shifted from the original proposal to that presented at the hearing. Council argued that, in any event, the works comprise a very modest benefit as the Hotel is already in good condition, will not add new facilities and the cost is modest.
89. The Council submitted that anticipated new employment is small and that no new facilities, services or activities will be provided to the community. The Council argued the application contains no improvements in venue layout or complementary expenditures and that there was low demand for EGMs at the venue.
90. Council submitted that there are social and economic disbenefits arising out of the application: the risk of problem gambling is exacerbated by the

significant disadvantage in areas near the Hotel, which represent a clear risk factor, as well as its location in an area of high EGM expenditure per adult as well as high gaming expenditure in the LGA generally.

91. Council submitted that there are concerns arising out of the RSG compliance by the venue with respect to its engagement with Gambler's Help, the number of staff circulating the gaming floor, the compliance history of the venue and the Applicant's significant reliance on Mr Normington. Council also submitted that Mr Barrett had 'cut and pasted' the content of his statements and his evidence should not be relied on.
92. Council also submitted that the application shares similarities with the recent application to increase EGMs at the Dromana Hotel which the Commission refused.¹⁰

FINDINGS BY THE COMMISSION

93. The Commission agrees with Council that the proposed capital works in this matter has altered from that originally submitted to the Commission. Additionally, there was some confusion as to the dating of witness statements. The Commission considers it preferable that an application is finalised at the time of lodgement and not materially change prior to or at the hearing. Such changes unnecessarily create difficulties for the Council which must assess whether it will oppose an application prior to hearing.

Likely social impacts

94. The predominant social detriment relevant to this application is the possibility of an increase in problem gambling. The Commission accepts that increased access to EGMs can increase the risk of problem gambling in a community.
95. The Commission has closely considered the demographic statistics of the LGA and those areas within the catchment area of the Hotel. Clearly, a risk exists with the close proximity of the Mornington North area, which both parties agreed is a relatively disadvantaged area. There is a risk that

¹⁰ Decision and Reasons for Decision – *Dromana Hotel* – 6 March 2015.

individuals from that area who developing problem gambling behaviours would be less able to withstand such losses and concomitant social impacts.

96. The Commission notes that while the Mornington North area is proximate to the Hotel, both the survey data and the analysis of addresses to which cheques were paid indicates that there is a low level of patronage stemming from this area. The Commission agrees with Council that the surveys are far from conclusive but is prepared to accept them as indicative and does not put great weight on them.
97. The Commission considers that proper provision of RSG limits, but does not eliminate, the risk of problem gambling. The evidence suggests that the Applicant had some difficulties since taking over the Hotel in late 2012, with a high turnover of venue managers and low levels of engagement with Gambler's Help. The Commission considers that the level of engagement with Gambler's Help prior to late 2014 appears to be overstated in the Applicant's witness statements. While this is concerning the Commission accepts that the Hotel has improved its engagement with Gambler's Help since the appointment of Mr Normington, who has organised training sessions and focused attention on RSG matters. The Commission notes the Group intends to employ a full time staff member to focus on RSG.
98. The Commission is satisfied that, as it stands, the Hotel is moving towards better RSG practices. It is not acceptable simply to delegate or "outsource" RSG compliance to an external contractor (such as Mr Barrett). RSG requires proper attention and focus from senior management as well as those "on the ground" at the venue. The Applicant must ensure that RSG considerations are front of mind at all levels.
99. The Commission notes that the Council conducted a community survey in response to this application. The low level of response (49 respondents) and the fact that 70% of respondents stated that grant of the application would not affect their wellbeing has led the Commission to place very little weight on the level of community opposition.
100. The Commission also notes that the venue is small, and even with an increase of 17 EGMs would remain relatively small compared to larger (and

nearby) venues. The evidence further suggests that this venue is not one likely to be exposed to 'convenience' gambling and the Commission considers its location is more akin to a bulky retail precinct than a strip shopping centre. The Commission accepts the evidence of Mr Barrett - that problem gamblers are likely to be attracted to venues that offer greater anonymity than this Hotel.

101. The Commission considers that there are social benefits which are likely in connection with this application. In particular, the proposed renovation will enable the venue to offer an enhanced function room to cater for a wider variety of functions. The Applicant's current practice of enabling community groups to use Hotel facilities at no cost represents one such benefit. The Commission notes the arguments of Council that the proposed renovations lack clarity (and therefore the corresponding benefit is unclear) but ultimately considers that the conditions proposed by the Applicant do now specify the proposal with acceptable particularity.
102. The proposed community contributions of \$50,000 per annum (indexed to CPI) and its intended distribution to not-for-profit community groups within the Shire represents a modest social benefit.
103. In conclusion, the Commission considers that there will not be a significant risk of an increase in problem gambling at the Hotel, noting that the possible increase in gambling expenditure represents a very small increase in total gaming expenditure. Further, there are social benefits which act to offset any such increase. Accordingly, the Commission considers that the likely social impact of the application will be neutral.

Likely economic Impacts

104. The Commission considers that there are economic benefits flowing from this application. The Commission notes that a venue with 23 EGMs is less likely to offer significant machine choice to recreational patrons. Whilst not anticipated to be great, the increased gaming expenditure to result from the additional EGMs and increase in machine choice represents a very slight economic benefit.

105. The Commission notes that the proposed renovations, at a cost of \$500,000, will provide a small, albeit temporary, economic stimulus to the local community. Additionally, Mr Grollo indicated that he will be likely to use local tradespeople, which will be an economic benefit to those contractors local to the LGA who are subsequently engaged on the project.
106. The Commission agrees that there will be a level of job creation as a result of the application with between two and four roles created. The Commission notes the arguments of Council that this is necessarily imprecise. Accordingly, the Commission has placed only small weight on this benefit.
107. The proposed community contributions, to be made in cash, also represent a small economic benefit, particularly given that it both crystallises and represents a significant increase on the Hotel's existing contributions, which are primarily in-kind.
108. The Commission notes that gaming expenditure attributed to problem gambling is likely to have a negative economic impact. However, as discussed above, the Commission is satisfied that this risk is low. Additionally, the Commission accepts that Mr Stillwell's predictions, which indicated only a small increase in gambling expenditure in the Shire, will occur.
109. The Commission notes that whilst the Applicant may be able to engage in a level of debt retirement should this application be successful, this matter is not a relevant one in applying the net detriment test. The Commission has placed no weight on the retirement of existing debt nor on the renovations completed prior to the application.
110. The Commission therefore considers that there is a collection of small economic benefits which, balanced against the negative economic impact of problem gambling expenditure, mean that the likely economic impact of the application is marginally positive.

CONCLUSION

111. The Council argued that this application is not dissimilar to the application previously rejected by the Commission in March 2015.¹¹ The Commission considers that there are significant differences in this application to the Dromana Hotel matter - which did not contain any proposed capital works, was located in an area relatively more disadvantaged than is the case here¹² and where the applicant was found to “not have a thorough understanding of responsibilities required for the operation of a gaming venue.”
112. The Commission considers that the likely social impacts of this application will be neutral and the likely economic impacts of this application will be marginally positive. Accordingly, the Commission considers that the net economic and social impact of approving this application will not be detrimental to the well-being of the Shire.
113. Based on the material before the Commission, the Commission is satisfied that the Applicant has the authority to make the application and the matters listed in section 3.4.20(1)(a) and (b) of the Act are met.
114. The Commission notes that the Applicant has put forward suggested conditions should the Commission approve the application. The Commission considers that it is desirable to impose conditions in this matter to ensure that both redevelopment works and proposed community contributions occur, particularly in light of the lack of clarity concerning proposed works in the application originally submitted to the Commission.
115. Pursuant to section 3.4.20(3) of the Act, it is a condition of this approval that the Licensee complies with the following two conditions. Should the Licensee fail to comply with either of the two conditions, this approval will lapse and the maximum number of EGMs that may operate at the premises will revert to 23.

¹¹ VCGLR, Decision and Reasons for Decision – Dromana Hotel, 6 March 2015.

¹² In the Dromana Hotel matter, 56% of SA1s within a 2.5km radius of the venue were within the first or second quintile of disadvantage according to SEIFA statistics, as compared with approximately 40% in this matter.

Condition 1 – Works

- 1.1 The Licensee must substantially complete the Works by 30 June 2017 or such later date as agreed to in writing by the Commission;
- 1.2 The Commission may, upon the request of the Licensee, agree to extend the time for substantial completion of the Works. Any request for extension of time must include an explanation as to why the Works have not been substantially completed by 30 June 2017; and
- 1.3 If the Licensee sells or transfers the Premises to a third party after the commencement of the operation of the 17 additional EGMs at the Hotel, the Licensee shall, as part of the sale or transfer, require the purchaser or transferee to assume responsibility of the obligations in these conditions.
 - 1.3.1 The Works comprise:
 - 1.3.1.1 the internal fit out of the upstairs Function Room including disabled toilets, new male/female toilets, bar infrastructure and new staircase access;
 - 1.3.1.2 the new first floor outdoor deck lounge with pergola roof;
 - 1.3.1.3 alfresco dining component with bi-fold doors at the western aspect of the Bistro; and
 - 1.3.1.4 the re-configuration of the Sports Bar incorporating sports theatre, upgraded and reconfigured TAB area and renovated bar infrastructure.

Condition 2 – Community Contributions

- 1.4 The Licensee will make annual cash contributions of no less than \$50,000 per annum (indexed each year by CPI all groups Melbourne by CPI annually) from the commencement of the operation of the approved 17 EGM (“the **Contribution**”).

- 1.5 The Contribution will be allocated each year to not-for-profit community groups within the Mornington Township and the Applicant will use its best endeavours to allocate the Contribution to non-gender dominated sporting groups.
- 1.6 The Licensee will use its best endeavours to cooperate and liaise with Council to identify not-for-profit community groups and will (where practicable) comply with the Council's recommendations.

The preceding one hundred and fifteen (115) paragraphs are a true copy of the Reasons for Decision of Miss Gail Owen (Deputy Chairman) and Mr Des Powell (Commissioner).