



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 Castello Cardinia Hotel Pty Ltd for amendment of its venue operator's licence to increase the number of electronic gaming machines permitted in the approved premises, Castello's Cardinia Hotel located at 108 Princes Highway, Pakenham, from fifty (50) to seventy (70).

Commission:

Mr Ross Kennedy, Chair
Ms Deirdre O'Donnell, Deputy Chair

Appearances:

Ms Louise Hicks, Counsel for the Applicant (instructed by Williams Winter Solicitors)
Mr John Rantino and Ms Kate Lyle, Maddocks Solicitors, representing the Cardinia Shire Council
Ms Michelle Miller, Counsel Assisting the Commission

Dates of Hearing:

23 and 24 August 2018

Date of Decision:

10 September 2018

Date of Reasons:

9 October 2018

Decision:

The application is granted subject to the conditions set out at Appendix A.

A handwritten signature in black ink, appearing to read 'Ross Kennedy', is written over a light blue circular background.

Signed:

Ross Kennedy
Chair



REASONS FOR DECISION

INTRODUCTION

1. On 1 May 2018, Castello's Cardinia Hotel Pty Ltd (**the Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) to amend its venue operator's licence to increase the number of electronic gaming machines (**EGMs**) permitted at the approved premises, the Cardinia Hotel, located at 108 Princes Highway, Pakenham (**the Premises**), from fifty (50) to seventy (70) (**the Application**).
2. The relevant municipal authority is the Cardinia Shire Council (**the Council**). By correspondence to the Commission dated 18 June 2018, the Council stated that it intended to make a written submission to oppose the Application and it did so on 11 July 2018.
3. The Commission considered the Application at a public inquiry conducted over two days, on 23 and 24 August 2018 (**the Hearing**).¹ The Applicant was represented by Ms Louise Hicks of Counsel, instructed by Williams Winter Solicitors. The Council was represented by Mr John Rantino and Ms Kate Lyle of Maddocks Solicitors.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Gaming 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* (**GR Act**). The GR Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities. For this reason, the GR Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some, and a potentially harmful activity for others.
5. The objectives of the GR Act are set out at section 1.1, which provides:
...
(2) *The main objectives of this Act are—*
 - (a) *to foster responsible gambling in order to-*
 - (i) *minimise harm caused by problem gambling; and*
 - (ii) *accommodate those who gamble without harming themselves or others;*
 - (ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*
 - (b) *to ensure that gaming on gaming machines is conducted honestly;*
 - (c) *to ensure that the management of gaming equipment and monitoring equipment is free from criminal influence and exploitation;*
 - (d) *to ensure that other forms of gambling permitted under this or any other Act are*

¹ The Commission is required to conduct a public inquiry in relation to the Application pursuant to s 28(g)(iii) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (**VCGLR Act**). As to the manner in which the Commission is to conduct an inquiry, see generally Part 3 Division 2 (Inquiries) and Part 2 Division 3 (Performance and exercise of the Commission's functions, powers and duties) of the VCGLR Act.



conducted honestly and that their management is free from criminal influence and exploitation;

- (e) *to ensure that-*
 - (i) *community and charitable gaming benefits the community or charitable organisation concerned;*
 - (ii) *practices that could undermine public confidence in community and charitable gaming are eliminated;*
 - (iii) *bingo centre operators do not act unfairly in providing commercial services to community or charitable organisations;*
- (f) *to promote tourism, employment and economic development generally in the State.*

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

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

7. The relevant provision concerning this Application is section 3.4.17(1)(b) of the GR Act, which provides that the number of gaming machines permitted in an approved venue may be amended in accordance with Division 2, Part 4 of Chapter 3 of the GR Act.

8. Sections 3.4.18 to 3.4.19 of the GR Act provide for the manner in which requests for amendments under section 3.4.17(1)(b) are to be made. Relevantly for the Application, section 3.4.18 provides, inter alia, that:

- (1) *A request by a venue operator for an amendment of licence conditions—*

...



- (c) *in the case of ... an amendment to increase the number of gaming machines permitted in an approved venue, must be accompanied by a submission—*
 - (i) *on the net economic and social benefit that will accrue to the community of the municipal district in which the approved venue is located as a result of the proposed amendment; and*
 - (ii) *taking into account the impact of the proposed amendment on surrounding municipal districts—*

in the form approved by the Commission and including the information specified in the form.

9. Section 3.4.18(2) provides that if the request is for an amendment to increase the number of gaming machines permitted in an approved venue, the venue operator must give the relevant municipal council a copy of the proposed request before submitting the request to the Commission.

10. Further, section 3.4.19(1) of the GR Act provides:

- (1) *Subject to this section, after receiving a copy of a request for an amendment referred to in section 3.4.18(2), a municipal council may make a submission to the Commission—*
 - (a) *addressing the economic and social impact of the proposed amendment on the well-being of the community of the municipal district in which the approved venue is located; and*
 - (b) *taking into account the impact of the proposed amendment on surrounding municipal districts.*

...

11. Section 3.4.20 sets out matters that are required to be considered by the Commission with respect to such a proposed amendment, as follows:

- (1) *Without limiting the matters which the Commission may consider in deciding whether to make a proposed amendment the Commission must not amend a venue operator's licence unless—*
 - (a) *the Commission is satisfied that the amendment of the licence does not conflict with a direction, if any, given under section 3.2.3; and*
 - (b) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the regional limit or municipal limit for gaming machines for the region or municipal district in which the approved venue is located will not be exceeded by the making of the amendment; and*
 - (c) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the net economic and social impact of the amendment will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located; and*
 - (d) *if premises are proposed to be added to the licence as an approved venue and the premises are situated within 100 metres of an approved venue of which the applicant for the amendment, or an associate of the applicant, is the venue operator, the Commission is satisfied that the management and operation of the*



approved venue and the proposed approved venue are genuinely independent of each other.

...

12. Section 3.4.20(1)(c) (outlined above) provides for what is now commonly described as the ‘*no net detriment*’ test. It requires the Commission to be satisfied that there is no net detriment arising from the approval through positively and objectively establishing that the net economic and social impact will not be detrimental to the well-being of the community.²
13. The GR Act does not specify the matters which the Commission must consider in deciding whether the ‘*no net detriment*’ test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:
 - (a) the likely economic impacts of approval;
 - (b) the likely social impacts of approval; and
 - (c) the net effect of those impacts on the well-being of the relevant community.³
14. As such, the ‘*no net detriment*’ test is a composite test requiring consideration of a single net impact in economic and social terms on the well-being of the community.⁴ The test will be satisfied if, after weighing 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.
15. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.⁵ On review, decisions in the Victorian Civil and Administrative Tribunal (**VCAT**) have held that for impacts that may be both economic and social – for example the benefits of gaming consumption – it does not matter whether the impact is considered on the economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.⁶
16. The Commission has adopted the same approach as VCAT in setting out a table of likely economic and social benefits both to enhance clarity of Commission decisions and facilitate greater consistency between the Commission and VCAT.⁷

² *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [52] per Dwyer DP (**‘Mount Alexander Shire’**).

³ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [42]-[43] per Warren CJ, Maxwell P and Osborn AJA (**‘the Romsey Case’**).

⁴ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [332], [348] per Bell J (**‘Romsey No. 2’**) cited in *Mount Alexander Shire* [2013] VCAT 101, [58] per Dwyer DP.

⁵ *Mount Alexander Shire* [2013] VCAT 101, [57] per Dwyer DP.

⁶ See *Romsey No. 2* [2009] VCAT 2275, [352] per Bell J; *Mount Alexander Shire* [2013] VCAT 101, [58] per Dwyer DP.

⁷ *Mount Alexander Shire* [2013] VCAT 101, [60] per Dwyer DP.



17. If the Commission is not satisfied that the ‘*no net detriment*’ test is met, that is clearly fatal to the application before it, as given the opening words of section 3.4.20(1) of the GR Act, satisfaction of the test is a mandatory pre-condition to approval. Although section 3.4.20(1) sets out certain mandatory considerations for the Commission, the provision is not exhaustive. If the Commission is satisfied that the ‘*no net detriment*’ test is met, it still has an ultimate discretion as to whether or not to grant the application.⁸ The Commission must decide whether to make the proposed amendment, with or without any changes from that proposed by the applicant, even where the applicant has satisfied the minimum threshold of the ‘*no net detriment*’ test.⁹
18. In considering the exercise of this discretion:
 - (a) it must be exercised having regard to the purposes of the GR Act and, in particular, the specific purposes of Chapter 3 of the GR Act dealing with the regulation, supervision and control of gaming machines;¹⁰ and
 - (b) it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the GR Act as a whole.¹¹
19. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*¹² that, if all of the mandatory considerations under the GR Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval – other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.
20. Pursuant to section 3.4.20(1)(a) of the GR Act, the Commission must be satisfied that the proposed amendment does not conflict with a Ministerial direction, if any, given under section 3.2.3 of the GR Act. Additionally, pursuant to section 9(4) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)*, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation.
21. There is no relevant direction issued pursuant to section 3.2.3 of the GR Act that relates specifically to this Application. However, there are Ministerial Guidelines dated 14 October

⁸ See *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921 (**‘Ocean Grove’**), [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192 (**‘Bakers Arms’**), [126] per Code PM and Nelthorpe M; see also *Mount Alexander Shire* [2013] VCAT 101, [97] and following per Dwyer DP (with respect to section 3.3.7 GR Act).

⁹ GR Act, section 3.4.20(2).

¹⁰ *Mount Alexander Shire* [2013] VCAT 101, [98] per Dwyer DP.

¹¹ *Ocean Grove* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire* [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M. As to policy principles identified for consideration, see the *Romsey Case* (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

¹² *Mount Alexander Shire* [2013] VCAT 101, [98].



2013, “Assessment of children’s play areas within gaming premises” (**the Guidelines**), that are relevant to this Application as there is currently a children’s play area within the approved premises and the Application proposes to make changes to this area. This guideline concerns the assessment of the suitability of premises for gaming. As such, it appears primarily to apply to premises applying to be a new gaming venue, rather than an increase in the number of EGMs at an existing gaming venue. While this guideline is therefore not directly applicable to this Application, the Commission’s view is that it is proper for the Commission to have regard to the underlying policy intent of such a guideline (which in this instance appears to relate to the legislative objective under section 1.1(2)(ab) of the GR Act that minors are neither encouraged to gamble nor allowed to do so) when considering the Application. The Commission has had regard to the Guidelines in making its decision.

22. The requirement under section 3.4.20(1)(d) (outlined in paragraph 11 above), is not relevant to this application as the Premises are not proposed to be added to a licence and the Premises are not situated within 100 metres of any other approved venue.

MATERIAL BEFORE THE COMMISSION

23. The Applicant provided the Commission with the following material in support of the Application:
 - (a) application form – Amendment to venue operator’s licence – vary gaming machines, dated 19 February 2018 (received by the Commission on 1 May 2018) (**the Application Form**);
 - (b) a report titled *Social and Economic Impact Statement, Castello Cardinia Hotel Pty Ltd*, prepared by Mr Nick Anderson (**Mr Anderson**), Managing Director of NBA Group, dated April 2018 (**the NBA Report**). The NBA Report included the following appendices:
 - (i) Current Curriculum Vitae for Mr Anderson;
 - (ii) Existing Condition Plans and Photographs;
 - (iii) Proposed Floor Plans;
 - (iv) Gambler’s Help Report by Guy Kumashev;
 - (v) SEIFA Analysis of Relative Advantage and Disadvantage;
 - (vi) Demographic Analysis;
 - (vii) Gaming Machine density and expenditure;
 - (viii) Patron Survey Results; and
 - (ix) Expenditure Report prepared by Mr Michael Clyne (**Mr Clyne**) of Progressive Venue Services (**PVS**) dated March 2018 (**PVS Report**).



- (c) witness statement of Mr Giuseppe Giustiniano (**Mr Giustiniano**), Chief Executive Officer of the Castello Group, with 3 attachments:
 - (i) Victorian Commission for Gambling Regulation Decision and Reasons for Decision dated 1 March 2006 in relation to premises at 825 Princes Highway, Pakenham;
 - (ii) Responsible Gambling Code of Conduct prepared by PVS, approved by the VCGLR on 27 June 2012;
 - (iii) Australian Hotels Association (Vic) Self-exclusion program.
- 24. On 11 July 2018, the Commission received the Council's submission in respect of the Application. The Council's submission included:
 - (a) an economic and social impact submission; and
 - (b) a report titled *Castello's Cardinia Hotel EGM Application, Social and Economic Impact Assessment* prepared by Dr Kate Kerkin (**Dr Kerkin**) of K2 Planning Pty Ltd (**the K2 Report**).
- 25. The following material, prepared by Commission officers, was provided to the Applicant and the Council and considered by the Commission:
 - (a) a report titled *Pre-Hearing Inspection and Compliance Report*, for the Premises, dated 26 July 2018 (**the Inspection Report**);
 - (b) a report titled *Economic and Social Impact Report, Gaming Machine Increase*, dated August 2018 (**the VCGLR Report**); and
 - (c) a report titled *Economic and Social Impact Report, Update to Homelessness Data*, dated August 2018 (**the VCGLR Homelessness Report**).
- 26. The Commission received correspondence in opposition to the Application from seven individuals in the local area and from the following community organisations and associations operating in the Shire of Cardinia:
 - (a) The Salvation Army Berwick, dated 29 June 2018;
 - (b) St Patrick's Primary School, Pakenham, dated 30 July 2018;
 - (c) Kooweerup Regional Health Service, Koo Wee Rup, dated 6 August 2018;
 - (d) Cardinia Combined Churches Caring (the 4C's), Pakenham, dated 10 August 2018;
 - (e) Follow Baptist Church, Officer, 14 August 2018; and
 - (f) Uniting (Victoria & Tasmania) Limited, East Melbourne, dated 15 August 2018.
- 27. Prior to the Hearing, Commissioners Kennedy and O'Donnell separately visited the Premises.



28. At the Hearing, the following further material was provided to the Commission in relation to the Application:

by the Applicant:

- (a) Patron Counts for 16 July 2018 through to 12 August 2018;
- (b) Revised floor plan;
- (c) Castello's Group Responsible Gambling Policy dated 31 March 2018;
- (d) Gaming Venue Engagement Report from Gamblers' Help dated 29 June 2018; and
- (e) Venue Audit Report from PVS with results of 4 audits conducted between 25 July 2017 and 23 May 2018.

by the Council:

- (f) An outline of Dr Kerkin's response to the NBA Report;
- (g) Expansion of SEIFA data used in the K2 Report including details of sub areas and maps;
- (h) EGM density figures calculated by Dr Kerkin for the Pakenham precinct (sub area) and the SA1s within the 2.5 kilometre radius of the Premises; and
- (i) An illion Media Release titled "Australian personal bankruptcies rise 4% in FY2018", dated 31 July 2018.

29. The following witnesses gave oral evidence at the Hearing:

- (a) Mr Anderson;
- (b) Mr Clyne;
- (c) Mr Giustiniano;
- (d) Dr Kerkin;
- (e) Mr Jay Stent, from the 4C's, at the request of the Council's representatives.

30. Written final submissions were provided to the Commission at the Hearing by Mr Rantino on behalf of the Council and by Ms Hicks on behalf of the Applicant. Mr Rantino also provided the Commission with a copy of Clause 22.03 Gaming from the Cardinia Planning Scheme and the Cardinia Shire Gaming Policy Review dated September 2015. Ms Hicks also provided the Commission with a copy of the Commission's 2014 Decision and Reasons for Decision in relation to the Pakenham Hotel.



DECISION AND REASONS FOR DECISION

Background

31. The Premises are located on the Princes Highway in Pakenham within the Shire of Cardinia¹³. The Shire of Cardinia is located approximately 60 kilometres south east of Melbourne and covers an area of 1,282 square kilometres.
32. The Shire of Cardinia is a metropolitan local government area (**LGA**) that has an adult population of 75,144 and is ranked 29th out of 31 metropolitan municipalities (with the most populated area being 1st). The Shire of Cardinia's annual rate of population growth is projected by Victoria in Future to be 4.2% in the period 2017/22, which is higher than the Victorian average of 1.8%. By 2022, 29.2% of the population is expected to be over 50 years of age.
33. Currently there are 5 gaming venues operating within the Shire of Cardinia with approvals to operate a total of 325 gaming machines. The maximum permissible number of gaming machine entitlements in the Shire of Cardinia as at 3 November 2017 is 573.
34. The VCGLR Report notes that the Shire of Cardinia has a gaming machine density of 4.3 machines per 1,000 adults, which is 15% less than the metropolitan average (5.1) and 20.1% less than the Victorian average (5.4). This ranks the Shire of Cardinia 21st out of 31 metropolitan LGAs with gaming machines, with the 1st being the LGA with the highest number of gaming machines per 1,000 adults. The VCGLR Report also notes that the adult population per venue in the Shire of Cardinia is 15,029 adults per venue, which is 26.2% higher than the metropolitan average of 11,912 and 52.4% higher than the State average of 9,859 adults per venue. This indicates that the concentration of gaming machines and gaming venues in the Shire of Cardinia is low in comparison with the adult population of the LGA.
35. The VCGLR Report also states that the 2017–18 gaming machine expenditure per adult in the Shire of Cardinia at \$387 was 32% lower than the average for metropolitan LGAs (\$568) and 29.7% lower than the State average (\$550). This ranks the Shire of Cardinia 24th out of 31 metropolitan municipalities with the 1st being the highest in terms of expenditure per adult. The total gaming expenditure in the Shire of Cardinia for the 2017–18 financial year was \$29,046,899.53. As outlined in the PVS Report, the total gaming expenditure has been increasing year on year at a greater rate than the metropolitan total. For example, in 2016–17 the total gaming expenditure in the Shire of Cardinia increased by 8% from 2015–16, whereas the metropolitan total increased by 0.5% over the same period.

¹³ Where reference is made in these reasons to the Shire of Cardinia, this is a reference to the local government area (**LGA**).



36. The Shire of Cardinia is characterised by a mixed socio-economic profile with indices for SA1s¹⁴ both above and below metropolitan averages. The Socio-Economic Indexes for Areas (SEIFA),¹⁵ score for the LGA is 1021.00 which is on par with metropolitan LGAs at 1020.75 and is higher than that for Victoria at 1010.45, where a higher score indicates less disadvantage. Cardinia is ranked 58th out of 79 LGAs for Victoria on the SEIFA scale of disadvantage where the 1st is the LGA with the greatest disadvantage.
37. The SEIFA score for the SA1 in which the Premises is located is 919.00 and the score for the immediate surrounding area (2.5-kilometre radius around the Premises) is 977.50. The SEIFA score for the immediate surrounding area is 4.26% lower than the score for the Shire of Cardinia. Of the SA1s within the immediate surrounding area 25.7% are in the 1st quintile¹⁶ of SEIFA scores which are relatively disadvantaged.
38. The VCGLR Report also indicates that:
 - (a) the unemployment rate for the LGA is 6.7%, which is only slightly higher than the unemployment rate for metropolitan LGAs at 6.1%. The unemployment rate for the immediate surrounding area of the Premises is 9.0%;
 - (b) the crime rate in the LGA during 2016–17 was 13.8% lower than the metropolitan crime rate and 16.7% lower than the Victorian crime rate;
 - (c) the equivalised household income for the LGA is lower than the average for metropolitan LGAs and lower than the Victorian average; and
 - (d) housing stress for the LGA is lower than the average of the metropolitan LGAs and lower than the Victorian average.
39. The Commission notes that the Application would (if approved):
 - (a) increase the total number of approvals for EGMs within the Shire of Cardinia by 20, from 325 to 345 (an approximate increase of 6.2%);
 - (b) increase the EGM density in the Shire of Cardinia from 4.3 to 4.6 per 1,000 adults compared with the metropolitan average of 5.1 and State average of 5.4 gaming machines per 1,000 adults; and

¹⁴ Statistical Areas Level 1 (SA1) are the smallest regions used for release of census data. SA1s have a population of between 200 and 800 people with an average population size of approximately 400 people.

¹⁵ 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.

¹⁶ SEIFA index of relative disadvantage is divided into five quintiles each comprising 20% of SA1s ranked by socioeconomic status from the most disadvantaged (lowest / 1st quintile) to least disadvantaged (highest / 5th quintile). High disadvantage is indicated by a low SEIFA score (and low disadvantage by a high score).



- (c) based on the Applicant's expenditure estimate, would result in new gaming expenditure in the municipality of approximately \$700,525 in the first year of operation which equates to approximately 2.6% of total gaming expenditure in the Shire of Cardinia in 2016–17.

Nature of the Premises

- 40. The Premises were purchased by the Castello Group in 2014 and were previously known as the Pakenham Inn. The Premises currently comprise:
 - (a) a large bistro with capacity to seat 160 patrons open for meals 7 days a week between 12:00pm and 2:30pm for lunch and between 5:00pm and 9:00pm for dinner;
 - (b) a large children's play area with indoor and outdoor areas;
 - (c) a sports bar that includes wide screen televisions, pool tables and TAB facilities;
 - (d) a walk-in bottle shop;
 - (e) 2 lounge areas;
 - (f) a gaming room with 50 gaming machines in operation; and
 - (g) 3 outdoor areas including a beer garden attached to the sports bar, a smokers' area attached to the gaming room and a beer garden at the front of the Premises adjacent to one of the lounge areas.

Catchment of the Premises

- 41. The 'no net detriment' test refers to 'the community of the municipal district in which the approved venue is located'. In determining the impact of an application on a municipal district, previous Commission and VCAT decisions have had regard to the area serviced by the premises, which are generally referred to as the catchment areas.¹⁷ The determination of the likely catchment area in this instance is important in the Commission's consideration of the identity of those residents which will be most affected by the Application in terms of gambling-related benefits and harms.
- 42. In the NBA Report and in oral evidence before the Commission, Mr Anderson described the Shire of Cardinia as a significant residential, industrial and commercial growth area. In his oral evidence, Mr Anderson told the Commission that although both the suburbs of Officer and Pakenham, within the LGA, have had significant growth since the mid-1990s, Pakenham has experienced the bulk of the industrial and commercial growth.
- 43. Mr Anderson informed the Commission in his oral evidence that he would ordinarily use a 2.5 kilometre radius from the Premises as the primary catchment area for a mature suburb.

¹⁷ See for example, *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation & Anor (Occupational and Business Regulation)* [2009] VCAT 2275 (12 November 2009); *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 (7 April 2011).



Mr Anderson went on to state that he considered a 5 kilometre radius more appropriate for an urban growth area such as the area surrounding the Premises.

44. Patron Surveys provided by the Applicant indicate that 86% of patrons in the gaming room during the survey period resided in the suburb of Pakenham. Mr Anderson advised the Commission that this was “completely understandable” considering the location of the suburb and considering the fact that it has been bypassed by the Princes Freeway. Mr Anderson described Pakenham as serving as the main service centre for the municipality. This is reflected in the population density figures available from .id.com.au, which indicates that the suburb of Pakenham has a population density of 5.94 persons per hectare, whereas the entire Shire of Cardinia has a population density of 0.80 persons per hectare.
45. The K2 Report noted that a catchment area comprising 2.5 kilometres from the venue is appropriate for considering the social and economic impacts and referenced a previous Commission decision relating to the South Morang area. It was also noted that the primary trade area set out in the PVS Report includes the SA1s that are within the 2.5 kilometre radius from the Premises.
46. After considering the evidence available, the Commission notes that the nature of the Shire of Cardinia, the fact that the urban areas are still growing, its population concentration and evidence that the suburb of Pakenham acts as a hub or service centre for the entire LGA, indicate that it would be appropriate to assess the catchment area for the Premises in this Application to be a 5 kilometre radius from the Premises.

Issues for determination

47. As outlined above in paragraph 11, section 3.4.20 of the GR Act, sets out four matters that the Commission must be satisfied of before it can grant the Application. The Commission is satisfied that the Application does not conflict with any direction given under section 3.2.3 and does not consider that the requirements under subsections 3.4.20(1)(a) and 3.4.20(1)(d) are relevant to this application (refer to paragraphs 20 to 22 above).
48. In considering this Application, the Commission must be satisfied of the following relevant matters:
 - that the relevant regional or municipal limit for EGMs applicable will not be exceeded by the making of the amendment the subject of the Application (section 3.4.20(1)(b)); and
 - that the net social and economic impact of the increase in EGMs permitted in the Hotel will not be detrimental to the well-being of the community of Cardinia (the ‘*no net detriment*’ test) (section 3.4.20(1)(c)).



49. The Commission, having determined that these matters have been satisfied, is then required to exercise its discretion under section 3.4.20(2) to determine whether or not the Application should be granted; that is, whether or not the proposed amendment to the venue operator's licence should be made.¹⁸

Municipal limits and regional caps

50. As noted in paragraph 33 above, there are currently 5 gaming venues operating within the Shire of Cardinia with approvals to operate a total of 325 gaming machines. The Shire of Cardinia is subject to a municipal limit on the number of gaming machine entitlements under a Ministerial Order pursuant to sections 3.2.4 and 3.4A.5(3A) of the GR Act. At the time of the Application, the municipal limit was 573 and the number of attached entitlements within the municipality is 325.
51. Approval of this Application would increase the number of gaming machine approvals within the Shire of Cardinia to 345, which is well below the applicable municipal limit. The Premises are not located within an area that is subject to a regional cap.
52. On that basis, the Commission is satisfied that granting the Application would not cause a regional or municipal limit to be exceeded, and hence the requirement in section 3.4.20(1)(b) of the GR Act is satisfied.

'No net detriment' test

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

Economic Impacts

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

Expenditure on capital works

55. A potential economic benefit associated with the Application is the economic stimulus arising from the expenditure on the proposed renovation of the Premises.

¹⁸ See paragraph 17 above. An amendment may be made subject to any conditions the Commission thinks fit: GR Act, section 3.4.20(3).



56. According to the NBA Report and evidence presented at the Hearing, the total proposed expenditure on capital works is estimated at \$2.5 million. At the Hearing the Commission was informed that the works would likely be completed in two stages with improvements to the gaming room to be completed in the first stage.
57. The proposed renovations will involve:
- (a) redevelopment of the bistro area including a new centre bar and lounge area, increasing the variety of seating options, new furniture, finishes and lighting;
 - (b) a new parent's room;
 - (c) redevelopment and relocation of the children's play area including new equipment, new furniture, a kids' lounge area with the area to be fully enclosed for all-weather play;
 - (d) redeveloped main entry foyer including extending the airlock area, new signage, new furniture, new lighting and new finishes with the entry opening up into a new lounge area;
 - (e) redevelopment of the sports bar and TAB area including a new central bar, a more open plan area, new furniture and finishes; and
 - (f) refurbishment and reconfiguration of the gaming room to accommodate the additional gaming machines, to reduce visibility from the remainder of the Premises and to improve Responsible Service of Gaming (RSG) compliance.

The Commission refers to subparagraphs 57 (a)-(f) above as **'the Proposed Works'**.

58. At the Hearing, the Applicant confirmed that they would not be in a position to undertake all of the Proposed Works without the anticipated revenue from the additional gaming machines the subject of this Application. The Applicant indicated if the Application was not approved, they would complete some refurbishment works to the value of approximately \$500,000, but this would not include works to reduce the visibility of the gaming room.
59. The Commission notes that the Proposed Works would involve construction expenditure which would generally be considered an economic benefit. Dr Kerkin told the Commission at the Hearing that she did not consider the Proposed Works to be a benefit because they would increase gambling opportunities in the area through the refurbishment of the sports bar and the TAB area.
60. Mr Giustiniano, CEO of the Castello Group, gave evidence at the Hearing that the Proposed Works in relation to the gaming room involved screening the sights and sounds of the gaming room from other areas using solid walls and having doors leading into the gaming room rather than a gap between a wooden slat structure as originally proposed.



61. The Commission accepts that the majority of the Proposed Works are contingent on the grant of the Application and that the portion of the expenditure spent in the Shire of Cardinia will be an economic benefit. However, given the amount of the expenditure and some uncertainty as to how much of the expenditure will remain in the LGA, the Commission attributes a low weight to this economic benefit.
62. The Commission acknowledges that it is important to avoid double counting the benefits associated with capital works in terms of social impact that may result from the improved facilities. These aspects are considered separately, and are detailed below at paragraphs 107 to 109.

Community Contributions

63. A potential economic benefit associated with the Application is the community contributions proposed by the Applicant. For such contributions to be regarded as a benefit associated with the Application, it is necessary that they are properly regarded as community contributions and that they will result as a consequence of the Application.
64. The NBA report sets out the existing community contributions made by the Applicant as:
 - (a) Employ 45 local people at a cost of approximately \$2.5 million per annum;
 - (b) \$20,000 cash per annum (from this Castello Group venue) to Windemere;
 - (c) \$250,000 per annum in discounts for themed meal nights and meal deals;
 - (d) \$20,000 per annum to run free Morning Melodies for patrons;
 - (e) \$29,500 per annum to run free Bingo for patrons;
 - (f) \$20,000 per annum to run free Children's Entertainment for local kids;
 - (g) \$45,000 per annum to run Members' Nights once a week; and
 - (h) \$15,000 per annum in ad hoc cash, stock and vouchers for local sporting and community clubs as well as schools and kindergartens seeking support.

It was acknowledged by Mr Anderson at the Hearing that the cost of employment, although beneficial to the community, is considered a business expense rather than a contribution to the community.

65. The Council's final submission cautioned the Commission against placing any weight on the Applicant's past contributions. The submission went on to note that the past contributions do not constitute a community benefit by way of community contribution, but are commercial in nature. Further, Mr Rantino noted that the past contributions do not arise out of the Application.
66. In relation to the community contributions resulting as a consequence of this Application, the Applicant has committed to an annual \$40,000 cash community contribution for the term of the



operation of the additional gaming machines at the Premises. The Applicant has proposed to increase this contribution by \$500 per annum for as long as the additional gaming machines are operational.

67. The existing contributions have a positive, although relatively small, economic impact on the Cardinia community and are largely “in-kind” contributions. The new contribution of \$40,000 per annum proposed to be made is a cash contribution to be allocated to the local community. This contribution is dependent upon the Application being approved and the economic benefit is an impact to which the Commission assigns low weight.

Additional employment

68. The economic benefits associated with an application to increase the number of gaming machines at a venue may include short term employment benefits associated with the Proposed Works. The Commission considers that this aspect has already been assessed in relation to the economic benefit associated with the expenditure on the Proposed Works. Accordingly, the Commission gives nil weight to this aspect.
69. Separate to the short term economic benefits associated with the Proposed Works is the potential benefit associated with longer term employment at the Premises arising from the Application. According to the NBA Report and Mr Giustiniano’s witness statement, the improved facilities and changes to the operation of the gaming room will result in direct employment of 5.5 full-time equivalent (FTE) staff. Mr Giustiniano gave evidence at the Hearing that the additional employment would include:
 - (a) 1 full-time gaming room manager;
 - (b) 1 part-time YourPlay Ambassador;
 - (c) 2 full-time gaming room attendants; and
 - (d) 4 part-time bar and bistro staff.
70. The Commission accepts the evidence given at the Hearing by Mr Giustiniano and Mr Anderson that if the Application is granted, this will result in the creation of at least 5.5 new FTE employees at the Premises. However, considering that a reasonably large proportion of the additional gaming expenditure will be transferred from other venues in the Shire of Cardinia, as noted at paragraph 74(b) below, it is possible that some of the additional employment may be transferred from other venues within the LGA.
71. The Commission heard evidence from the Mr Giustiniano that approximately 66% of the current employees at the Premises reside within the Shire of Cardinia. Council’s witness, Dr Kerkin, asserted that this meant that only 3.5 FTE could be attributable as a benefit to the



local community. Dr Kerkin further noted at the Hearing that only 3.5 FTE of the additional employees would be located in the gaming room.

72. The Commission finds that the likely economic impact on employment arising from this Application would be the employment of up to 5.5 FTE employees at the Premises. In consideration of the high unemployment rate in the Shire of Cardinia compared to the metropolitan average (see paragraph 38(a) above), the size of the employment increase and the fact that the majority of existing staff are residents in the LGA, the Commission considers this is a benefit to the community and attributes this impact a low weight.

Gambling expenditure not associated with problem gambling

73. To the extent that gaming expenditure is not associated with problem gambling, it has been recognised that such expenditure can be treated as an economic positive.¹⁹ As Bell J notes in *Romsey No. 2*, this approach also brings to account the benefit obtained from pure consumption by the lone gambler who does not use machines for social reasons.²⁰
74. Mr Clyne, in the PVS Report and at the Hearing, gave evidence regarding the likely increase in gaming expenditure at the Premises should the Application be granted. Mr Clyne noted:
- (a) anticipated additional expenditure in first 12 months of operation of the additional gaming machines is \$1,904,636;
 - (b) the Geotech model estimates that \$1,204,111 or 63% will be transferred from competing venues within the municipality and some venues in the neighbouring municipality (**transferred expenditure**);
 - (c) the expenditure that is not transferred from competing venues is deemed to be new expenditure and the new gaming expenditure of 37% is estimated to be \$13,472 per week or \$700,525 per annum; and
 - (d) this new gaming expenditure equates to approximately 2.6% of total gaming expenditure in the Shire of Cardinia in 2016–17.
75. According to the PVS Report, gaming expenditure at the Premises grew at a slower rate over the 2016–17 financial year than the Shire of Cardinia, with the expenditure at the Premises increasing by 1.7% and the LGA experiencing growth of 8%. It should be noted that both the Shire of Cardinia and the Premises had growth that was higher than the total metropolitan growth rate of 0.5%. The figures for 2017–18 released by the Commission indicate that the

¹⁹ See *Romsey No. 2* at [351] per Bell J.

²⁰ See *Romsey No. 2* at [351]. Bell J notes further at [352] that the other approach is to say, as did Morris J in *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [79] that gaming extends 'substantial economic and social benefits' to gaming machine users, which treats consumption as a benefit without saying whether it is economic or social. While Bell J states both approaches are correct, for the purposes of this Application this benefit is treated as an economic benefit.



growth in gaming expenditure at the Premises in 2017–18 of 5.3% was closer to the LGA's result of 6.9% over the same period.

76. At the Hearing, Dr Kerkin informed the Commission that she did not consider gaming expenditure, whether associated with problem gambling or not, to be a benefit as it equated to a loss of money by the community. Dr Kerkin confirmed that in her view, new gaming expenditure should be considered a disbenefit, unless it is redirected back to health and wellbeing activities in the community.
77. The Commission accepts Mr Clyne's evidence as to the likely increase in gaming expenditure should the Application be granted, and his views on transferred expenditure. The Commission notes that the Shire of Cardinia has experienced population growth over the past few years and is predicted to have population growth in excess of the metropolitan growth rate.²¹ The Commission also notes that gaming machine density for the Shire of Cardinia is low relative to the metropolitan and Victorian average (see paragraph 34) and this would necessarily decrease over time taking into account further increases in population, even with the additional gaming machines.
78. In assessing the extent of the benefit associated with increased gaming expenditure, the Commission has had regard to the evidence outlined in paragraphs 84 to 99 below with respect to gambling expenditure associated with problem gambling. Various factors suggest that the extent of the expenditure associated with problem gambling will be low to moderate, including, the level of anticipated new expenditure, the catchment including areas wider than the 2.5 kilometre radius with lower levels of socio-economic disadvantage and the RSG practices of the Applicant. In short, the Commission accepts that, while some portion of the new expenditure resulting from this Application will be attributable to problem gambling, the portion of new expenditure not attributable to problem gambling is an economic benefit.
79. The Commission considers, given the above factors, that this benefit should be given a marginal weight.

Increased gaming competition in the Shire of Cardinia

80. Increasing competition in gaming in the Shire of Cardinia is a factor to be considered by the Commission in light of the statutory purposes of the GR Act²² and the consumer benefits that derive from competition.

²¹ The Shire of Cardinia's annual rate of population growth is projected by Victoria in Future to be 4.2% in the period 2017/22, which is higher than the Victorian average of 1.8%.

²² See GR Act, s 3.1.1(2).



81. The Commission notes that granting the Application could be considered to increase gaming competition in the Shire of Cardinia by providing additional gaming machines at the Premises and making it more appealing to gaming patrons.
82. The Proposed Works have the potential to improve the venue's attractiveness to both gaming and non-gaming patrons. The PVS Report indicates that the venue attractiveness score, as determined using the Geotech model, would increase from 764 to 1,234 with the Proposed Works and additional gaming machines. This increase in venue attractiveness would increase competition between the Premises and other premises within the catchment area. In this regard, the Commission refers to and relies on the evidence set out in paragraphs 73 to 77 above in relation to the anticipated transfer of gaming expenditure within the Shire of Cardinia.
83. The Commission considers that the proposal has the potential to draw patrons away from other venues, which may in turn result in those other venues improving their offer to patrons. The Commission attributes a low weight to this economic benefit of increased gaming competition.

Gambling expenditure associated with problem gambling

84. To the extent that a portion of the new gaming expenditure is attributable to problem gambling, this represents an economic disbenefit.²³ In assessing this impact (and other effects of problem gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gaming undertaken by those who may be defined as 'problem gamblers', as well as those who may be otherwise regarded as 'low-risk' or 'moderate-risk' gamblers.
85. In assessing the extent of this disbenefit, the Commission has had regard to the expenditure evidence set out in paragraphs 73 to 77 above. The Commission recognises that in considering this aspect of the 'no net detriment' test it does not include consideration of transferred expenditure because such expenditure cannot be said to exacerbate problem gambling.²⁴
86. The extent to which new gaming expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with the Application, will be influenced by the socio-economic status and vulnerability of the community of the catchment area.²⁵ This is because communities characterised by socio-economic disadvantage and greater vulnerability

²³ The Commission recognises that the key likely disbenefit of 'problem gambling' has, for convenience, been treated under the heading of 'social impacts' in various instances: see *Mount Dandenong Tourist Hotel Pty v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted; see, for example, *Mount Alexander Shire* [2013] VCAT 101 at [178] and following per Dwyer DP. For completeness, the Commission considers both the economic and social impacts of problem gambling in assessing this Application.

²⁴ See *Bakers Arms* [2014] VCAT 1192 at 11 per Code PM and Nelthorpe M; *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J.

²⁵ This common-sense approach accords with the VCAT's treatment of this issue in *Molwin Pty Ltd v Mornington Peninsula SC* [2015] VCAT 1982 (23 December 2015), [68].



are more susceptible to harms arising from problem gambling.

87. As recorded in the VCGLR Report, according to the 2016 SEIFA²⁶ index of relative socio-economic disadvantage (**IRSD**), the Shire of Cardinia is more disadvantaged than other municipalities on average. The Shire of Cardinia is ranked 14th out of 31 metropolitan LGAs, with 1 being the most disadvantaged. In relation to the SEIFA IRSD of the immediate surrounding area, the VCGLR Report notes that 25.7% of SA1s are in the first quintile and 47.3% are in the second quintile, indicating a relatively high level of disadvantage.
88. In relation to the SEIFA IRSAD²⁷ in the 2016 Census period, Mr Anderson noted in the NBA Report that the Shire of Cardinia was ranked 52nd out of 80 Victorian municipalities with a score of 996, indicating a relatively low level of disadvantage across the municipality (with 1st being the most disadvantaged and 80th being the least disadvantaged). Mr Anderson characterised the 5 kilometre catchment area as having pockets of advantage and disadvantage with the disadvantaged areas being concentrated in the built up and industrial areas within Pakenham. Mr Anderson informed the Commission that he considered a 5 kilometre catchment area to be appropriate for rural and urban growth areas rather than the 2.5 kilometre catchment area traditionally used for more built up areas.
89. Dr Kerkin noted that in her view, and based on information released by the Australian Bureau of Statistics in relation to the SEIFA Index, any index below 1000 indicates an area of relative disadvantage and an index above 1000 indicates relative advantage. Dr Kerkin also provided the Commission with information in relation to higher than average bankruptcy rates in the suburb of Pakenham.
90. As noted in the VCGLR Report, the crime rate in the Shire of Cardinia in 2016-17 was 9,189 criminal offences per 100,000 adults. This is 13.8% lower than the metropolitan crime rate (10,657) and 16.7% lower than the Victorian crime rate (11,029).²⁸
91. Also, as noted in the VCGLR Report, the unemployment rate in the Shire of Cardinia and in the SA2 where the Premises are located, is high compared to the metropolitan average (see paragraph 38(a) above).
92. The Commission accepts that accessibility of the Premises can make it more convenient and there is an increased risk of problem gambling. There was somewhat conflicting evidence submitted to the Commission in relation to the accessibility of the Premises. The NBA Report

²⁶ Socio-Economic Indexes for Areas (**SEIFA**) is a product developed by the ABS that ranks areas in Australia according to relative socio-economic advantage or disadvantage. The SEIFA index of relative socio-economic disadvantage is created by combining numerous measures of disadvantage, for example, low educational attainment, high unemployment, the level of population in unskilled occupations, and the percentage of people with stated annual equivalised income between \$1 and \$20,799.

²⁷ Mr Anderson chose to analyse the Index of Relatively Advantage and Disadvantage (**IRSAD**) rather than the IRSD.

²⁸ See the VCGLR Report, where these figures are based on statistics from Victoria Police, and data from the ABS and Victoria in Future.



notes that the Premises are not located within a main shopping precinct and as such the Premises are considered a destination venue in the sense that patrons would need to travel there. Specifically, the NBA Report goes on to state that “Being located on the periphery of the Pakenham activity centre, being 2km from the main shopping hub, and on the 925 and 926 bus routes, ensures the Hotel is accessible but not convenient.”

93. The K2 Report provided a list of community services, including schools, health centres, community support organisations and employment services, within 2.5 kilometres of the Premises. Dr Kerkin informed the Commission at the Hearing that her view was that the Premises are highly accessible given the location of community services, shops and bus services. Dr Kerkin gave evidence that in discussions with the 4C’s community organisation, located within 350 metres of the Premises, she was advised that a large percentage of people accessing their services walk or take public transport to the location. Dr Kerkin went on to submit to the Commission that in her experience, accessing fast food outlets near the Premises was a daily activity in the same way that going to the supermarket was a daily activity.
94. Mr Giustiniano informed the Commission at the Hearing that the Premises do not have significant foot traffic and that most customers drive to get to the Premises. Considering all the evidence submitted, the Commission is satisfied that the location of the Premises does not greatly increase the risk of convenience gambling.
95. In considering the extent to which new gaming expenditure may give rise to an increased risk of problem gambling and gambling-related harms, the manner in which gaming is conducted at the Premises is also a relevant consideration. In relation to the Applicant’s current RSG practices, the Commission notes that the Applicant has implemented a number of positive measures which demonstrate that it would continue to effectively manage RSG at the Premises and mitigate some of the risks associated with gambling-related harms were the Application to be granted. The Applicant’s current RSG measures include:
 - (a) adopting and enforcing the PVS Responsible Gambling Code of Conduct;
 - (b) all staff in the gaming room holding RSG certificates in accordance with minimum regulatory requirements;
 - (c) floor walkers (responsible gambling officers) in the gaming room to engage with patrons;
 - (d) a dedicated responsible gambling officer, rostered on when the venue is open;
 - (e) a YourPlay ambassador with a second one to be employed if the Application is approved;
 - (f) closure of the rear entrance to the gaming room from 10pm;
 - (g) RSG trained security staff at the Premises from 10pm;
 - (h) adopting and strictly adhering to the AHA (Vic) Self Exclusion Program;
 - (i) quarterly external audits by PVS to ensure compliance with the GR Act and the *Gambling*



Regulations 2015;

- (j) regular training sessions with Gamblers' Help and PVS for staff and management; and
 - (k) a Castello's Group Responsible Gambling Policy dated March 2018, which was provided to the Commission at the Hearing.
96. At the Hearing, Mr Giustiniano outlined the following additional measures designed to reduce the risk of gambling-related harm were the Application to be granted:
- (a) full screening of the gaming room to block the view from other areas of the Premises; and
 - (b) installation of sliding doors to further prevent the sights and sounds of the gaming room from penetrating into other areas of the Premises.
97. Taking into account all the material before it, the Commission accepts that the catchment area exhibits mixed levels of socio-economic disadvantage and that there are some indicators that make the community more vulnerable to the risks of gambling-related harm. The Commission, while acknowledging the evidence from Dr Kerkin, accepts the evidence of Mr Anderson and Mr Giustiniano that the Applicant's current RSG practices would assist to mitigate the risk of problem gambling and gambling-related harm. The Commission was persuaded that the additional measures in relation to screening of the gaming room would likely further mitigate some of the potential economic disbenefit from problem gambling that might arise should this Application be granted.
98. Taking into account the material before it, the Commission finds that the granting of the Application would result in estimated new expenditure of \$700,525 per annum when the additional gaming machines are operational in the Premises. The Commission accepts a proportion of this expenditure will be associated with problem gambling.
99. Overall, the Commission considers with respect to the Application that the potential expenditure associated with problem gambling is a negative economic impact upon which it should place a low weight. Issues relating to the negative social impacts associated with problem gambling are considered further in paragraphs 117 to 120 below.

Diversion of trade from other gaming venues

100. Mr Clyne gave evidence that the introduction of the additional gaming machines at the Premises would divert trade from other gaming venues within the municipality resulting in a transfer rate of approximately 63%.
101. Given the number of venues in the catchment area, the Commission notes that the transferred expenditure is predicted to be spread across a number of venues in the catchment area and therefore diversion of trade is unlikely to be felt by a single venue. As such, the Commission



considers that any diversion of trade would be minor and accordingly assigns nil weight to this impact.

Diversion of trade from non-gaming venues

102. Improvements to the venue and changes to the bistro and sports bar may attract new patrons from other types of venues that do not offer gaming.
103. The Commission notes that Pakenham, and the Shire of Cardinia more broadly, does not have many venues that offer a non-gaming pub experience. The Commission acknowledges that there are some restaurants and sporting clubs in the catchment area that may experience a loss in patronage to the improved facilities at the Premises.
104. The Commission considers that there is a potential that diversion of trade from non-gaming venues will have a negative economic impact on the community, however, this is likely to be lessened by the increasing population in the catchment area. The Commission attributes nil to marginal weight to this impact.

Conclusion on Economic Impacts

105. After considering the economic benefits of the Application and balanced against the economic disbenefits, the Commission considers that there is likely to be a small positive economic impact resulting from the approval of the Application.

Social Impacts

106. The materials before the Commission and the evidence adduced at the Hearing detailed a range of social benefits and disbenefits associated with the Application.

Improved facilities enabling a greater range of services

107. Ancillary to the economic benefit from capital works expenditure that will occur if this Application is granted,²⁹ the Proposed Works will result in improved facilities being available to the community. Access to such improved facilities is an outcome which the Commission³⁰ and VCAT³¹ have regularly determined is a positive social impact associated with applications of this nature. The physical nature of these improved facilities has been described in paragraph 57 above.
108. Dr Kerkin in the K2 Report noted that the improvements to the Premises will remain within a gambling venue and would not increase the choice of non-gambling entertainment in the area.

²⁹ See paragraphs 56 to 61 above.

³⁰ See, for example, *Darebin RSL Sub-branch Inc at Darebin RSL premises* [2018] VCGLR 19 (4 May 2018).

³¹ See, for example, *Bakers Arms* [2014] VCAT 1192.



109. The Commission notes that although the facilities will be improved with the Proposed Works, there will not be a greater range of services. The Commission considers that the improved quality of the services on offer will enable the Premises to better cater for the anticipated population growth in the region. The Commission also notes that the scope of the Proposed Works is quite substantial. The Commission places a low weight on this social benefit. In allocating this weight, the Commission did not double count the economic benefits resulting from expenditure on capital works detailed at paragraphs 56 to 61 above.

Increased gaming opportunities for those who enjoy gaming

110. The Commission acknowledges that there would be a positive impact if the granting of the Application would better serve the needs of gaming patrons through increasing gaming machine choice for recreational players and catering for non-problem gambling demand. The NBA Report outlined the results of gaming room utilisation surveys conducted in May and June 2018, which indicated that there are several periods of peak utilisation³² per week. The NBA Report stated that the highest utilisation of gaming machines occurs around meal times, indicating that many patrons are enjoying a meal and using the gaming room in the same visit to the Premises.

111. Mr Giustiniano informed the Commission at the Hearing that there would be an opportunity to install some newer machines with different jackpot scenarios and thus offer more variety to the patrons.

112. The Commission considers that the 20-machine increase the subject of this Application will provide additional opportunities and choice of machine for gaming patrons. The Commission places a low weight on this impact.

Social benefit derived from increased community contributions

113. In determining the net economic and social impact of applications of this nature, both the Commission³³ and VCAT³⁴ have regularly treated community contributions as a positive benefit. However, for such contributions to be regarded as a benefit associated with the Application, it is necessary that they are properly regarded as community contributions, and that they will result as a consequence of the granting of the Application.

114. At the Hearing Mr Giustiniano gave the Commission an overview of the Castello Group's ongoing relationship with Windermere. Mr Giustiniano informed the Commission that the Castello Group currently donates between \$15,000 and \$20,000 per annum to Windermere

³² Mr Anderson noted that peak utilisation occurs when 70% of gaming machines (or 35 machines) were in use.

³³ See, for example, *Application by Richmond Football Club* [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

³⁴ See, for example, *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms* [2014] VCAT 1192.



and has supported the organisation since at least 2010 with the relationship going back even further. The Applicant would like to allocate \$40,000 per annum to support Windermere's Kids on Track program that will operate in two schools in Pakenham to work with children who may be vulnerable to problems in the future. Mr Giustiniano also outlined the Applicant's ongoing support of the Pakenham Football Club and indicated that the Applicant intended to sponsor the Club to establish a girls' football team.

115. To formalise the community contributions to arise specifically as a result of the granting of the Application, the Applicant has committed to an annual cash donation of \$40,000 for the term of the EGMs operation at the Premises to be allocated each year to not-for-profit community and sporting organisations in the Shire of Cardinia, in accordance with the conditions proposed by the Applicant. This would have a positive social impact on the community by supporting services provided by community organisations.
116. Having regard to the increase in the community contributions that will occur, and the impact this will have on the community, the Commission considers these contributions to be a positive social benefit to which it attributes a low weight.

Possibility of increased incidence of problem gaming and the potential impact on the community

117. Wherever accessibility to gaming machines is increased there is always a risk of an increase in problem gambling and gambling-related harms, which may lead to other costs such as adverse health outcomes, relationship breakdowns, emotional harms and other social costs. Accordingly, the Commission accepts there is potential for negative social impact on the community through possible increased problem gambling expenditure. Further, the Commission accepts that the extent that approval of this Application would result in an increase to gambling-related crime and other social disturbances (including family violence) it would constitute a social disbenefit of this Application.
118. The Commission refers to and relies upon the evidence set out in paragraphs 84 to 99 above with respect to the economic impact of problem gambling on the community, which similarly applies to the social impact of problem gambling.
119. The Commission notes the level of anticipated new expenditure as set out at paragraph 74 and accepts that a proportion of this new expenditure will be associated with problem gambling. The Commission also notes the mixed levels of socio-economic disadvantage in the catchment area of the Premises and considers that the Shire of Cardinia is a mature gaming marketplace and the addition of 20 machines is not likely to have a significant impact on gambling-related harm. Further, any potential increase in gambling-related harm is mitigated to some extent by the Applicant's RSG practices and management's demonstrated commitment to the welfare of its patrons.



120. In reaching its assessment, the RSG practices detailed above in paragraphs 95 to 96 and the commitment to fully screen the gaming room, gave the Commission confidence that any likely increase in problem gambling harms resulting from this Application would be minimised. The Commission considers the protective factors in this case result in an assessment of this impact as having low weight.

Community attitude

121. As was determined in the *Romsey Case*,³⁵ the Commission recognises that while community apprehension is not an over-riding factor (in the sense that the Application is not a referendum on gaming), it is a relevant factor in the consideration of the particular social impact of an application as part of the ‘*no net detriment*’ test. In determining this impact, the Commission recognises that the Council’s role, as the representative body of the relevant community and charged with statutory duties under various pieces of legislation, includes representing the community attitude.

122. The evidence before the Commission with respect to the community attitude is to be found in the submissions received from members of the local community and community groups. Concerns raised in the submissions included that:

- (a) there are already too many gaming machines in the community;
- (b) the Premises are attracting families and exposing children to gambling; and
- (c) the community is vulnerable to gambling-related harm.

123. The Commission also heard evidence at the Hearing from Mr Jay Stent of the 4C’s who told the Commission that that 4C’s has been working in the community surrounding the Premises for over 20 years and has been in its current location, approximately 350 metres from the Premises, for 10 years. The 4C’s is primarily an emergency crisis centre assisting people on a temporary basis, however there are long-term clients that the organisation supports. Mr Stent informed the Commission that the need for its services is increasing and that in his experience the area surrounding the Premises is an area of quite high disadvantage. Mr Stent told the Commission that he has seen evidence of clients spending money at gaming venues and not having enough for bills or food.

124. Some of the submissions, particularly the submission from Follow Baptist Church, raised a correlation between family violence and gaming machines. The Commission acknowledges that there is an emerging body of research regarding the links between problem gambling and family violence, and accepts that some research has established a correlation at the postcode

³⁵ (2008) 19 VR 422, [44] per Warren CJ, Maxwell P and Osborn AJA. See also *Mount Alexander Shire* [2013] VCAT 101, [73] per Dwyer DP.



level between gaming machine density and incidents of police-recorded domestic violence. While it acknowledges this emerging research, and supports further work in this area, the Commission is not satisfied that the available evidence establishes a causal link between gaming machines and family violence such as would support a finding that an impact of this Application would be an increase in existing levels of family violence.

125. The objections received indicate that members of the surrounding community have concerns about additional gaming machines in the Shire of Cardinia. The Commission notes that the quantity of submissions from the community was relatively low and primarily indicated concerns with gaming machines in general rather than concerns with the Premises or the manner in which the Premises are managed. The Commission attributes a low weight to this impact.

Increased exposure of children to gambling activity

126. The Applicant has committed to installing screening around the gaming room as part of stage 1 of the Proposed Works. This will significantly decrease the potential exposure of children to the sights and sounds of the gaming activities at the Premises.
127. The Commission notes that the current children's play area will be replaced by an enclosed play area in a different part of the Premises. The changes proposed to the screening of the gaming room and the relocation of the children's play area will significantly decrease the level of exposure of children to gambling activity. As such, the Commission places nil weight on this factor.

Conclusion on social impacts

128. After considering the social benefits of the Application and balanced against the disbenefits, the Commission considers that, on balance, there is likely to be a small positive social impact resulting from the approval of the Application

Net economic and social impact

129. The '*no net detriment*' test outlined in section 3.4.20(1)(c) of the GR Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. This test will be satisfied if, following the weighing of any likely impact, the Commission is satisfied that the net economic and social impact of approval on the well-being of a relevant community will be either neutral or positive.³⁶
130. After consideration of the material before it, including the evidence provided at the Hearing (and weighted as outlined above and summarised in a tabular form at Appendix B of these Reasons for Decision), the Commission is satisfied that the social and economic impact to the

³⁶ *Mount Alexander Shire* [2013] VCAT 101 at [52] per Dwyer DP.



well-being of the community of the municipal district in which the Premises are located if the Application is approved will be slightly positive.

Determination of Application

131. On the material before it, the Commission has determined that the 'no net detriment' test has been satisfied and that the total number of EGMs will be under the relevant municipal limit.³⁷
132. The Commission notes that there remains a discretion to determine whether or not to grant the Application. The Commission is satisfied that the Applicant understands and will continue to act in accordance with its obligations to, so far as reasonable, take measures to prevent problem gambling, and the Applicant has demonstrated that there are good RSG practices currently in place with additional measures in the process of being embedded. Further, the Commission is not aware of any other matter that would warrant it to refuse to grant the Application.
133. Accordingly, the Commission is satisfied it should exercise its discretion to approve the Application subject to the conditions set out in Appendix A. The Commission notes that the amendment to the venue operator's licence, increasing the number of gaming machines permitted in the approved premises, Castello's Cardinia Hotel, from fifty (50) to seventy (70), does not take effect until condition 4(a) has been satisfied.

³⁷ See paragraphs 47 and 49 above.



Appendix A

Conditions of the Decision of the Commission dated 10 September 2018 to vary the number of EGMs permitted in the approved premises, Castello's Cardinia Hotel located at 108 Princes Highway, Pakenham, from fifty (50) to seventy (70)

Conditions imposed under section 3.4.20(3) of the *Gambling Regulation Act 2003*.

1. Community Contributions

- (a) The Venue Operator undertakes to continue to make its existing annual cash contribution of \$20,000 per annum. The Venue Operator will make additional annual cash contributions in the sum of \$40,000 per annum (increased each year by \$500) whilst and so long as any of the additional twenty (20) electronic gaming machines (**the Additional EGMs**) are in operation at the Premises (**the Contributions**).
- (b) The Contributions will be donated to not-for-profit community groups and sporting organisations providing services and facilities to residents in Cardinia (**the Cardinia Community**).
- (c) The Contributions are to be made by equal quarterly payments commencing within four (4) weeks of the commencement of the operation of any of the Additional EGMs. The Venue Operator will distribute the Contributions to the Cardinia Community in accordance with paragraph 1(b) above.
- (d) The Venue Operator must retain records of each quarterly payment of the Contributions made to the Cardinia Community and provide evidence of payments if requested by the Victorian Commission for Gambling and Liquor Regulation (**the Commission**).
- (e) If the Contributions are not made as required herein the operation of the Additional EGMs at the Premises must cease immediately for as long as the Contributions (or part thereof) remain outstanding.

2. The Works

- (a) The works to the Premises proposed by the Venue Operator which have been approved by the Cardinia Shire Council in accordance with Planning Permit No. T160084 (**the Permit**), or works substantially similar to the works approved by the Permit as amended or extended from time to time (**the Works**) must be substantially completed by 10 September 2020 (**the Completion Date**).
- (b) If the Works are not substantially completed by the Completion Date, the operation of the Additional EGMs must cease immediately until the Works are substantially completed.



- (c) The Commission may, upon the request of the Venue Operator, agree to extend the Completion Date. The request must be made not less than sixty (60) days before the Completion Date. Any request for an extension of time must include an explanation as to why the Works have not been substantially completed by the Completion Date.
- (d) If the Commission agrees to extend the Completion Date in accordance with condition 2(c), the Commission may require that any of the Additional EGMs cease operation during the period of the extension of time granted by the Commission.

3. Other

- (a) Upon installation of any of the Additional EGMs and for as long as any of the Additional EGMs are in operation at the Premises, the Venue Operator will ensure that the rear entrance to the gaming room from the car park is closed at 10:00 p.m. each night and does not reopen until 9:00 a.m. the following day.

Conditions imposed under section 3.4.20(3C) of the *Gambling Regulation Act 2003*.

4. Other

- (a) This amendment does not take effect until the Venue Operator installs screening and doors for the gaming room in a manner consistent with evidence provided by Mr Giuseppe Giustiniano to the Commission on 24 August 2018.



Appendix B

Summary of economic and social impacts

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

Social and Economic Impacts

Economic impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
Benefits	Expenditure on capital works	55 to 62	<p>Estimated expenditure on capital works is \$2.5 million. This is likely to be over 2 stages with stage 1 to include the gaming room. Stage 1 will include fully enclosing the gaming room which is currently highly visible.</p> <p>Applicant has committed to completing the works within 24 months of approval.</p> <p>There is no guarantee that the expenditure will be retained within the Shire of Cardinia and no evidence was given as to where trades and supplies would be sought.</p>	Low
	Community contributions	63 to 67	<p>The Applicant has committed to an additional annual cash contribution of \$40,000 for as long as the additional EGMs are in operation.</p> <p>The level of current cash contributions is modest with the majority of community contributions claimed by the Applicant being for discounts on meals and entertainment costs.</p> <p>The estimated current cash contribution is less than \$35,000 per annum.</p>	Low



	Additional employment	68 to 72	<p>The Applicant submitted that the granting of the additional EGMs would result in the creation of 5.5 FTE positions. Further evidence was submitted that 66% of current staff resided within the Cardinia Shire and it was estimated that of the new positions 3.5 FTE could be expected to be filled from within the local area.</p> <p>The Applicant gave evidence that of the 5.5 FTE that would result from the additional gaming machines, 3.5 positions directly related to the gaming room.</p>	Low
	Gaming expenditure not associated with problem gambling	73 to 79	<p>The portion of additional gaming expenditure that is not attributed to problem gambling is considered a benefit.</p> <p>The expected new expenditure is \$700,525 p.a., which represents an increase in the total expenditure within the Shire of Cardinia of approximately 2.6%.</p>	Marginal
	Increased gaming competition in the Shire of Cardinia	80 to 83	<p>This is an existing venue in an area with several gaming venues.</p> <p>The hours of operation and improvements to the sports bar may attract patrons. The PVS report indicates that the venue attractiveness will significantly improve with the capital works.</p>	Low
Disbenefits	Gambling expenditure associated with problem gambling	84 to 99	<p>To the extent that a portion of the new gaming expenditure is attributable to problem gambling, this represents an economic disbenefit.</p> <p>The Commission accepts evidence that the Shire of Cardinia exhibits a relatively mixed level of socio-economic disadvantage, however, the immediate surrounding area is primarily disadvantaged and there are indicators that make the community more vulnerable to the risks of problem gambling. The Commission notes a portion of the expected new expenditure of \$700,525 per annum will be associated with problem gambling. The manner in which the Applicant conducts gaming and the RSG measures proposed by the Applicant mitigate some of the risk of harm associated with problem gambling.</p>	Low
	Diversion of trade from other gaming venues	100 to 101	<p>Transferred expenditure is predicted to come from a range of other venues. Unlikely a single venue will feel a significant impact.</p>	Nil
	Diversion of trade from non-gaming venues	102 to 104	<p>Improvements to the venue and changes to the bistro and sports bar may attract new patrons from other venues.</p>	Nil to Marginal



Social impacts	Impact	Paragraph numbers	Comment relevant to weight	Weight
Benefits	Improved facilities enabling a greater range of services	107 to 109	There will be no real change to range of services and the children's play area will be reduced in size. The existing facilities will be improved to better cater for anticipated population growth in the region.	Low
	Increased gaming opportunities for those who enjoy gaming	110 to 112	The additional gaming machines will improve the number and type of machine on offer at the Premises.	Low
	Social benefit derived from increased community contributions	113 to 116	Community contributions to sporting clubs and community support organisations will be a direct social benefit.	Low
Disbenefits	Possibility of increased incidence of problem gaming and the potential impact on the community	117 to 120	This is an existing venue in a mature gaming marketplace; the additional 20 machines are not likely to have a significant impact on the incidence of problem gaming. Any increase in the risk of gaming related harm will be mitigated to some extent by the Applicant's strong RSG practices and additional gaming room staff.	Low
	Community attitude	121 to 125	The Commission acknowledges the submissions from members of the surrounding community and several community support organisations expressing concerns in relation to gambling generally and to additional EGMs in the area. The Commission notes that the current and proposed community contributions, both social and economic, would have a positive impact on the wellbeing of the community.	Low
	Increased exposure of children to gambling activity	126 to 127	The gaming room is currently highly visible from the entrance of the Premises. The relocation of the children's play area and the enclosure of the gaming room will decrease the potential exposure of children to gambling activity.	Nil