



**DECISION AND REASONS FOR DECISION**

In the matter of an application by Station Hotel Officer Pty Ltd under section 3.3.4(1) of the *Gambling Regulation Act 2003* for approval of the premises, the Officer Hotel, proposed to be located at 1 Station Street, Officer, as suitable for gaming with eighty (80) electronic gaming machines.

**Commission:** Ms Deirdre O'Donnell, Deputy Chair  
Mr Des Powell AM, Commissioner

**Appearances:** Ms Louise Hicks of Counsel for the Applicant (instructed by Zervos Lawyers)

Mr John Rantino for the Council (instructed by Maddocks)

Mr Lewis Whittington as Counsel Assisting the Commission

**Date of Hearing:** 4, 10, 12 and 16 April 2018

**Date of Decision:** 1 May 2018

**Date of Reasons:** 21 May 2018

**Decision:** The Application is refused.

**Signed:**

A handwritten signature in black ink, appearing to read 'Deirdre O'Donnell'.

**Deirdre O'Donnell**  
Deputy Chair

## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by Station Hotel Officer Pty Ltd (**the Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) for approval of the Officer Hotel,<sup>1</sup> located at 1 Station Street, Officer (**Premises**), as suitable for gaming with eighty (80) electronic gaming machines (**EGMs**) (**the Application**).
2. The relevant municipal authority is the Shire of Cardinia (**the Council**). On 2 March 2018, the Council provided the Commission and the Applicant with a written submission in opposition to the Application.
3. The Commission considered the Application by way of a public inquiry.<sup>2</sup> A public hearing was conducted on 4, 10, 12 and 16 April 2018 (**the Hearing**). The Applicant was represented by Ms Louise Hicks of Counsel, instructed by Zervos Lawyers. The Council was represented by Mr John Rantino, instructed by Maddocks.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (**Act**). The Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities. For this reason, the Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some, and a potentially harmful activity for others.
5. The objectives of the Act are set out in section 1.1(2), which provides, inter alia:
 

...

(2) *The main objectives of this Act are—*

  - (a) *to foster responsible gambling in order to-*
    - (i) *minimise harm caused by problem gambling; and*
    - (ii) *accommodate those who gamble without harming themselves or others;*

<sup>1</sup> The Applicant has not yet decided on the name of the Hotel between 'the Officer Hotel' or the 'Station Hotel'. For the purposes of this decision and reasons, the Commission calls the Hotel the Officer Hotel.

<sup>2</sup> A public inquiry is required to be conducted by the Commission in relation to the Application pursuant to section 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 Pt 3 Div 2 VCGLR Act (Inquiries), see also Pt 2 Div 3 VCGLR Act (Performance and exercise of the Commission's functions, powers and duties).



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- (ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*
- (b) *to ensure that gaming on gaming machines is conducted honestly;*
- (c) *to ensure that the management of gaming equipment and monitoring equipment is free from criminal influence and exploitation;*
- (d) *to ensure that other forms of gambling permitted under this or any other Act are conducted honestly and that their management is free from criminal influence and exploitation;*
- (e) *to ensure that-*
  - (i) *community and charitable gaming benefits the community or charitable organisation concerned;*
  - (ii) *practices that could undermine public confidence in community and charitable gaming are eliminated;*
  - (iii) *bingo centre operators do not act unfairly in providing commercial services to community or charitable organisations;*
- (f) *to promote tourism, employment and economic development generally in the State.*

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

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



7. Section 9(3) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)* provides, inter alia:

*The Commission must, when performing functions or duties or exercising its powers under the Gambling Regulation Act 2003 ... or any other Act, have regard to the objects of the Act conferring functions on the Commission.*

8. The relevant provisions concerning this Application are to be found in sections 3.3.7 and 3.3.8 of the Act:

- (a) section 3.3.7 provides:

- (1) *The Commission must not grant an application for approval of premises as suitable for gaming unless satisfied that—*
  - (a) *the applicant has authority to make the application in respect of the premises; and*
  - (b) *the premises are or, on the completion of building works will be, suitable for the management and operation of gaming machines; and*
  - (c) *the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located.*
- (2) *In particular, the Commission must consider whether the size, layout and facilities of the premises are or will be suitable.*
- (3) *The Commission must also consider any submission made by the relevant responsible authority under section 3.3.6.<sup>3</sup>*
- ...
- (5) *The Commission cannot approve an area as a gaming machine area unless that area is wholly indoors.*

- (b) section 3.3.8 provides, inter alia:

- (1) *The Commission must determine an application by either granting or refusing to grant—*
  - (a) *approval of the premises as suitable for gaming; and*
  - (b) *if applicable, approval for 24 hour gaming on the premises on any one or more days.*
- ...
- (2) *An approval must specify—*
  - (a) *the number of gaming machines permitted; and*
  - (b) *the gaming machine areas approved for the premises; and*

<sup>3</sup> Section 3.3.6 of the Act allows the Council to make a submission addressing the economic and social impact of the proposal for approval on the well-being of the community of the municipal district in which the premises are located; and taking into account the impact of the proposal on surrounding municipal districts.



(c) *if applicable, the days on which 24 hour gaming is permitted on the premises.*

...

9. Section 3.3.7(1)(c) 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.<sup>4</sup>
10. The Act does not specify the matters which the Commission must consider in deciding whether this ‘*no net detriment*’ test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:
  - the likely economic impacts of approval;
  - the likely social impacts of approval; and
  - the net effect of those impacts on the well-being of the relevant community.<sup>5</sup>
11. As such, the ‘*no net detriment*’ test is a composite test requiring consideration of a single net impact in economic and social terms on the well-being of the community.<sup>6</sup> The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.
12. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues, and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.<sup>7</sup> 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.<sup>8</sup>

<sup>4</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [52] per Dwyer DP.

<sup>5</sup> *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor* (2008) 19 VR 422, [42]-[43] per Warren CJ, Maxwell P and Osborn AJA (**‘Romsey’**).

<sup>6</sup> *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [332], [348] per Bell J (**‘Romsey #2’**) cited in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [58] per Dwyer DP.

<sup>7</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [57] per Dwyer DP.

<sup>8</sup> See *Romsey #2* [2009] VCAT 2275, [352] per Bell J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [58] per Dwyer DP.

13. The Commission also accepts the position expressed by Morris J in *Branbeau Pty Ltd v Victorian Commission for Gaming Regulation* [2005] VCAT 2606 at [51] that:

*Although the [no net detriment] test requires consideration of the impact of approval on the well-being of the community of the municipal district in which the premises are located, logic and common sense require this to be considered in the context of the spatial impact of the gaming machines to be installed in the venue concerned.*<sup>9</sup>

14. The Commission also notes that on review, it has been indicated by VCAT that:

*A table of likely economic and social benefits and disbenefits, and with some comments relevant to the relative weight to be given to particular factors ... is a useful way of transparently dealing with the 'no net detriment' test, and might perhaps be considered for wider application.*<sup>10</sup>

This approach has been adopted in a number of VCAT decisions.<sup>11</sup> To facilitate greater consistency between the Commission and VCAT, the Commission has adopted the same approach in this matter.

15. If the Commission is not satisfied that the 'no net detriment' test is met, that is clearly fatal to the application given the opening words of s 3.3.7(1) of the Act. The test is a mandatory precondition to approval. However, although s 3.3.7(1) sets out certain mandatory considerations for the Commission, the provision is not cast in exhaustive terms. If the Commission is satisfied that the 'no net detriment' test is met, it still has an ultimate discretion as to whether or not to grant the approval.<sup>12</sup> The Commission must decide whether to grant the approval, even where an applicant has satisfied the minimum threshold of the 'no net detriment' test.<sup>13</sup>
16. In considering the exercise of this discretion:
- (a) it must be exercised having regard to the purposes of the Act and, in particular, the specific purposes of Chapter 3 of the Act dealing with the regulation, supervision and control of gaming machines;<sup>14</sup> and
  - (b) it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the Act as a whole.<sup>15</sup>

<sup>9</sup> See also *Romsey #2* [2009] VCAT 2275, [274] per Bell J.

<sup>10</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [60] per Dwyer DP.

<sup>11</sup> See, for example: *Darebin CC v Victorian Commission for Gambling and Liquor Regulation & Anor* [2013] VCAT 1389; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Monash CC v L'Unico Pty Ltd* [2013] VCAT 1545; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

<sup>12</sup> See *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [97] and following per Dwyer DP; see also *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M.

<sup>13</sup> *Gambling Regulation Act 2003*, section 3.3.8(1).

<sup>14</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [98] per Dwyer DP.

17. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*<sup>16</sup> that if all of the mandatory considerations under the Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval – other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.
18. Finally, it is noted that pursuant to section 9(4) of the VCGLR Act, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation.
19. On 16 October 2013, Ministerial decision-making guidelines were published in the Victorian Government Gazette pursuant to section 5 of the VCGLR Act concerning applications for approvals of venues for EGMs (**Children’s play area Ministerial Guidelines**). The Children’s play area Ministerial Guidelines concern the assessment of the suitability of a premises for gaming which contain, or will contain, a children’s play area to ensure that the venue operator provides a responsible gambling environment. The Ministerial Guidelines provide a list of criteria regarding children’s play areas that the Commission should have regard to, and also states that the Commission should have regard to any other aspect relevant to ensuring that the approved premises for gaming will provide a responsible gambling environment.
20. On 14 February 2017, Ministerial decision-making guidelines were published in the Government Gazette (**permanent residential accommodation Ministerial Guidelines**). The permanent residential accommodation Ministerial Guidelines note that when considering applications for the approval of premises as suitable for gaming, the Commission must have regard to the Government’s position that any building that is planned to include permanent residential accommodation should not be approved as premises suitable for gaming.

## MATERIAL BEFORE THE COMMISSION

21. The Applicant provided the Commission with the following material in support of its Application:
  - (a) approval of Premises for Gaming application form dated 6 December 2017 (**the Application Form**);

<sup>15</sup> *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M. As to policy principles identified for consideration, see *Romsey* (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

<sup>16</sup> [2013] VCAT 101, [98].



- (b) an order from the Victorian Civil and Administrative Tribunal (**VCAT**) matter in relation to the applicant T C Rice Pty Ltd<sup>17</sup> in relation to applying for a planning permit for the Premises, where the VCAT hearing is listed for 14 May 2018;
- (c) Social and Economic Impact Statement prepared by Ms Colleen Peterson, Chief Executive Officer of Ratio Consultants Pty Ltd (**Ratio**) dated December 2017 (**the Ratio Report**). The Ratio Report was tendered with minor corrections. Ms Peterson attended the Hearing and gave evidence;
- (d) Town Planning Report dated January 2017 prepared by Ratio;
- (e) report of Mr Michael Clyne of Progressive Venue Service (**PVS**) dated November 2017 (**Original PVS Report**) and an addendum report dated March 2018 (**Addendum PVS Report**). Both reports were tendered although Mr Clyne in his evidence at the Hearing noted that the Addendum PVS Report corrected typographical errors in the Original PVS Report and was a completely new report;
- (f) statement of Mr Leigh Barrett dated 13 October 2017, tendered without any corrections. Mr Barrett also attended the Hearing and gave evidence;
- (g) statement of Mr Timothy Rice, a director of the Applicant, dated 4 December 2017. Mr Rice's statement was tendered with minor corrections, and Mr Rice also attended the Hearing and gave evidence;
- (h) statement of Mr Craig McDonald, a director of the Applicant, dated 4 December 2017. Mr McDonald's statement was tendered with no corrections, and Mr McDonald attended the Hearing and gave evidence;
- (i) letter from Mr Shane Murray, Senior Business Banking Manager at the National Australia Bank (**NAB**), addressed to VCAT dated 27 October 2017, referred to in the evidence of Mr McDonald;
- (j) document entitled 'Investment – Document 1 Rev a' for project 'Proposed Mixed Development – 1 Station Street, Officer' dated 16 October 2017 referred to in the evidence of Mr McDonald;
- (k) document entitled 'Supply Contracts – Document 2 Rev a' for project 'Proposed Mixed Development – 1 Station Street, Officer' dated 16 October 2017 referred to the evidence of Mr McDonald and Mr Rice;

<sup>17</sup> In an email dated 16 March 2018, the Applicant's solicitor explained that the Applicant and T C Rice Pty Ltd are related entities that share common directors and it is intended that the Applicant will be the trading entity at 1 Station Street, Officer.





- (l) a venue floor plan entitled 'Proposed Mixed Development' prepared by TM Design Group (drawing number 17001 VCGLR-06);
- (m) revised gaming room and premises floor plans prepared by TM Design Group; and
- (n) executed authority of Carolyn Jo-Ann Payne, owner of the land on which the Premises was proposed to be constructed, dated 14 February 2018, authorising the Applicant to make the Application.<sup>18</sup>

22. The Council provided the following material in opposition to the Application:

- (a) economic and social impact submission signed by the Chief Executive Officer of the Council dated 2 March 2018;
- (b) report of Mr Julian Szafraniec of SGS Economics & Planning dated 2 February 2018 (**the SGS Report**) and a witness statement of Mr Szafraniec dated 27 March 2018.<sup>19</sup> Mr Szafraniec attended the Hearing and gave evidence, and made some corrections to the SGS Report;
- (c) a social and economic impact assessment prepared by Ms Bonnie Rosen of Symplan Consulting dated 27 February 2018 (**the Symplan Report**), a witness statement of Ms Rosen dated 28 March 2018 (which included as an attachment an addendum report of Symplan dated 27 March 2018) and a further addendum report of Symplan dated 9 April 2018. Ms Rosen attended the Hearing and gave evidence; and
- (d) an affidavit of Ms Kate Lyle, solicitor for the Council, dated 29 March 2018, including as an attachment a copy of a community video.

23. The following material, prepared by Commission officers, was provided to the Applicant and the Council and was considered by the Commission:

- (a) a report titled *Economic and Social Impact Report*, originally dated March 2018 and provided to the parties on 16 March 2018, and revised on two occasions (29 March 2018 and 3 April 2018) (**VCGLR Report**);
- (b) a report titled *Economic and social impact report – update to homelessness data* dated March 2018, provided to the parties on 3 April 2018;
- (c) a report titled *Pre-Hearing Size, Layout and Facilities Report* dated 21 March 2018; and

<sup>18</sup> Ms Payne is also the wife of a director of the Applicant.

<sup>19</sup> The witness statement attaches Mr Szafraniec's curriculum vitae and the SGS Report. Also, on the final day of the Hearing, the Council also emailed a copy of a letter from Mr Szafraniec dated 16 April 2018. However, given when this document was provided and the Applicant's lack of an opportunity to respond to it, the Commission has not read it or given it any weight.



- (d) a report titled *Pre-Hearing Inspection and Compliance Report* dated 29 March 2018 (**the Compliance History Report**).

24. In addition, the Commission received correspondence in opposition to the Application from 45 individuals,<sup>20</sup> and submissions signed by 29 businesses. The Commission also received submissions from a number of community organisations and associations operating in the Shire of Cardinia (including by providing services to the LGA), including:

- (a) Officer & District Community Association Inc. on 26 March 2018;
- (b) Enliven Victoria (**Enliven**) dated 26 March 2018;
- (c) Officer Union Church dated 15 March 2018;
- (d) New life Presbyterian Church dated 27 March 2018;
- (e) CityLife Church dated 29 March 2018; and
- (f) Berwick Salvation Army dated 27 March 2018.

25. The Commission also received correspondence in support of the Application from 27 individuals.

26. During the hearing, the Commission was provided with:

- (a) the Officer Precinct Structure Plan dated September 2011 (**the PSP**);
- (b) further marked up revised Premises and gaming room floor plans, handed up on 4 April 2018 and addressed in the evidence of Mr Barrett;
- (c) a letter to Ms Hicks from Ms Peterson regarding Updated SEIFA data dated 28 March 2018;
- (d) a Draft Ratio Report, also referred to in the evidence of Mr Barrett;
- (e) CK and Sons Pty Ltd Responsible Gambling Policies and Procedures Manual dated April 2018, provided after the completion of Mr Barrett's evidence;
- (f) projected profit and loss statements both with and without gaming, prepared by Mr McDonald, printed on 3 April 2018;
- (g) elevation diagrams, referred to in Mr Rice's evidence;
- (h) a document outlining the qualifications of Mr James Atkinson, referred to in the evidence

<sup>20</sup> The Commission has counted submissions received from couples as a single submission.

of Mr Szafraniec;

- (i) written submissions by Ms Hicks of Counsel on behalf of the Applicant and by Mr Rantino on behalf of the Council, both dated 16 April 2018;
  - (j) a folder of documents containing the Applicant's submission material, which, apart from duplicates of material listed above, included a title search for 1 Station Street, Officer, various extracts from the Planning Scheme and authorities to which the Applicant referred; and
  - (k) materials from the Planning Scheme and in relation to the planning controls applying to the Premises and authorities on which the Council relied.
27. Prior to the Hearing, two members of the public who had provided submissions in opposition to the Application, Mr Andrew McNabb and Mr Michael Petrovich (Secretary of the Officer & District Community Association), requested an opportunity to provide oral submissions at the Hearing. The Commission granted the request and provided Mr McNabb and Mr Petrovich with an opportunity to make any further submissions. The Applicant, the Council and the Commission were provided with the opportunity to question Mr McNabb and Mr Petrovich.
28. Commissioner Powell visited the area of the proposed Premises before the Hearing. Commissioner Powell also visited the Prince of Wales Hotel (Richmond) and Deputy Chair O'Donnell visited the Riversdale Hotel (Hawthorn) before the hearing, two gaming venues that a director of the Applicant, Mr McDonald, operates through another entity.

## DECISION AND REASONS FOR DECISION

### *Background*

29. The Shire of Cardinia is a metropolitan municipality located approximately 60 kilometres south-east of Melbourne. Major centres include Pakenham, Emerald and Koo-Wee-Rup. The estimated total adult population is 71,966, ranking the Shire of Cardinia 29 out of 31 metropolitan municipalities.<sup>21</sup> The Shire of Cardinia's estimated annual population growth of 4.2% in the period 2017 to 2022 is projected by the Department of Environment, Land, Water and Planning to be higher than the Victorian average of 1.8%.
30. The Ratio Report notes that the population in the Shire of Cardinia of 94,128,<sup>22</sup> is projected to

<sup>21</sup> Source: Victoria in Future, 2016.

<sup>22</sup> The Ratio Report, p.8, [2.3.1], citing ABS Census 2016 data.

increase by 25.3% to 117,994 in 2021 and by 50% to 141,226 by 2026.<sup>23</sup> As Ms Peterson notes in the Ratio Report, the population growth in the Officer Precinct is estimated to grow from 5,319 in 2017 to 37,402 in 2036, a change of 603.2%.<sup>24</sup>

### *Current gaming in the Shire of Cardinia*

31. Currently, there are five gaming venues operating within the Shire of Cardinia with approvals to operate 325 EGMs and with all 325 attached entitlements<sup>25</sup> currently operating.<sup>26</sup> The maximum permissible number of gaming machine entitlements under which gaming may be conducted in the Shire of Cardinia is 573.<sup>27</sup>
32. The VCGLR Report notes that the Shire of Cardinia has an EGM density of 4.5 EGMs per 1000 adults, which is 12.8% lower than the metropolitan Local Government Area (**LGA**) average of 5.2 and 18% less than the State average of 5.5, placing the Shire of Cardinia as the 21<sup>st</sup> of 31 metropolitan LGAs in terms of EGM density per 1000 adults. Also as stated in the VCGLR Report, in the 2016-17 financial year, the Shire of Cardinia had an average gaming expenditure of \$376 per adult (based on the 2016 population estimate), which is 33% less than the metropolitan LGA average of \$561 and 30.6% lower than the State average of \$542. Applying the Applicant's estimate of the increased gaming expenditure arising from the operation of 80 EGMs in the first year of operation would result in an increase in average gaming expenditure per adult of 5.2% in the LGA.<sup>28</sup>

### *Location*

33. The Premises are to be situated at 1 Station Street in Officer, on the south-eastern corner of Station Street and the Princes Highway. The site is currently largely vacant, containing two weatherboard houses. On the western edge of the proposed Premises, there is an existing commercial centre, containing material suppliers, farm suppliers and car sales yards.
34. The suburb of Officer sits in the western part of the Shire of Cardinia. While the area

<sup>23</sup> Ibid, citing Victoria In Future 2016 figures.

<sup>24</sup> The Ratio Report, p.26, [7.2.5] (Table 7.2).

<sup>25</sup> Attached entitlements are gaming machine entitlements attached to an approved venue by the venue operator owning the entitlements, and indicates the number of gaming machines actually operating.

<sup>26</sup> The Pink Hill Hotel Pty Ltd also has approval of the premises at The Pink Hill Hotel, 13 May Road, Beaconsfield as suitable for gaming with 60 EGMs: See *In the matter of an application under section 3.3.4 of the Gambling Regulation Act 2003 by The Pink Hill Hotel Pty Ltd for approval of premises at The Pink Hill Hotel, 13 May Road, Beaconsfield as suitable for gaming with sixty (60) gaming machines*, 23 July 2010, F.B. Thompson (Chairman) ('**the Pink Hills decision**'). The Applicant provided the Commission with *DSL Securities Pty Ltd v Cardinia SC* [2018] VCAT 212, where VCAT granted the application to extend the permit for development for six months from 12 February 2018. Due to the uncertainty surrounding the building of the Pink Hills Hotel, the Commission has not considered its potential effect on the municipality of the Shire of Cardinia for the purposes of assessing this Application.

<sup>27</sup> See the Ministerial Order under ss 3.2.4 and 3.4A.5(3A) of the Act, Victorian Government Gazette, No. S 318 Wednesday 20 September 2017, p.5.

surrounding the Premises is sparsely developed, the Premises are situated in the Officer Precinct Structure Plan area, with the Premises located in the proposed Officer Major Activity Centre (**MAC**), within a Gateway Precinct. Ms Peterson noted that, although Officer was reasonably undeveloped, the PSP gives a fair degree of certainty as to physically how the town centre will evolve, giving a clear vision of where roads, car parks, and, for instance, the approximate location of the supermarket. Ms Peterson stated that, while challenging to envisage, *“there is no doubt 20 years from now that entire corridor will look like Narre Warren and Berwick look now”*.<sup>29</sup>

#### *Details of the Proposed Premises*

35. The Premises is proposed to include a building comprising two storeys. On the ground floor:
- (a) a bistro (208 seats) with al-fresco terrace (92 seats);
  - (b) a café/lounge area (27 seats);
  - (c) a sports lounge (72 seats) with an external terrace (76 seats);
  - (d) a family area;
  - (e) a children’s play area;
  - (f) a gaming lounge with 80 EGMs; and
  - (g) back of house facilities.
36. The first floor is to contain a foyer area, two function rooms (which can be combined for a total of 250 seats), a roof top bar (122 seats) and back of house facilities. The Commission terms this particular building the **Hotel**.
37. The Premises are also proposed to include a separate building comprising a four storey, 52-bedroom motel above ground floor office tenancies fronting Princes Highway. The Commission terms this particular building the **Motel**. The Hotel and Motel will be connected by an atrium and a covered outdoor space. The Applicant proposes to integrate the Motel with the Hotel by having the check-in for the Motel at the Hotel’s reception, the Hotel providing the Motel’s food and drinks, and breakfast for the Motel’s guests being served in the Hotel. The Premises will include a total of 257 car parking spaces: 192 spaces for the Hotel, 52 spaces for the Motel and 13 for the offices.

<sup>28</sup> This figure does not factor in transferred expenditure.

<sup>29</sup> Transcript of the Hearing, 4 April 2018, p-40.

*Catchment area of the Premises*

38. 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 of this nature on a municipal district, previous Commission and VCAT decisions have had particular regard to the area serviced by the relevant premises, which is generally referred to as the ‘catchment area’.<sup>30</sup> The determination of the likely catchment area in this instance is important in the Commission’s consideration of the identity of those residents who will be most affected by the Application in terms of gambling-related benefits and harms.
39. Ms Peterson analysed the primary catchment as the Officer Precinct, which is almost completely contained in a 2.5 km radius around the Premises.<sup>31</sup> Ms Peterson noted that it is generally estimated that 70-80% of patrons come from a 2.5 km radius but had increased the radius to 5 km radius as she considered the subject site to be in an outlying area, which was growing and where residents were largely car dependent. As such, Ms Peterson considered the secondary catchment of the Premises as an additional five precincts: Beaconsfield, Southern Rural (which is contained in the suburb of Officer South), Cardinia Road (which is contained in the suburb of Pakenham), Pakenham Balance and the Pakenham Precinct (both of which are again contained in Pakenham), which are between 2.5 km and 5 km of the Premises.
40. For the Council, Mr Szafraniec had also identified the core catchment area as being a radius of 2.5 km to 5 km around the Premises.<sup>32</sup> Mr Szafraniec suggested that the catchment area was the Statistical Area 2 (**SA2s**)<sup>33</sup> of Beaconsfield – Officer (which includes the suburbs of Officer and Beaconsfield), Pakenham – North and Pakenham – South. Mr Szafraniec excluded areas to the north, east and south on the basis that they were predominately rural in nature, and areas to the west (such as Berwick and Narre Warren) as functionally separate.<sup>34</sup>
41. Having regard to the above material, the Commission agrees with the analysis of Ms Peterson in the Ratio Report and considers the appropriate catchment area of the Premises consisting of the primary catchment of the Officer Precinct, and the secondary catchment comprising the five precincts of Beaconsfield, Southern Rural, Cardinia Road, Pakenham Balance and the Pakenham Precinct.

<sup>30</sup> See for example, *Romsey #2* [2009] VCAT 2275; *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 (7 April 2011).

<sup>31</sup> The Ratio Report, [4.1.1]-[4.1.4], p.14; [7.1.1]-[7.1.4], p.25. Ratio used precinct areas identified in the Cardinia Urban Growth Area Framework Plan.

<sup>32</sup> Transcript of the Hearing, 10 April 2018, P-303.

<sup>33</sup> Statistical Area Level 2. The SA2s are the second smallest unit of the 2011 and 2016 Census data, are based on gazette State suburbs and localities, and usually have a population from 3,000 to 25,000, with an average of 10,000.

<sup>34</sup> SGS Report, [44], p.7.

*Relevance of Council policies and Planning Scheme*

42. Both the Applicant and the Council went into some detail as to matters that would usually be considered planning considerations, such as the alignment of the Application with Council policies in relation to gaming and with provisions in the Shire of Cardinia Planning Scheme (**the Planning Scheme**).
43. The thrust of the Applicant's submissions seemed to be that the location of the Premises is settled and that Council have deemed the subject site as suitable for EGMs or, at the very least, the key issue of location had already been extensively traversed through the PSP process.<sup>35</sup> Ms Hicks submitted that the Commission could take note of what the planning scheme says but it could not be determinative for the Commission's consideration of the approval of premises as suitable for gaming under s 3.3.4 of the Act.<sup>36</sup> However, the Council was of the view that the issue of whether planning would be approved was far from settled and would be determined by VCAT in mid-May 2018.
44. Different legislative frameworks apply under planning and gaming approval processes.<sup>37</sup> Indeed, differences mean that approval under one framework does not mean approval under the other will follow. Here, the Commission is obliged to make its own assessment of the issues including the social and economic impacts of the approval of the premises containing 80 EGMs and to make its own findings of fact based on the material.<sup>38</sup>
45. In assessing this Application, the Commission therefore takes notice of the PSP and the Planning Scheme as to what the catchment area and the LGA might look like in the future. However, the particular question for the Commission is whether, under the Act, there will be a net detriment to the relevant municipality if the Premises are approved for gaming in this particular location. The Commission did not approach this question on the basis that the location of the Premises was settled under complementary planning law.

***Reasons for Decision***

46. Pursuant to section 3.3.7, there are three elements that the Commission must be satisfied of before it can grant the Application:

**AUTHORITY TO MAKE APPLICATION**

47. The first element in relation to which the Commission is required to be satisfied is that the

<sup>35</sup> Transcript of the Hearing, 4 April 2018, p-31; 12 April 2018, p-446.

<sup>36</sup> Transcript of the Hearing, 12 April 2018, p-446.

<sup>37</sup> See e.g., *ALH Group Property Holdings Pty Ltd v Whittlesea CC* [2017] VCAT 2164, [10]-[14] (**'Commercial Hotel'**).

Applicant has authority to make the Application in respect of the Premises.

48. In the Application Form, the Applicant noted that it was not the owner of the Premises, which were instead owned by Carolyn Jo-Ann Payne, the wife of Mr Rice, a director of the Applicant. However, on 1 March 2018, the Applicant provided to the Commission evidence of the owner's authority for the Applicant to make the Application.
49. Based on the evidence above, the Commission is satisfied that this first element has been met.

#### SUITABILITY OF PREMISES FOR THE MANAGEMENT AND OPERATION OF GAMING MACHINES

50. The second element in relation to which the Commission is required to be satisfied is that the Premises are, or on the completion of building works will be, suitable for the management and operation of gaming machines. In particular, the Commission must consider whether the size, layout and facilities of the Premises are, or will be suitable.<sup>39</sup>
51. The Commission was provided with a Pre-Hearing Size, Layout and Facilities report prepared by staff at the Commission. This report was prepared based on original plans provided by the Applicant referred to in paragraph 21(l) above in relation to the Premises and the gaming machine area (**GMA**). According to the Pre-Hearing Size, Layout and Facilities report, new venues are assessed by Commission Licence Management and Audit Inspectors against standards and guidelines in relation to the size, location and layout of the GMA, type and height of perimeter barriers, floor numbering and layout of gaming machines, windows, proximity of the GMA to other facilities within the venue (e.g. children's play areas) and any liquor or statutory authority conditions imposed. Based on the plans submitted, and subject to any planning issues, the report concluded that the size, layout and facilities of the Premises would be suitable for gaming.
52. During the hearing, the Commission also heard evidence from Mr Barrett in relation to the suitability of the Premises for the management and operation of EGMs. Mr Barrett spoke to amended plans of the gaming room and Premises. He considered that the draft plans for the gaming room indicated the Premises would be suitable for gaming as:
- (a) the gaming room would be discrete from other parts of the venue and EGMs would not be visible from outside the venue or the bistro;
  - (b) there was good separation from the children's play area and the gaming room; and

<sup>38</sup> See e.g., *Moreland City Council v Glenroy RSL* [2018] VSC 126, [73] (Ginnane J).



(c) there would be good visibility of the EGMs and gaming room entrances by staff at the cashier's desk.

53. The Commission also heard evidence as to the design and suitability of the Premises from Ms Peterson, Mr McDonald and Mr Rice. Based on the evidence above, the Commission is satisfied that this second element has been met.

54. On the basis of the material before it and the evidence in particular of Mr Barrett and Mr Rice, the Commission is satisfied as to the matters set out in the Children's play area Ministerial Guidelines and the permanent residential Ministerial Guidelines.

#### 'NO NET DETRIMENT' TEST

55. The third element in relation to which the Commission is required to be satisfied is that 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 One) is the Commission's assessment of the economic benefits and disbenefits and social benefits and disbenefits associated with this Application, including the weighting given to each of these impacts.

#### Economic Impacts

56. 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.

#### Gaming expenditure not associated with problem gambling

57. As the economic category of gaming expenditure not associated with problem gambling includes consumption, then to the extent that such expenditure is not associated with problem gambling, it has been recognised (by, for example, the Productivity Commission in its 1999 report) that it can be treated as an economic positive.<sup>40</sup> As Bell J further notes, this approach also brings to account the benefit obtained from pure consumption by the lone gambler who does not use machines for social reasons.<sup>41</sup>

<sup>39</sup> Section 3.3.7(2) of the Act.

<sup>40</sup> See *Romsey #2* [2009] VCAT 2275 at [351] per Bell J.

<sup>41</sup> See *Romsey #2* [2009] VCAT 2275 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.

*Expenditure estimates*

58. For the Applicant, in the Addendum PVS Report, Mr Clyne gave evidence that, using the Geotech model, he would anticipate the 80 EGMs at the Premises in the first 12 months of operation to earn approximately between \$5,306,079 and \$5,995,870 after September 2022.
59. The Commission notes that the Geotech model is a retail gravity model, based on the theory that a consumer's choice of gaming venue will be based on two fundamental considerations: travel time and venue attractiveness. The determinants for venue attractiveness, in order of priority, are: EGM numbers; whether the venue is a hotel or a club; operating hours; and facility score, which itself is based on a number of factors, including the proposed venue fit-out.
60. Mr Clyne's prediction of \$5,995,870 in the first 12 months of operation post-2022 was his upper bound prediction.<sup>42</sup> Mr Clyne acknowledged that his figures would, if the Premises were to be operating in 2019,<sup>43</sup> see it place either 28 (using the upper bound figure) or 29 (using the 2019 estimate) out of 31 for expenditure for metropolitan hotels with between 75 and 85 EGMs, which Mr Clyne believed would be an accurate ranking for the Premises in its first 12 months of operation.
61. As he had only provided an estimate of expenditure the first year of the operation of the Premises, the Council asked Mr Clyne what increase in expenditure the Premises might expect in its second and third years of operation. Mr Clyne estimated a 10% to 15% increase in the second year, and a lesser increase in the third year.
62. In terms of transferred expenditure, the Geotech model effectively estimates how much expenditure the venue may take from each competitor venue. Analysing the 10 venues from which the Premises might draw expenditure, his evidence was that the strongest impacts would be on Club Officer, the Pakenham Hotel and Castellos Cardinia Hotel. Mr Clyne gave an estimate in the Addendum PVS Report of 90% transferred expenditure.
63. In the Original PVS Report, Mr Clyne estimated that the 80 EGMs in the first 12 months of operation would earn approximately \$5,995,615 and that 76% would be transferred expenditure. Mr Clyne advised the reason for the similarity in anticipated expenditure but the change of 14% in transferred expenditure between the Original PVS Report and the Addendum PVS Report was that the Geotech model was updated, including by inputting 2016/2017 gaming expenditure data from the VCGLR. This meant that Cardinia Club's expenditure for its first year in operation

<sup>42</sup> Mr Clyne explained that an upper bound confidence level of 75% meaning in statistical terms there is a 75% chance that expenditure would be equal or below this figure and a 25% chance that expenditure would be above this figure

<sup>43</sup> 2019 was used as it was not practicable to compare the projected estimate for 2022 with venues' current expenditure.

had now been incorporated into the model.<sup>44</sup> The estimate in the Addendum PVS Report was now also on the basis that the Premises would not commence until after September 2022, with the population base within the model increased to reflect projected population.<sup>45</sup>

64. Mr Clyne acknowledged 90% was a high transfer rate for a growth area, although noted that for the seven months to January 2018, the growth rate for expenditure in the Shire of Cardinia was lower than metropolitan Melbourne, potentially indicating that rapid growth in the LGA is changing. However, Mr Clyne could not form any judgments as the reason behind the slow down, and noted the data was not sufficient to draw a conclusion.
65. For the Council, while Mr Szafraniec did not take issue with the use of the Geotech model insofar as estimating expenditure in the Premises' first 12 months, Mr Szafraniec was of the view that the estimate of the first 12 months was not helpful when the Premises' impact would extend well beyond the first year of operation. The SGS Report noted that the \$5.9 million figure was close to half that achieved in other parts of outer-metropolitan Melbourne, including in Hume (the Highlands Hotel), in Wyndham (Hotel 520 on Sayers) and in Whittlesea (the Bridge Inn Hotel).<sup>46</sup> Noting that the norm for hotels in outer-metropolitan regions is expenditure of between \$150,000 and \$200,000 per EGM per year, and that Mr Clyne's upper bound estimate was for approximately \$75,000 per EGM, SGS believed that expenditure was likely to be significantly higher and assumed a rate of around \$110,000 per EGM per year, equating to \$8.883 million.<sup>47</sup>
66. Mr Szafraniec also disagreed with the rate of 90% transferred expenditure due to the Premises' location in a rapidly-growing outer-metropolitan region, as the retail gravity model PVS used essentially assumes that population and expenditure will be static.<sup>48</sup> While Mr Szafraniec agreed there would be transferred expenditure in the near term, due to the new facility being more appealing and convenient to EGM players, he was of the view that the expenditure at existing venues was likely to increase over time and revert to former levels. Mr Szafraniec therefore adopted a transferred expenditure rate of 50%, noting that in the long run, the rate may be significantly lower still.<sup>49</sup>

<sup>44</sup> Transcript of the Hearing, 4 April 2018, p-117. This was also a large reason why transferred expenditure had increased from 76% to 90%. Indeed, 19.25% of Club Officer's expenditure was expected to be transferred: Addendum PVS Report, p.21, Table 4.

<sup>45</sup> At the Hearing, Mr Clyne could not say what the exact increase of the population as inputted into the Geotech model was as he had not completed this task, which had instead been done by Geotech analysts: Transcript of the Hearing, 4 April 2018, p-114.

<sup>46</sup> SGS Report, p.22 [127].

<sup>47</sup> SGS Report, [159]-[160], p.24; [168], p.26

<sup>48</sup> Transcript of the Hearing, 10 April 2018, p-305.

<sup>49</sup> SGS Report, [133], p.23.

67. Mr Clyne disagreed with the figure of 50% transferred expenditure on the basis that it seemed to him there was no empirical evidence to support it. Mr Clyne asserted that transferred expenditure must be calculated by taking into account what gaming expenditure would have been in the municipality without the additional EGMs, an analysis SGS had not done.<sup>50</sup> Explaining this further, Mr Clyne noted that it was incorrect to simply say that just as other venues keep growing, there is no transferred expenditure. By way of an example, Mr Clyne noted that if a gaming venue grows its expenditure by five per cent, but without the new premises it would have grown 10 per cent, then the additional five per cent has been transferred to the new premises.

*The Commission's view*

68. Mr Clyne noted that expenditure would be transferred from the City of Casey, reducing expenditure in that LGA by approximately \$1,303,016 and \$1,472,432 but that this would be offset by the increased expenditure in Cardinia to a large extent. For the purposes of the '*no net detriment*' test, the Commission has considered the impact on the community of the municipal district in which the Premises are located, and notes that the entirety of Mr Clyne's estimated primary trade area is located in the Shire of Cardinia, with only a small portion of the estimated secondary and tertiary trade area sitting in the City of Casey. The Commission therefore considers that the vast majority of the estimated new expenditure will come from the Shire of Cardinia, which accords with the Commission's view of the catchment area.
69. The Commission accepts Mr Clyne's upper bound estimate for the anticipated expenditure of the 80 EGMs in the first 12 months of operation post September 2022. However, the Commission's view is that it is appropriate in this Application to look beyond the first 12 months of expenditure that the 80 EGMs would be expected to generate post September 2022 given that this is an application for a new premises in a growing community where demand is expected to increase significantly over time, a view supported by Ms Peterson, Mr Szafraniec and Ms Rosen. Here, the Commission relies on Mr Clyne's upper bound estimate for the first 12 months of operation of \$5,995,870, rising by 10% to 15% in the second year, and rising by a smaller percentage in subsequent years. On this basis, the Commission considers that, consistent with Mr Szafraniec's estimate, expenditure does have the potential to approach \$8.883 million within five years of operation. Even at Mr Szafraniec's expenditure estimate, the Commission notes the Premises would still be ranked quite low in terms of expenditure of hotels 75 to 85 EGMs in outer-metropolitan regions.

<sup>50</sup> Transcript of the Hearing, 4 April 2018, p-106-7. Mr Szafraniec acknowledged he had not performed such an analysis: Transcript of the Hearing, 12 April 2018, p-361.

70. While the Commission broadly accepts Mr Clyne's view that transferred expenditure needs to be analysed on a counter-factual basis as to what would occur were the additional EGMs not operational, and needs to take account of significant potential growth in expenditure of other gaming venues up until September 2022, all experts in this matter acknowledged that there would be substantial population growth in the catchment area in the coming years and beyond 2022. In circumstances where the population is expected to grow significantly (particular of the primary catchment area in Officer Precinct), the Commission prefers the evidence of SGS that, while transferred expenditure is likely to be higher for the first year of operation of the Premises, the estimate of 90% of transferred expenditure overstates the likely rate and should decrease over time.
71. In conclusion, the Commission finds that:
- (a) it is likely the Premises in the first year of its operation post September 2022 will earn expenditure in the amount of Mr Clyne's upper bound prediction of \$5,995,870;
  - (b) in subsequent years, expenditure at the Premises will likely rise by 10% to 15% in the second year and lesser percentages in following years, meaning the expenditure for the Premises will likely approach \$8.883 million within five years of operation; and
  - (c) while transferred expenditure will be higher for the first year of operation of the Premises, it is not likely to be in the order of 90%, and is likely to be closer to 80% in the first year of operation and decrease to 70% to 50% in subsequent years.
72. The Commission has considered the higher level of estimated expenditure and lower transferred expenditure than what PVS estimated in its assessment of both social and economic benefits and disbenefits of this Application. In assessing the extent of the benefit of gaming expenditure not associated with problem gambling, the Commission has had regard to the evidence outlined in paragraphs 114 to 153 below with respect to the incidence of problem gambling. The Commission finds that the portion of new expenditure not attributable to problem gambling is an economic benefit. Various factors suggest that the extent of problem gambling at the Premises is likely to be low to moderate, including that the venue is a larger one, with a relatively high number of EGMs. Generally, and noting the caution expressed below at paragraph 150 in relation to current SEIFA indices, it is located in an area of lower relative socio-economic disadvantage (albeit with some vulnerability), and one that is anticipated to experience ongoing population growth.
73. Finally, the anticipated extent of the new expenditure at the Premises is expected to be low to moderate due to the determined transfer rate. As such, the Commission gives the benefit of gaming expenditure not associated with problem gambling marginal to low weight.

Expenditure on capital works

74. A potential key economic benefit associated with this Application is that arising from the expenditure on the proposed development of the Premises.
75. In terms of the Applicant's evidence, Ms Peterson noted that it was expected the development would cost \$17.4 million, on the basis of a breakdown of construction costings provided by the Applicant.<sup>51</sup> The Commission was also provided with a range of plans of the proposed development. However, Ms Peterson weighed this as negligible benefit as there was no certainty that the successful tenderer would be a locally based business or that its employees would live locally.
76. Similarly, Mr Szafraniec assessed this impact as a low benefit and Ms Rosen assessed this impact as not applicable due to the perceived lack of information as to how this would be a benefit to the community of the Shire of Cardinia. SGS's view was based on labour surplus (the difference between hourly wages and workers' cost of leisure) and the value add, assumed at 35% of the total project cost.<sup>52</sup> SGS also submitted that a high proportion of construction workers would reside outside of the Shire of Cardinia and construction would involve inputs from largely outside the LGA.
77. SGS discounted this benefit on the assumption that it was highly unlikely the site would remain undeveloped in the future, and so the extent of the benefit would only be to the extent that such expenditure is brought forward, as a similar development in terms of economic cost would take place.<sup>53</sup> While Ms Peterson accepted the proposition that the site would be developed, she noted that the task before the Commission was to assess the impact of the Application before it.
78. Mr Rice noted that the Applicant had not yet selected a tenderer for the project. Mr Rice suggested that, were the Application to be refused, the land might be developed in 10 to 15 years. Mr McDonald gave evidence that he expected the Applicant to favour local tradespeople, and, if there was a local tenderer, the Applicant would consider it and give weight to it.<sup>54</sup> Both expected the total spend on the Premises to be above \$30 million, factoring in the value of the land (about \$9 million, owned by Mr Rice's wife), the price to source EGM entitlements, fit out costs and the like.

<sup>51</sup> In the form of the document entitled 'Supply contracts' dated 16 October 2017.

<sup>52</sup> SGS Report, [84]-[85], p.14.

<sup>53</sup> Mr Szafraniec acknowledged he was not sure of the cost of alternative developments, such as a supermarket, medical centre or commercial premises in comparison to the proposed Premises: Transcript of the Hearing, 10 April 2018, p-316-8.

<sup>54</sup> Transcript of the Hearing, 10 April 2018, p-262.

79. Both Mr McDonald and Mr Rice gave evidence that the proposed development was dependent on the success of this Application. Mr McDonald in particular presented detailed projected profit and loss statements both with and without the 80 EGMs, and advised that 80 EGMs was a suitable number to make the Applicant's business viable.<sup>55</sup>

*The Commission's view*

80. The Commission accepts Mr Rice and Mr McDonald's evidence that the redevelopment would not occur without the approval of this Application. Further, the Commission is mindful of VCAT's decision in *Monash CC v L'Unico Pty Ltd*,<sup>56</sup> where it held (albeit in relation to an EGM increase application) that it is not appropriate under the relevant statutory framework to either engage in a 'project feasibility' or 'existing financial capacity' assessment, but rather (with two provisos<sup>57</sup>) that it is appropriate to simply take the proposal for what it is and then assess its likely social and economic impacts as per the '*no net detriment*' test. Here, the Commission considers that neither of those two provisos are enlivened, and it has a sufficient degree of confidence that the development of the Premises would not proceed if this Application were not to be successful.<sup>58</sup>
81. In relation to the Council's argument that the Commission should analyse this, and other benefits or disbenefits,<sup>59</sup> on the basis that development at the site will take place in the future, the Commission notes that its role in the '*no net detriment*' test is assessing an application before it. Albeit that it is highly likely the site will be developed in the future, due to the PSP, the site value of \$9 million and the likely population growth in the area, the Commission notes the Applicant's effective cross-examination of Mr Szafraniec, on the basis that it is rather unclear what form of development is permitted and would take place if the Application was refused. Therefore, while the Commission notes that if this Application is not granted, it is highly likely the site will be developed in the future, the Commission has had regard to the benefits and disbenefits said to arise from this Application when assessing the '*no net detriment*' test.

<sup>55</sup> Transcript of the Hearing, 10 April 2018, p-232. While Mr McDonald also spoke to a letter from NAB addressed to VCAT, which suggested NAB would not finance the project without EGMs, Mr McDonald accepted the proposition that the letter did not go as far as saying the venture would not go ahead without the EGMs: Transcript of the Hearing, 10 April 2018, p-270.

<sup>56</sup> [2013] VCAT 1545.

<sup>57</sup> The first proviso was that common sense suggests that there needs to be a reasonable degree of corroborating information, to at least provide comfort that the "estimated project value" of the proposed works is more than just an ambit or "back of the envelope" calculation. As such, less weight should be given to purported proposed works where there is a concern about the bona fides of the "project value" figure being relied upon. The second proviso was that it seemed appropriate to recognise that the proposed works may in practice be easier to achieve financially if the Application were approved.

<sup>58</sup> The Commission also notes the Applicant's commitment in its proposed conditions were the Application to be approved that the Hotel and Motel component would be operated at all times that any of the EGMs are in operation or any of them are installed as otherwise the approval will lapse

<sup>59</sup> Council also suggested the employment benefit related to the Application would be only similarly brought forward: Transcript of the Hearing, 16 April 2018, P-464.

82. The Commission regards the expenditure of capital works to be a benefit. Here, the Commission accepts that construction of the Premises will cost approximately \$17.4 million plus additional fit-out costs. In weighing the benefit, while \$17.4 million is a significant expenditure associated with the construction and fit-out, the Commission also considers that there is no great certainty that a large proportion of the cost will benefit the community of the Shire of Cardinia, due to the uncertainty as to whether the proposed tenderer and the workers on the development will be based in the Shire of Cardinia. As such, the Commission accords this benefit a marginal weight.
83. In making this assessment, the Commission notes it is important that the benefits associated with the development are not double counted, having regard to the social impact that may result from the proposed facilities and services at the Premises. This aspect has been considered separately, and is detailed below at paragraphs 166 to 169.

#### Employment creation

84. The economic benefit of employment creation arising from this Application can be described as both short term and longer term:
- (a) short term employment benefits that arise during the development of the Premises (related to but separate to the economic benefit associated with the expenditure on capital works); and
  - (b) longer term employment benefits arising from the introduction of EGMs and increased patronage of facilities at the Premises.
85. In relation to short term employment benefits, the extent of the works are described generally in paragraphs 74 to 83 above. As noted above, it is not clear to what extent this work will be undertaken by individuals who live in the relevant municipality.
86. Based on the evidence presented, the Commission concludes that it should not place any weight on this economic benefit. To the extent that it arises in relation to this Application, the Commission considers that the value of this benefit has been captured in the benefit associated with the expenditure on capital works considered in paragraphs 74 to 83 above.
87. Separate from the short term economic benefits associated with the capital works is the potential benefit associated with longer term employment arising from the Application.
88. In relation to this benefit, Ms Peterson gave evidence that 40 equivalent full-time employee (EFT) positions would be created, which includes 12 EFT positions in the gaming room.



Mr McDonald noted that the number of 12 EFT positions had been arrived at as the Applicant would likely require three shifts per day of three staff per shift, and occasionally four staff on peak shifts. Ms Peterson was of the view that a high proportion of the 40 EFT positions would be sourced locally, basing her view on Ratio's work in previous applications before the Commission on Club Officer and Club Cardinia, where surveys showed that employees mainly lived within the Shire of Cardinia. Further, responding to a question as to whether those employees would be new employees given the transferred expenditure, Ms Peterson was of the view that the vast majority would be new employment, due to the anticipated population growth of the area. Mr McDonald also noted his preference of employing local staff.

89. For Council, both Mr Szafraniec and Ms Rosen were of the view that the effect of employment of 40 EFT employees was likely to be negligible, with both referring to the 2010 Productivity Commission report, which noted the additional jobs in the gaming industry might not be considered net additional jobs, as most employees would likely have been employed in other industries had the gaming industry been smaller and such employees have highly valued skills where there are other employment options.<sup>60</sup> In this regard, Mr Szafraniec referred to 2016 Census data for the Shire of Cardinia, where around 62.5% of locally-based food and hospitality workers lived within the LGA.<sup>61</sup> Ms Rosen also thought there might be a transferred employment effect from other gaming venues.<sup>62</sup>
90. The Commission is of the view that granting the Application will generate employment in the Hotel and Motel, and this is a positive benefit. The Commission accepts the evidence given on behalf of the Applicant that if the Application is granted, this will result in the creation of the equivalent of 40 EFT positions at the Premises, which include 12 EFT positions in respect of its gambling operations (both gaming and TAB). The Commission also accepts Ms Peterson's view that the majority of the employees will be sourced from the municipality and, due to the population growth in the municipality, will be net new additional employees. However, the Commission considers that some employment will likely be transferred from within the municipality (i.e. from competitive gaming and hospitality venues).
91. Overall, the Commission considers the additional employment arising from the Application as positive but uncertain, taking in account the anticipated numbers of employees, the potential for employees to be sourced from outside the LGA, and the potential for some transfer of local employment. As such, the Commission gives this benefit marginal to low weight.

<sup>60</sup> Productivity Commission, Gambling – Productivity Commission Inquiry Report, Volume 1, No. 50, 26 February 2010, Overview, p.10; 6. The benefits of gambling and some implications, 6.1.

<sup>61</sup> SGS Report, [55], p.10.

Complementary expenditure

92. Complementary expenditure is the increased economic activity in the LGA, apart from gaming expenditure, that may arise if the Application is granted. However, the extent of this benefit will likely depend upon a range of factors, including the extent to which the expenditure is a consequence of new spending, for example, as a result of additional people coming to the municipal district as tourists or for business as compared to transferred complementary expenditure from other venues within the municipality, and the extent to which that complementary expenditure results in additional spending on local goods and services.
93. For the Applicant, Ms Peterson noted that her estimate for complementary expenditure annually post 2022 was \$4.5 million.<sup>63</sup> Ms Peterson also noted that an economic benefit generated by the Application would be the economic stimulus through the provision of the 52-bed Motel, which would increase the offer and demand for functions and conferences. This would consequently encourage additional business into the municipality, as the Motel would enable people to come into the municipal district and stay in the region for longer and thereby stimulate the local economy.
94. In his written statement, Mr McDonald noted he expected on-going complementary expenditure in the order of \$200,000 to \$250,000 per annum.<sup>64</sup> However, this was based on the economic definition of 'complementary expenditure', on what venue operators spend on items given out for free such as coffee, and rather than further expenditure resulting from the Premises (apart from gaming). The Commission has accordingly not had any regard to this estimate.
95. During his evidence at the Hearing, Mr McDonald gave further detail as to complementary expenditure, presenting projected profit and loss statements for the Premises,<sup>65</sup> which were indicative and his best estimates. The statements estimated the total sales without EGMs at \$5,540,672, which include approximately \$3 million in accommodation from the Motel, \$1.47 million in sales from the bars and \$700,000 in food sales. The statements also detailed the projected total operating expenses at approximately \$262,000, including approximately

<sup>62</sup> Ms Rosen acknowledged that in forming this view, she had not looked for research that dealt with jobs in the gaming industry in growth suburbs: Transcript of the Hearing, 12 April 2018, p-401.

<sup>63</sup> While Ms Peterson provided no details in the Ratio report or at the Hearing as to how this figure had been calculated, she noted the figure had been the subject of quite a lot of work with emails back and forth between the Applicant and Ratio and was satisfied the figure was broadly correct: Transcript of the Hearing, 4 April 2018, p-84. In his evidence, Mr McDonald thought he had provided Ms Peterson with an earlier version of his projected profit and loss statements: Transcript of the Hearing, 10 April 2018, p-269.

<sup>64</sup> Mr McDonald's statement, [44], p.8;

<sup>65</sup> Mr McDonald had prepared these projections on the basis of his previous employment as a chartered accountant and drawing from figures relating to the Prince of Wales Hotel (Richmond) and the Riversdale Hotel. During cross-examination, it became apparent that Mr McDonald had prepared the projected profit and loss statements earlier than their print date of 3

\$61,000 in cleaning costs and approximately \$87,000 in repairs and maintenance. Mr McDonald estimated the cost of sales at approximately \$1.22 million, which includes approximately \$400,000 in food costs and \$620,000 in beverage costs. Although Mr McDonald estimated that approximately 90% of the beverage costs would be from big, international beverage suppliers, he thought that sourcing food locally should not be too difficult and so estimated 80% to 90% could be sourced locally.<sup>66</sup>

96. Mr McDonald notes his preference for buying local in terms of food for the venues he operates, to give back to the local community. Indeed, were the Application to be successful, the Applicant proposed a condition as suggested by Ms Rosen that the Applicant use its best endeavours of ensuring that investment and proposed supply contracts, amongst other things, be to the benefit of the community of the Shire of Cardinia.
97. For the Council, Mr Szafraniec was of the view that complementary expenditure is a benefit where associated with expenditure that would have otherwise have occurred outside the LGA, in terms of attracting visitors from outside the region or capturing more local expenditure. Mr Szafraniec was of the view that granting the Application was likely to lead to increased expenditure within the catchment by local residents and was also likely to induce new expenditure from outside the Shire of Cardinia.<sup>67</sup> The Commission accepts this view. Ms Rosen also noted that the potential economic stimulus associated with complementary expenditure might be offset by diversion of trade from other businesses, which may also result in job losses.<sup>68</sup>
98. While the Commission does not accept the figure of \$4.5 million will be complementary expenditure annually post 2022, due to the uncertainty as to increase in supply contracts and anticipated food and beverage sales resulting from the grant of the Application, the Commission accepts that there will be substantial complementary expenditure, driven in large part by the operation of the Motel. However, part of this complementary expenditure might be transferred from other venues in the Shire of Cardinia. Also, there is again uncertainty as to whether increased expenditure will be retained in the municipality in which the Premises are located. In particular, while noting Mr McDonald's preference to source food from local suppliers, it is clear that beverage suppliers will largely not be from the local region. In the Commission's view, due largely to the Motel arm of the Premises, there will be complementary expenditure in other parts of the Shire of Cardinia, which is a positive economic benefit. However, there is a level of

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April 2018, and perhaps in February 2018 or late in 2017, although these were not provided to Council or the Commission until Mr McDonald's evidence during the Hearing: Transcript of the Hearing, 10 April 2018, p-265-6.

<sup>66</sup> Transcript of the Hearing, 10 April 2018, p-295.

<sup>67</sup> SGS Report, [102]-[103], p.17.

uncertainty as to the extent to which this would generate increased economic activity in the municipality.

99. For these reasons, the Commission accords the complementary expenditure associated with the Application marginal to low weight and is careful not to place any weight on this impact in relation to the ‘*no net detriment*’ test that has already been accorded to the below consideration of the impact associated with supply contracts.

### Supply contracts

100. The Applicant considers that the approval of the Application will result in contracts for the maintenance of the Hotel and Motel, all of which are separate to the anticipated gaming revenue to be generated through operation of EGMs. Any supply contracts for food and beverage sales have already been considered separately under complementary expenditure.
101. In the Application, the Applicant provided details of the building maintenance contracts it expects the Applicant will have to pay annually of approximately \$919,000, where the largest item is cleaning costs for the Hotel and Motel (approximately \$600,000). However, it is unclear whether such tasks will be performed by the Applicant’s employees, as Ms Peterson estimated 2 FTEs will be employed for cleaning and maintenance.<sup>69</sup>
102. Similarly to complementary expenditure, the Council submitted that the supply contracts may not be locally sourced, with no information as to what proportion of the supply contracts would accrue to the Shire of Cardinia,<sup>70</sup> and it was likely that an alternative development would go in its place and so supply contracts would likely still result from activities at the site, although the community benefit may be delayed.
103. The Commission accepts Mr McDonald’s evidence that there will be supply contracts but is not of the view that, given the Applicant proposes to separately employ cleaners, such costs will amount to \$919,000 per annum. Also, again, there is some level of uncertainty as to the extent of such supply contracts being retained in the municipality in which the Premises are located. With regard to Council’s position on supply contracts in essence being brought forward by the Application, the Commission refers to its comments at paragraph 81 above, and again notes that its function is to assess the Application before it.
104. As such, the Commission considers that the increase in supply contracts at the Premises will result in a minor economic benefit to the Shire of Cardinia, and gives it marginal weight.

<sup>68</sup> Symplan Report, [158], p.39.

<sup>69</sup> Ratio Report, [3.1.9], p.10-11.

Community contributions

105. In determining the net economic and social impact of applications of this nature, both the Commission<sup>71</sup> and VCAT<sup>72</sup> have regularly treated community contributions as a positive benefit. However, for the proposed contribution of \$120,000 annually (indexed to the Consumer Price Index (**CPI**)) as long as EGMs are in operation at the Premises is 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. In assessing the weight to be placed on such a benefit, it is important that the Commission does not conflate this benefit with the social benefit associated with such contributions.
106. Having regard to the evidence and submissions made with respect to the community contributions that are set out in paragraphs 173 to 176 below, such contributions can also have a positive economic impact. The Commission considers the community contributions (distributed in accordance with conditions of any approval of this Application) and their impact on local community organisations in the Shire of Cardinia to be an economic benefit which is given marginal weight.

Increased gaming competition in the Shire of Cardinia

107. Increasing competition in gaming in the Shire of Cardinia is a factor in light of the statutory purposes of Chapter 3 of the Act<sup>73</sup> and the consumer benefits that derive from competition.
108. Ms Peterson gave evidence of the value of competition, as other venues would improve their offer to compete, both in terms of hospitality and gaming. Ms Peterson also noted that the benefit of increased competition would be felt particularly in the area as, although there are already five gaming venues in the Shire of Cardinia, one operator owns two of the venues.
109. The Commission also notes the evidence of Mr Clyne and Mr Szafraniec and the Commissions view in relation to anticipated transferred expenditure at paragraphs 62 to 71 above, an outcome of increased competition between venues for gaming expenditure.
110. On the basis of an estimated adult population in the Shire of Cardinia of 71,966 for 2016, the Commission considers that this Application would (if approved):
- (a) increase the number of approved venues within the municipality by one;

<sup>70</sup> Symplan Report, [40], p.10.

<sup>71</sup> See, for example, *Richmond Football Club Ltd at Wantirna Club premises* [2015] VCGLR 31 (24 July 2015).

<sup>72</sup> See, for example, *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

<sup>73</sup> The Act, s 3.1.1(2).

- (b) increase the overall number of EGMs within the municipality by 80 from 325 to 405;
- (c) increase the EGM density of the municipality in which the Premises are situated from 4.5 EGMs per 1,000 people to 5.6 EGMs per 1,000 people (compared with the metropolitan average of 5.2 EGMs per 1,000 people and State average of 5.5 EGMs per 1,000 people).

111. Consequently, the Commission finds that granting approval of the Application will increase gaming competition in the Shire of Cardinia by providing an additional venue at which patrons may choose to play EGMs. Having regard to the number of EGMs intended to operate at the Premises, the current number of EGMs and the number and location of other gaming venues in the Shire of Cardinia (and more particularly in the catchment area of the Premises), the Commission considers the impact of increased competition to be an economic benefit to which it gives marginal to low weight.

#### Increased State Government revenue

112. Ms Peterson did not record as a separate factor the increase in State Government revenue from the taxation generated by expenditure on the 80 EGMs. However, the Applicant in its closing submissions noted that benefits from the approval of the Application include the taxation benefit derived from gaming in Victoria.<sup>74</sup> The Council, in Ms Rosen's report, noted this factor is considered to be an economic benefit but cited research that the cost of EGM-related problem gambling far exceeding revenue from taxation and fees.<sup>75</sup>
113. Any increase in government revenue will very likely be split across all Victorian municipalities. This is amplified by the lack of evidence presented as part of this Application as to the specific impact on the Shire of Cardinia. Apart from also agreeing with the Senior Members in VCAT in *Commercial Hotel* that such Government revenue is the primary basis upon which the community of the municipality derives benefit from gaming, the Commission places no weight on this impact.<sup>76</sup>

<sup>74</sup> The Applicant's Closing Submissions, [12], p.4, citing *ALH Group Property Holdings Pty Ltd v Whittlesea CC (Corrected)* [2017] VCAT 2164 (*'Commercial Hotel'*), [108].

<sup>75</sup> Symplan Report, [6.2.1], p.38, citing Minshull, L; Browne, B; Grudnoff, M and Richardson, D (2017) *Gambling on the Future: Do poker machines represent a net gain or loss to the Tasmanian economy* The Australia Institute.

<sup>76</sup> The Commission notes the reference to State Government revenue was made in *Commercial Hotel* in the context of considering the effect of community contributions, where the Senior Members set out that the primary basis on which the community derives financial benefit from gaming is through the State Government's taxation system, and that the impact was not considered as a separate factor: See *Commercial Hotel* [2017] VCAT 2164, [189].

*Gambling expenditure associated with problem gambling*

114. To the extent that a portion of new expenditure is attributable to problem gambling, this represents an economic disbenefit.<sup>77</sup> In assessing the extent of this disbenefit, the Commission recognises that it does not include transferred expenditure because such expenditure cannot exacerbate problem gambling.<sup>78</sup> Also in assessing this impact (and other impacts involving problem gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gambling 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.
115. For example, the VRGF study, cited by both Ms Rosen in evidence and Enliven in its submission, involved calculating a burden of gambling-related harm in comparison with other common health conditions by reference to a taxonomy of harms and Victorian prevalence statistics for each of the problem gambling severity index (**PGSI**) risk categories. The report concluded that:
- (a) the overall burden of harm experienced by Victorians equates to approximately two-thirds the harm caused by major depressive disorders and alcohol misuse and dependency;
  - (b) the burden of harm is primarily due to damage to relationships, emotional/psychological distress, health and financial impacts; and
  - (c) a majority of the harm from gambling is attributable to ‘low-risk’ gamblers (50.2%), as compared with ‘moderate-risk’ gamblers (34.5%) and ‘problem gamblers’ (15.2%).
116. The Commission acknowledges these studies and notes that, although the burden of harm approach has been used extensively to inform health policy, its application in the gambling context is relatively new. The Commission also notes the functional definition of gambling-related harm used as part of the study is broad and may, to some extent, be inconsistent with the accepted legitimacy of EGM gambling as a lawful recreational activity and the objectives of the Act (set out in paragraphs 4 to 6 above). Despite this and in any event, the Commission

<sup>77</sup> The Commission recognises that on review, the key likely disbenefit of ‘problem gambling’ has for convenience been treated under the heading of ‘social impacts’ in various instances: see *Mount Dandenong Tourist Hotel Pty Ltd v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted: see, for example: *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [178] and following per Dwyer DP. For completeness the Commission considers both the economic and social impacts of problem gambling in its assessment of this Application.

<sup>78</sup> See *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [113] per Code PM and Nelthorpe M; *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J.

accepts that harms associated with the incidence of problem gambling are wide-ranging and attributable to all PGSI categories of gamblers ('low-risk', 'moderate-risk' and 'problem gamblers') and across the community more broadly.

117. Also in assessing the extent of the economic disbenefit of gambling expenditure associated with problem gambling, the Commission has had regard to the expenditure evidence set out in paragraphs 58 to 72 above and its views on the anticipated expenditure and transferred expenditure, summarised at paragraph 71 above.

*The vulnerability of the Shire of Cardinia and the catchment area*

118. The extent to which it can be considered that new expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with this Application, will be influenced by the socio-economic status and vulnerability of the community in the area surrounding the Premises. This is because communities characterised by socio-economic disadvantage are regarded as more vulnerable to problem gambling and the negative impacts of gambling.
119. In the Ratio Report and in her evidence at the Hearing, Ms Peterson notes the socio-economic characteristics of the primary and secondary catchment area and the LGA include that:
- (a) the 2011 SEIFA<sup>79</sup> Index of Relative Socio-economic Disadvantage (**IRSD**) for the Shire of Cardinia sits significantly above the median for all Victorian LGAs at 1024 in the 8<sup>th</sup> decile with a percentile of 75%. The Officer Precinct (predominately the primary catchment area for the Premises) has a SEIFA score above the median SEIFA score for Victorian suburbs, and sits in the 79<sup>th</sup> percentile. The Precincts in the secondary catchment area of Cardinia Road and Beaconsfield also have SEIFA indices about the Victorian median and are in the 74<sup>th</sup> and 87<sup>th</sup> percentiles. The only exception to this trend of above the Victorian median in the secondary catchment is the Pakenham Precinct, the 2011 SEIFA IRSD score of which was 968, placing it in the 31<sup>st</sup> percentile;
  - (b) the 2016 SEIFA results, looking at the suburb level where data was available,<sup>80</sup> showed Officer unchanged in 86<sup>th</sup> percentile and in the 9<sup>th</sup> decile, despite an increase of around 4000 people in the period between 2011 and 2016. However, Pakenham had dropped 5 points from the 35<sup>th</sup> percentile in 2011 to the 30<sup>th</sup> in 2016, placing it in the third decile.

<sup>79</sup> Socio-Economic Indexes for Areas (**SEIFA**) is a product developed by the ABS that ranks areas in Australia according to relative socio-economic advantage and disadvantage. It consists of four different indexes, including the Index of Relative Socio-economic Disadvantage.

<sup>80</sup> The data for precincts in the Cardinia Urban Growth Area Framework Plan which formed the basis of the catchment area had not yet been updated at the particular geographic area level.





Overall, Ms Peterson's view that changes in percentile rankings did not represent any significant change in the socio-economic profile or level of disadvantage in the catchment area. Ms Peterson said this was fairly consistent with venues located in growth precincts such as South Morang, Berwick and Werribee, where it takes a number of years for there to be substantial change,<sup>81</sup>

- (c) based on an analysis of parameters of social disadvantage and the profile of problem gamblers set out in the 2009 Department of Justice Report<sup>82</sup> and based on the Victorian Responsible Gambling Foundation (VRGF)'s 2014 longitudinal study,<sup>83</sup> there is a mixed socio-economic profile in both the primary and secondary catchment both in terms of both general indicators of social and economic status and specific indicators with a higher representation amongst problem gamblers. In relation to indicators with lower representations amongst problem gamblers, the Officer Precinct (and other precincts in the secondary catchment) experience under representation in four out of the six criteria and so could be considered to be at risk of problem gambling, with:
- (i) the proportion of professionals well below the metropolitan average,
  - (ii) personal income less than \$31,199,
  - (iii) household income under \$31,199, and
  - (iv) persons migrated to Australia in the past 5 years,
- all below the metropolitan average;
- (d) balanced against these factors, the level of expenditure on gaming within the Shire of Cardinia, which sits at between \$130 to \$150 lower than the State average, tending to indicate that problem gambling was not a significant issue in the LGA, despite good access to EGMs within the growth corridor;
- (e) the VRGF recorded a prevalence in the Southern Metropolitan region (within which the Shire of Cardinia sits) of 1.08% of surveyed adults being problem gamblers, higher than the State average of 0.8%.<sup>84</sup> However, noting that the Southern Metropolitan region includes capped regions such as the City of Casey and the City of Greater Dandenong, and that expenditure per adult sits well below the metropolitan average in the Shire of

<sup>81</sup> Transcript of the Hearing, p-42, ln 36-39.

<sup>82</sup> Department of Justice, 2009, 'Problem Gambling from a Public Health Perspective – Profile of Problem Gamblers'

<sup>83</sup> Victorian Responsible Gambling Foundation, July 2014, 'The Victorian Gambling Study: A Longitudinal Study of Gambling and Health in Victoria 2008-2012', pp. 18 to 19.

Cardinia, there was a degree of comfort that the prevalence in the Southern Metropolitan region was caused by other municipalities within that group;

- (f) looking at housing stress, the catchment showed a mix of higher and lower levels of housing stress when compared to metropolitan and the LGA average;
- (g) in relation to unemployment levels, the Beaconsfield-Officer SA2 had an unemployment rate of 4.6% in the June 2017 quarter, lower than State and metropolitan averages for the same period. The small increase in homelessness in the Shire of Cardinia was not significant; and
- (h) while the Productivity Commission Report estimated in the order of 40% of expenditure results from problem gambling, seeking to attribute 40% of increased gaming expenditure from problem gambling is a rudimentary approach, not accurate or useful for determining the impact of granting the Application. However, it is reasonable to assume that there is a risk of an increase in problem gambling as a consequence of introducing a new venue.<sup>85</sup>

120. Both Ms Rosen and Mr Szafraniec gave evidence for the Council in relation to the economic impact of problem gambling.

121. In the SGS Report and in his evidence, Mr Szafraniec noted that:

- (a) while the SEIFA index of socio-economic advantage and disadvantage (**IRSAD**) is relatively high for the Beaconsfield-Officer SA2, the findings should be treated with caution, as the demographic composition is likely to be transformed by households and individuals moving to the region over the coming decades, and so likely to tend towards other outer-metropolitan regions, such as Pakenham to the east;<sup>86</sup>
- (b) similarly to Ms Rosen, a number of other factors contribute to the community's disadvantage, such as the high number of blue collar workers. In addition, population growth would see a lot of new home buyers, potentially contributing to housing stress; and
- (c) with more than 40% of expenditure associated with problem gambling, the Premises would almost certainly lead to an increased number of problem gamblers in the Cardinia community, and hence the economic impact of the new expenditure associated with newly-created problem gamblers is expected to be significant.<sup>87</sup>

<sup>84</sup> Ratio Report, p.37 [10.2.4], citing Hare, S. (2015) Study of Gambling and Health in Victoria, Victoria, Australia: Victorian Responsible Gambling Foundation and Victorian Department of Justice and Regulation.

<sup>85</sup> Ratio Report, p.37 [10.1.3]- [10.1.5].

<sup>86</sup> SGS Report, [51] p.10.

<sup>87</sup> SGS Report, p.17, [104]-[106].

122. The Commission notes that the Applicant questioned Mr Szafraniec's qualitative analysis, given his lack of social planning expertise, and his understanding and use of a table of weightings applied to each impact. Mr Szafraniec was assisted in preparing the SGS Report by Mr James Atkinson, who has social planning qualifications, and Mr Szafraniec advised he had undertaken a detailed analysis of SEIFA indexes and other indicia relating to the catchment area, using his economics background and experience in demographic forecasting.
123. In the Symplan Report and in her evidence, Ms Rosen noted that:
- (a) the Shire of Cardinia would not be considered to be experiencing high levels of socio-economic disadvantage,<sup>88</sup> although there are relatively high rates of socio-economic disadvantage in the suburbs represented in the primary and secondary catchment area, with a map of the 2011 SEIFA IRSD showing such SA1s tending towards Pakenham in the east;<sup>89</sup>
  - (b) the Shire of Cardinia is vulnerable to gambling-related harms as it has relatively high rates of certain indicators, including unemployment, financial vulnerability due to housing stress and dependency on pensions, and people engaging in lifestyle behaviours such as smoking and risky alcohol consumption.<sup>90</sup> While the LGA did not have a high rate of homelessness, it experienced the second highest increase between 2011 and 2016;<sup>91</sup>
  - (c) the high rates of family violence in the Shire of Cardinia and the adjoining municipality of Casey, ranked third and fourth respectively in the Eastern Metropolitan region, and the poor access to social and health facilities makes the Shire of Cardinia more vulnerable to gambling related harms;<sup>92</sup>
  - (d) EGM expenditure in the Shire of Cardinia increased by 30 per cent between 2010/2011 and 2016/2017, likely to be associated with population growth, while total EGM expenditure and expenditure per adult in the Shire of Cardinia are still below metropolitan and State averages. While EGM density for the LGA is relatively low, the density per 1,000 adults in the primary and secondary catchment area is significantly higher due to the location of four of the five venues in the Shire of Cardinia, namely the Cardinia Club, Castello's Cardinia Hotel, Club Officer and the Pakenham Hotel;<sup>93</sup> and
  - (e) granting the Application has the potential to cause and exacerbate gambling-related harms in the Premises' catchment area, particularly Pakenham and Beaconsfield, and in

<sup>88</sup> Symplan Report, p.21, [81].

<sup>89</sup> Symplan Report, [85] and Figure 16, pp.22-23.

<sup>90</sup> Ibid.

<sup>91</sup> Transcript of the Hearing, 12 April 2018, p-386. The Applicant criticised Ms Rosen for not taking factors from the resources Ms Peterson had used.

<sup>92</sup> Symplan Report, p.21, [83].

PVS's trade area, particularly suburbs in the adjoining municipality of Casey, particularly Hallam and Hampton Park.<sup>94</sup>

*Main areas of disagreement between the experts*

124. The experts were largely in agreement as to:

- (a) the SEIFA indices for the catchment area of the Premises as generally being positive, indicative of a lack of disadvantage, although with pockets of increased disadvantage;
- (b) the mixed socio-economic profile in both the primary and secondary catchment in terms of general indicators of social and economic status and specific indicators with a higher representation amongst problem gamblers; and
- (c) the fact that the Shire of Cardinia and the catchment area could be considered at risk of problem gambling due to under-representation of specific factors, as set out in paragraph 119(c) above.

125. However, the Applicant's expert and the Council's experts disagreed as to whether the Productivity Commission's estimate that 40% of expenditure as attributed to problem gambling could be attributed to this Application.

126. The experts also disagreed to what extent, given the large population influx expected, SEIFA indices would remain at current levels. Ms Peterson, while noting there needed to be some degree of caution, broadly gave the view that 'like attracts like',<sup>95</sup> as housing prices were likely driving wealthier people into newer areas, with more disadvantaged people continuing to move to Pakenham. Those new settlers to the region would bring with them similar SEIFA characteristics to those already in the area. As well as the examples listed in paragraph 119(b) above, Ms Peterson noted that the gentrification in terms of the rise of the SEIFA IRSD for instance in Brunswick took three census periods (or 10 years), as it takes time for people to move and buy homes. Ms Peterson warned against comparing the 2011 and 2016 SEIFA indices, as the scores are a median score averaged around 1000 for Statistical Area 1 (SA1) geographic areas for the survey period and so are a relative and not absolute measure and the weightings attached to criteria have changed. That said, Ms Peterson noted that it was useful to compare ranking in the form of percentile or decile to measure disadvantage in a relative sense.

127. In contrast, Mr Szafraniec cautioned against drawing conclusions from current 2016 SEIFA statistics, given that the Premises will not be operational until September 2022. He was not of the view that current demographic statistics were not going to truly reflect the future population.

<sup>93</sup> Symplan Report, [181], p.43.

<sup>94</sup> Symplan Report, [189]-[190], p.45.

<sup>95</sup> Transcript of the Hearing, 4 April 2018, p-81, ln 23.

Mr Szafraniec gave evidence that the difference between 2011 and 2016 SEIFA statistics demonstrated decreases in SEIFA in some parts of the catchment area.<sup>96</sup> While agreeing that SEIFA indices from different years should only be compared between percentiles and decile,<sup>97</sup> Mr Szafraniec disagreed with Ms Peterson's view that the catchment area was largely unchanged. He noted that it may be correct for an established area where population was incrementally changing, but a vastly different urban structure was present for the catchment area, with large residential estate and affordable housing likely to increase housing density, resulting in potential demographic changes.<sup>98</sup> Mr Szafraniec cited examples of metropolitan growth areas where SEIFA indices had been negatively affected by population increases, including Tarneit and Wyndham Vale.<sup>99</sup> Mr Szafraniec stated that looking at individual pockets in the catchment area that had transformed from rural to developed gave a better sense of the trajectory of the area and he did not believe this demonstrated an unchanged trend.<sup>100</sup>

128. Ms Rosen similarly urged caution when looking at the SEIFA indices. Ms Rosen had noted reductions between 2011 and 2016 scores and did not think it could be assumed that the community would become less disadvantaged as the population grew.<sup>101</sup> While not giving much weight to a reduction in Officer, and noting that the increase in disadvantage in Officer was off a higher base, she remained concerned about the decline in Pakenham from a potentially vulnerable base.<sup>102</sup>

#### *The convenience of the Premises*

129. The experts, while agreeing that the Premises would be passed by a large number of members of the community, also disagreed as to the convenience of the Premises in terms of its effect on the impact of problem gambling. Ms Peterson was of the view that the Premises would serve a local role rather than as a destination venue, given the significant urban development expected in the near future.<sup>103</sup> Ms Peterson noted the Premises would be convenient, largely due to its location on a busy intersection, but, looking at the PSP, that there was a good deal of physical separation from the Premises to core retail uses. Further, Ms Peterson's view was that the Application 'ticked every box' of the Council's planning policy, which is broadly in line with contemporary thinking about the reduction of risks of problem and convenience gambling. Ms Peterson accepted that the Premises would be a prominent structure with a high degree of

<sup>96</sup> Transcript of the Hearing, 10 April 2018, p-304.

<sup>97</sup> Transcript of the Hearing, 12 April 2018, p-368.

<sup>98</sup> Transcript of the Hearing, 10 April 2018, p-347; 364.

<sup>99</sup> Transcript of the Hearing, 10 April 2018, p-365.

<sup>100</sup> Transcript of the Hearing, 12 April 2018, p-369.

<sup>101</sup> Symplan Addendum Report, p.16 [4.1]; Transcript of the Hearing, 12 April 2018, p-425.

<sup>102</sup> Transcript of the Hearing, 12 April 2018, p-424.

<sup>103</sup> Ratio Report, p.14, 4.1.1.

visibility to significant numbers of drivers, although again noted that every site in that Gateway precinct has Princes Highway frontage.

130. Ms Rosen believed the location of the Premises had the potential to contribute to convenience gaming, as the Premises' location in the PSP was directly in the path of people moving through the Officer town centre and strip shopping.
131. The Commission is of the view that the Premises will be more of a convenience venue than a destination venue and hence more readily accessible by problem gamblers. The Commission does however accept the Applicant's point made in closing submissions that in a municipality which is largely car based, almost any gaming venue could be considered convenient.

*Proposed Responsible Service of Gambling measures*

132. In considering the extent to which any new expenditure may give rise to problem gambling, the manner in which gaming is to be conducted at the Premises is also a relevant factor.
133. Ms Peterson noted that the potential for some increase in problem gambling behaviour, and therefore expenditure, was mitigated to some degree by factors including:
- (a) the local community's access to EGMs at Club Officer, located 2.5 km to the south-east;
  - (b) protective factors at the venue, such as the range of other entertainment options offered by the sports bar, bistro, lounge area and function facilities<sup>104</sup> and the design of the venue, including no access to the gaming room from the carpark, meaning patrons have to make a deliberate decision to enter the gaming room, and the modest size of the gaming room compared to the internal licensed area;
  - (c) the closure of the gaming room at 2 am, in line with the Productivity Commission's recommendations;<sup>105</sup> and
  - (d) the engagement of Mr Barrett, a responsible gambling consultant, who has established a best practice in-house gaming policy and helped designed the Hotel in accordance with best practice principles.<sup>106</sup>
134. Ms Peterson therefore concluded that granting the Application was unlikely to increase the risk of problem gambling to the local community more than any other reasonably designed and

<sup>104</sup> Ms Peterson also suggested that one would expect a broad range of entertainment uses in the Officer Town Centre, as the PSP envisages cinemas, restaurants and other entertainment offerings, and so, by 2020, there will likely be a range of non-gaming related activities: Transcript of the Hearing, p-41-2.

<sup>105</sup> Ms Peterson also noted that the gaming room was intended to open at 8 am and not 7 am as stated in the Ratio Report, p.11, [3.2.2]: Transcript of the Hearing, 4 April 2018, p-37.

<sup>106</sup> Ratio Report, p.40.

located gaming venue.<sup>107</sup> Ms Peterson weighed the risk of harms associated with problem gambling, which is higher than for a ‘top up’ application, as low to moderate. Ms Peterson also noted the likelihood that the majority of behaviour would be transferred from other venues but, through best practice occurring at the Premises, there may be some positive intervention of transferred problem gambling behaviour. However, as this was not certain enough, Ms Peterson had not given this aspect any weighting, and said that to do so, would require a comprehensive analysis of those other venues, which she had not done.

135. The Applicant engaged Leigh Barrett & Associates to conduct regulatory compliance audits of the Prince of Wales Hotel and the Riversdale Hotel; develop a responsible gambling policies and procedure manual for use in these hotels and the new Premises, if approved (**Policies and Procedures Manual**); to make recommendations as to the proposed layout of the Hotel; and to comment on the Premises’ potential to increase the incidence of problem gambling in the Shire of Cardinia.
136. Firstly, the audits Mr Barrett conducted found both the Riversdale Hotel and the Prince of Wales Hotel were ‘quite compliant’<sup>108</sup> and the licensee displayed a good understanding of compliance obligations.
137. Secondly, the Policies and Procedures Manual was quite detailed, and emphasised staff interaction with patrons to attempt to curb problem gambling practices. ‘Interaction’ to Mr Barrett seemed to equate to staff initiating a discussion or communication with patrons, to attempt to ‘break the cycle’ or get patrons ‘out of the zone’.<sup>109</sup> Mr Barrett emphasised several protective factors reflected in the Policies and Procedures Manual, including the lack of a loyalty scheme for EGM play and a recommendation from the Productivity Commission in the form of a minimum six-hour shutdown.<sup>110</sup>
138. Mr Barrett prepared a ‘strengthened’ version of the Policies and Procedures Manual after he had given evidence, which contained details such as:
- (a) staff interacting with every customer in the gaming room at least once per half-hour;
  - (b) a minimum of three staff in the gaming room at all times when operating;

<sup>107</sup> Ratio Report, p.40, [10.3.7].

<sup>108</sup> Statement of Mr Barrett, annexures 2 and 3.

<sup>109</sup> Transcript of Hearing, 4 April 2018, p-164.

<sup>110</sup> Apart from when 24-hour gaming is permitted on the premises, a condition of every approval of premises is that there must be a continuous four hour break from gaming after every 20 hours of gaming: The Act, s 3.3.9(1)(a).



(c) increasing to four staff at peak times when required (this was estimated by Mr McDonald to be likely be between 4 pm and 9 pm); and

(d) interactions would be recorded for audit purposes on an excel spreadsheet.

139. Thirdly, Mr Barrett made recommendations as to the layout of the gaming room, the visibility into it (with all glass surrounding the gaming room to be frosted and screens preventing visibility from the sports lounge and foyer) and the location of a community brochure stand to also contain brochures related to services for problem gambling.

140. Further, Ms Peterson and Ms Rosen noted that the number of EGMs had the potential to increase problem gambling behaviours, as research has found that problem gamblers prefer gaming venues with a larger number of EGMs.<sup>111</sup> Mr Barrett characterised the Premises with 80 EGMs as towards the scale of larger venues, although was of the view that the research findings were based on such gamblers seeking anonymity<sup>112</sup> which would be minimised by the lines of sight, number of staff and staff interaction with patrons in the gaming room.

141. Fourthly, Mr Barrett detailed protective factors influencing whether a venue would be likely to attract and therefore increase problem gambling in the LGA. Those factors included staff numbers, the level of interaction between staff and customers, comprehensive staff training and procedures, the size, layout and number of EGMs in the gaming room, the hours of operation of the gaming room and the availability and promotion of the Premises' broad entertainment offer. Mr Barrett provided details of research studies as to the effectiveness of certain protective factors. Based on these factors, Mr Barrett concluded that approval of the Application would also have a negligible effect on problem gambling incidence in the Shire of Cardinia.<sup>113</sup> Mr Barrett also noted that he agreed with the conclusion of the Ratio Report that, were the Application to be granted, the impact on the level of problem gambling prevalence would be 'minimal'.<sup>114</sup> In cross-examination, Mr Barrett amended his view on the potential impact to 'low'.<sup>115</sup>

142. Relevant to how gaming is to be conducted at the Premises is the detail of the potential management of the Premises. There are three directors of the Applicant: Mr Rice, Mr McDonald

<sup>111</sup> E.g., Ms Rosen cited research in the Symplan Report, [196], p.46; Ratio Report, p.41, [11.1.6].

<sup>112</sup> Ms Peterson too acknowledged the Premises was on the large side as containing 80 EGMs and was mindful of anonymity being an attractive feature for problem gamblers, although was of the view that surveillance, staff levels and interaction were important in reducing that risk: Transcript of the Hearing, 4 April 2018, p-76.

<sup>113</sup> Mr Barrett's statement, p.5, [37]; transcript of Hearing, 4 April 2018, p-166. During cross examination, it became apparent that Mr Barrett only had a draft version of the Ratio Report before him when he had signed his statement on 13 October 2017, which potentially explains why he had reached his view of 'minimal' when the completed Ratio Report arrives at a weighting of 'low to moderate'.

<sup>114</sup> Mr Barrett's statement, p.4, [32].

<sup>115</sup> Transcript of Hearing, 4 April 2018, p-155.



and Mr John Potter, each of whom own 25%, 50% and 25% of the units of the trust in the Applicant respectively. Mr Potter is a financial backer only and is to have no role in the management of the Premises. Mr Rice has had no experience in managing gaming venues.<sup>116</sup> Although Mr Rice noted he would be 'leaning on' Mr McDonald as the operator of gaming venues, Mr Rice said he understood the importance of RSG as preventing problem gambling, to ensure that people do not cause harm to themselves and the community. Mr Rice stated that while Mr McDonald would principally run the Premises, he and Mr McDonald might manage the Premises in a one week on, one week off arrangement.

143. Mr McDonald, through an entity named CK & Sons Pty Ltd, has run three gaming venues: the Prince of Wales (Richmond) from 2007, the Riversdale Hotel in Hawthorn from 2006, and the Marine Bay Hotel in Brighton from 2007 until December 2016. Mr McDonald described his role at the Riversdale Hotel and Prince of Wales as 'hands-on', in the first two years, being at the hotels morning, noon and night almost seven days a week, working in all departments to ensure the hotels' smooth running. Mr McDonald indicated that he understood the signs of problem gambling, for instance being at the venue for long periods and patrons hitting machines. Mr McDonald committed to instigate various RSG practices at the Hotel, including with staff interacting with customers, annual RSG workshops with senior and non-supervisory front of house staff, and engaging Mr Barrett to review policies and procedures and provide advanced professional development sessions to staff.<sup>117</sup>
144. Mr McDonald also responded to an article that Mr McNabb had attached to one of his submissions, which noted that Mr McDonald had been fined \$50,000 after pleading guilty of 98 charges of food safety regulation breaches in relation to the Riversdale Hotel. Mr McDonald noted that adjoining business owners fed pigeons, which attracted rats, which were able to come through the fence at the premises but which were never in the hotel building itself. Mr McDonald also responded to the VCGLR Compliance Report, noting only minor issues with RSG components in relation to talkers falling off EGMs.
145. The Commission notes that during his evidence, Mr McDonald said that he had never received any penalties but later acknowledged paying fines from the VCGLR for RSA breaches. Also, apart from Mr Barrett's audits, in recent years, Mr McDonald had not commissioned any external audits for his CK & Sons Pty Ltd's venue's RSG practices, and, before the introduction of Mr Barrett's Policies and Procedures Manual, such venues were operating with 'outdated' RSG manuals and policies.

<sup>116</sup> Although he has completed module 1 of the Commission's responsible service of gaming.

<sup>117</sup> Mr McDonald's statement, [29]-[32], p.5-6.

146. For the Council, Ms Rosen agreed there was some evidence to suggest responsible gambling measures reduce harms associated with problem gambling, and relied on Mr Barrett's evidence that aspects of RSG are a protective factor. However, Ms Rosen noted that evidence to confirm effectiveness of such was limited.<sup>118</sup> Ms Rosen also noted VCAT decisions which set out that responsible service of gambling and other harm minimisation measures are not a panacea for dealing with problem gambling, as despite being implemented over a number of years, problem gambling remains a serious issue.<sup>119</sup>
147. Ms Rosen noted a variety of aspects where the Applicant had 'got it right', including by offering a range of other recreation and entertainment options, and its design to comply with best practice and promote responsible gambling. However, aspects remained of concern, such as the size of the venue and location of the gaming room. Ms Rosen's view was that, for this Application, the risk of problem gambling harm could not be adequately mitigated. As such, in Ms Rosen's view, approval of the Application would still be associated with some measure of gambling-related harms.

*The Commission's view*

148. The Commission finds that this Application will result in a new venue being established with 80 EGMs, and that this will be associated with new expenditure of between approximately the amounts set out at paragraph 71 above. While the Commission prefers Ms Peterson's view that it is simply too uncertain to apply the Productivity Commission's 40% range estimate to the LGA level, it accepts that a proportion of expenditure will be associated with problem gambling.
149. Further, largely in line with the expert's views, the Commission notes:
- (a) the 2016 SEIFA indices for the catchment area of the Premises are generally positive, indicating of lack of disadvantage, although with pockets of increased disadvantage;
  - (b) there is a mixed socio-economic profile in both the primary and secondary catchment areas in terms of both general indicators of social and economic status and specific indicators with a higher representation amongst problem gamblers; and
  - (c) the catchment area could be considered at risk of problem gambling due to under-representation in four out of six protective factors, as set out in paragraph 119(c) above.
150. The Commission must form a view as to the likely effect on the community of the municipal district of the Shire of Cardinia post September 2022 were the Application to be granted. The

<sup>118</sup> Symplan Report, [212]-[213], p.49

<sup>119</sup> Ibid, [214], citing *Melbourne City Council V Kingfish Victoria Pty Ltd* (2013) VCAT 371, [170].

Commission notes the dramatic increase in population for Officer in particular, expected to grow, using figures Ms Peterson presented, from 5,319 in 2017 to 37,402 by 2036, a change of 603.2%. The Commission is more persuaded by Mr Szafraniec's view that it should exercise some caution in using 2016 SEIFA scores to evaluate the effect on the community in 2022. The Commission notes that, viewing the Commission's previous Economic and Social Impact Report, which contains a map of the 2011 IRSD SEIFA SA1s map of a 2.5 km radius around the premises, and the updated report, which contains a similar 2016 map, several SA1s to the west of the Premises have increased in disadvantage in terms of their quintile or decile. The Commission does not have confidence that Ms Peterson's view that 'like attracts like' will continue to maintain socio-economic indicators at their current level into the future. The Commission agrees with Mr Szafraniec that population growth would see a lot of new home buyers and renters moving to the area, potentially raising the risk of increased housing stress and the vulnerability of the catchment area to the effects of problem gambling.

151. Also, the Commission remains concerned that the Premises might present a potential risk of an increase in incidence and impact of problem gambling to residents from the more disadvantaged Pakenham area, which had decreased by 5 percent from the 2011 SEIFA IRSD to the 2016 SEIFA IRSD, despite Ms Peterson's view that the Premises will likely serve a predominately local role and the existing opportunities for patrons in Pakenham.
152. In relation to the design and management of the premises, the Commission is satisfied that responsible gambling and harm minimisation initiatives, and the protective factors discussed by Mr Barrett, will contribute towards mitigating the potential harm caused by problem gambling. Specifically, the Commission is satisfied that the Applicant has some experience as a gaming operator, and, with Mr Barrett's Practices and Procedures Manual, would have robust RSG practices. However, the Commission remains concerned that, even with the staff levels and interaction discussed, the scale of the venue (with 80 EGMs) may make the Premises attractive to problem gamblers and those at risk of problem gambling behaviours, and that such protective measures will not be a panacea for problem gambling.
153. Consequently, while the Commission finds that there will be an economic disbenefit associated with problem gambling as a result of this Application, on which it places a low to moderate weight. Issues associated with the negative social impacts associated with problem gambling are considered further in paragraphs 177 to 179 below.

Potential diversion of trade from retail facilities

154. Ms Peterson, Ms Rosen and Mr Szafraniec all formed the view that the potential diversion of trade from retail facilities was a disbenefit of the Application. For the Applicant, Ms Peterson

weighted the lower spending and potential job losses from non-gaming businesses as a low disbenefit, noting this impact was difficult to determine and could trigger innovation in other businesses, as the other businesses would have to compete and improve their offering to avoid their trade being cannibalised by the Premises.

155. The Commission also notes in this matter it has received a submission signed by 29 businesses in opposition to the Application. While the Commission gives the submission some weight, its weight is tempered by the lack of detail in the submission as to how the businesses say that retail will be diverted by the approval of the Application and the distance of some of the businesses from the Premises.<sup>120</sup> The Commission also notes the submission from a business in support of the Application.
156. In terms of the impact on local retailers in the municipality, the Commission accepts that the maximum impact would be the amount of new gaming expenditure arising from this Application. The Commission also accepts that any diversion of trade is likely to be spread across a wide number of retail facilities and is unlikely to materially impact any single retail facility. As such, the Commission finds that there is an economic disbenefit associated with the diversion of trade from retail facilities within the Shire of Cardinia as a result of this Application, on which it places a marginal weight.

*Potential diversion of trade from other gaming venues*

157. Mr Clyne gave evidence that the introduction of EGMs at the Premises would cause a diversion of trade, in the form of transferred expenditure, from other gaming venues within the municipality, the Commission's view of which is summarised above at paragraph 71(c). Ms Peterson's opinion was that the lower spending at other venues in the LGA was a low disbenefit, given the competition objectives of the Act.
158. Mr Szafraniec thought this particular impact was a negligible detriment, as the population growth in the catchment area and municipality would result in the affected other gaming venues returning to previous expenditure levels in a relatively short space of time, with only minimal sustained diversion in expenditure. Mr Szafraniec similarly notes the Victorian Competition and Efficiency Commission (**VCEC**) in its 2012 report concluded that the overall impacts on expenditure would be neutral, meaning that increased expenditure on EGMs is offset by losses of expenditure in other parts of the economy. Mr Szafraniec therefore took EGM expenditure at this venue to displace expenditure from other parts of the Victorian economy, including the retail sector.

159. In relation to the potential diversion of trade from other gaming venues, the Commission refers to and relies on its findings at paragraphs 71(c) regarding the anticipated transferred expenditure from other gaming venues, where the Commission essentially found that while transferred expenditure could be as high as 80% in the first year of operation, this factor will decrease over time. As such, the Commission considers that there remains some impact on other venue operators and the diversion of trade will have a minor detrimental economic impact. Having regard to these factors, the Commission assigns marginal weight to this impact.

Increased demand for community support services

160. Related to the social impacts of gambling-related harms associated with this Application (discussed below), the economic cost of providing community support services to address such harms is considered an economic disbenefit of this Application.

161. In the SGS Report, Mr Szafraniec noted the cost of addressing an increase in problem-gambling typically falls on community support services, an area in which, in his view, the Shire of Cardinia was significantly underserved.<sup>121</sup> The Commission also notes the submissions received from community support organisations servicing the likely catchment area of the Premises, including Enliven and Berwick Salvation Army.

162. The Commission considers that any increase in gambling-related harms is likely to increase demand on existing community support services available in the Shire of Cardinia. In relation to the extent that this Application will increase gambling-related harms in the municipality, the Commission refers to and relies on its findings outlined in paragraphs 148 to 153 regarding harms arising from problem gambling. On this aspect, Ms Peterson noted that the higher costs to health and service providers were difficult to estimate and uncertain in scale,<sup>122</sup> and Mr Szafraniec agreed that such costs were impossible to estimate precisely.<sup>123</sup>

163. While the Commission accepts that there will be an economic cost in responding to any increase in gambling-related harms, there was no direct evidence that current services are not in a position to handle any anticipated increase in demand resulting from this Application. In light of the Commission's findings relating to the extent of the likely increase in gambling-related harms, the Commission considers that the financial cost in responding to increased demand for community support services is a negative economic impact, on which it places marginal weight.

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<sup>120</sup> For example, the Arena Shopping Centre, approximately 3 km from the Premises.

<sup>121</sup> SGS Report, [110]-[12], p.18.

<sup>122</sup> Ratio Report, p.46 (Table 13.2).

<sup>123</sup> SGS Report, p.16, [112].

Conclusion on economic impacts

164. After considering the economic benefits of the proposal against the detriments, the Commission considers that, on balance, the proposal is likely to have a small positive economic impact.

Social Impacts

165. The materials before the Commission, together with the evidence adduced at the public hearing, detailed a range of social benefits and disbenefits associated with the Application.

Development of a new Hotel and Motel

166. Ancillary to the capital works expenditure that will occur if this Application is granted, the development will result in new facilities being available to the community. Access to such facilities is an outcome which the Commission<sup>124</sup> and VCAT<sup>125</sup> have regularly determined is a positive social impact associated with applications of this nature.

167. The nature of these facilities has been described in detail in paragraphs 35 to 37 above. Mr Rice gave evidence that the Applicant was seeking to offer a quality Premises, which he described as a legacy venue and would be there in 100 years' time.<sup>126</sup> Mr Rice had researched quality venues, and was directed to the Highlands Hotel in Craigieburn. Both Mr McDonald and Mr Rice were impressed at the quality of the architecture and fit-out, and had selected the same architect.<sup>127</sup> Mr Rice noted the lack of a similar facility in Officer, and was of the view that there was a clear demand for such a facility given the population predictions.<sup>128</sup> Ms Peterson agreed, attaching moderate weight to the entertainment outlet and range of services, including the provision of accommodation in a community that does not have a huge amount of choice.

168. In the Symplan Report, Ms Rosen was of the view that this benefit could be considered relatively small, considering the number of patrons who would use the Premises compared with the size of the broader community, and so considered this impact of marginal weight.<sup>129</sup> The SGS Report considered this a low benefit, noting that entertainment options in outer metropolitan regions can be quite limited and so the Premises, including the EGMs, would be a welcome addition to the local entertainment option.<sup>130</sup>

<sup>124</sup> See, for example, *Glenroy RSL Sub-branch Inc at Glenroy RSL premises* [2015] VCGLR 40 (22 October 2015).

<sup>125</sup> See, for example, *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

<sup>126</sup> Transcript of the Hearing, 10 April 2018, p-208.

<sup>127</sup> Transcript of Hearing, 10 April 2018, p-186; p-226. Were the Application to be approved, the Applicant proposed a condition that it committed to use the architect throughout the construction of the Hotel and the Motel.

<sup>128</sup> Statement of Mr Rice, p.3, [16].

<sup>129</sup> Symplan Report, p.57.

<sup>130</sup> SGS Report, [69], p.13.

169. The Commission refers to its findings in paragraph 80 above that the development of the Premises will only proceed if this Application is approved, and it is therefore appropriate to consider the social benefits arising from the community's access to and use of the new facilities as benefits of this Application. The Commission also finds that the Premises will offer a new Hotel and Motel for a growing local community. As such, the Commission finds that the introduction of EGMs at the Premises will enable the Applicant to develop facilities at the Premises and, in relation to the gaming room, enable a greater range of services. The Commission regards access to such facilities and greater range of services as a positive social impact, upon which it places a low to moderate weight.

*Increased gaming opportunities for those who enjoy gaming*

170. Related to the economic benefit of increased competition is the social benefit that arises from there being increased gaming opportunities for those who enjoy gaming.

171. Having regard to the evidence and submissions made with respect to increased gaming competition in the Shire of Cardinia and in view of the evidence as to gaming expenditure set out in paragraphs 58 to 72 above, the Commission finds that granting approval of the Application will better serve the needs of gaming patrons through providing an additional venue at which they may choose to play EGMs in a growing community.

172. However, the Commission notes current number of EGMs and venues in the Shire of Cardinia, and the higher density of gaming venues in the catchment area than other parts of the LGA, in an area where people travel predominantly by car. The Commission is also mindful not to double count the benefit of the new Hotel and Motel considered above at paragraphs 166 to 169 above. Overall, the Commission considers this to be a social benefit and one on which it places marginal to low weight.

*Social benefit derived from increased community contributions*

173. Related to the financial impact associated with increased community contributions, such contributions can also have a positive social impact by improving the social fabric of the community in which they are made. In assessing the weight to be placed on such a benefit, it is important that the Commission does not conflate this benefit with the economic benefit associated with such contributions.

174. The Applicant gave evidence from several witnesses as to the community contributions that would result from this Application. Summarising the evidence of Mr Rice, Mr McDonald and Ms Peterson, if the Application were approved, the Applicant would:



- (a) for as long as any of the 80 EGMs were in operation of the Premises, contribute \$120,000 per annum (indexed to CPI) to local community organisations, such as local sporting groups and local responsible gambling service providers. Ms Peterson gave a list of six local organisations to which the contributions might be provided<sup>131</sup> and Mr McDonald emphasised that the contributions would be focused on benefitting the local community;
- (b) the provision of function rooms for community organisations free of charge, with the exception of conferences; and
- (c) provide a community bus, which would not be used by community organisations to transport their members to activities provided at the Premises but take individuals from the Premises and back and be otherwise available to the community when not in such use.<sup>132</sup>

175. The Council were of the view that it was difficult to judge what effect such community contributions would have on the community of the municipal district. Ms Rosen noted that there was no documentation or decision-making process associated with the distribution of the cash contribution.<sup>133</sup> Ms Rosen did concede that if distributed in accordance with Council policy as to where best allocated, community contributions had a potential positive benefit.<sup>134</sup> Mr Szafranec submitted that the cash community contribution was of low benefit.

176. The Commission notes the significance of any such contributions is assessed on the effect on the community. The Commission accepts that in this matter, there is uncertainty about such an effect, given the lack of evidence as to how such cash contributions would assist particular community organisations in the Shire of Cardinia. However, the Commission accepts the proposed community contributions will have a positive social impact. The Commission is further satisfied that the contributions will only occur if the Application is granted. Having regard to the increased amount of community contributions that will occur, and that these contributions will be made to community groups operating in the Shire of Cardinia (in accordance with conditions of any approval of this Application), the Commission considers these contributions to be a positive benefit to which it accords a marginal to low weight.

<sup>131</sup> One of those organisations was the Salvation Army, Beaconsfield. However, as noted in its letter in objection to the Application dated 27 March 2018, the Salvation Army noted it would not accept such a contribution.

<sup>132</sup> Transcript of the Hearing, 10 April 2018, P-237, P-263. Ms Peterson initially thought the cost of the bus and its maintenance would come from the \$120,000 cash contribution but that was clarified to not be the case by subsequent Applicant witnesses: Transcript of the Hearing, 4 April 2018, p-85.

<sup>133</sup> In response to the Applicant suggesting a draft condition that the cash contribution be allocated in accordance with a section 173 agreement under the *Planning and Environment Act 1987* between the Applicant and the Council, Council suggested that it would not be in the Commission's power to require a third party (the Council) to enter such an agreement by a condition in this gaming matter. On this point, the Commission notes that, were the Application to be granted, a condition would be an expectation that the Applicant collaborate with the Council in relation to the distribution of the cash contribution but, absent Council's agreement for such, it would not mandate a section 173 agreement

<sup>134</sup> Transcript of the Hearing, 12 April 2018, p-403.





Possibility of increased incidence and impact of problem gambling on community

177. Wherever accessibility to EGMs is increased there is always a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, relationship breakdowns, emotional harms and other social costs. Accordingly, the Commission accepts there is potential for negative social costs through possible increased problem gambling.
178. The Commission refers to and relies upon the evidence set out in paragraphs 112 to 153 with respect to the economic impact of problem gambling on the community.
179. Overall, the Commission finds that this Application will result in a new venue being established with 80 EGMs, and that this is estimated to be associated with new expenditure as summarised in paragraph 71 above, which, in the Commission's view, is a considerable level of new expenditure, increasing as the Premises' attracts new patrons. It accepts that a proportion of this expenditure will be associated with problem gambling. Further, as noted above, the Commission finds that the catchment area surrounding the Premises, while not particularly disadvantaged, does exhibit a level of vulnerability to problem gambling. The Commission is therefore of the view that granting this Application has the potential to somewhat increase the incidence and impact of problem gambling in the Shire of Cardinia. As such, the Commission accepts that the disbenefit associated with problem gambling is a negative social impact upon which it places moderate weight.

Community attitude

180. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,<sup>135</sup> 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 certainly a relevant factor in the consideration of particular social impact as part of the 'no net detriment' test.
181. The evidence before the Commission indicates that there has been a negative community attitude. In summary:
- (a) the Council, as the representative body of the relevant community and charged with statutory duties under various pieces of legislation, has made a submission in opposition to the Application and appeared at the public hearing of the Application;<sup>136</sup>

<sup>135</sup> *Romsey* (2008) 19 VR 422, [44] per Warren CJ, Maxwell P and Osborn AJA. See also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [73] per Dwyer DP.

<sup>136</sup> See also *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [42]; *Romsey #2* [2009] VCAT 2275 at [249] and [288]-[321].

- (b) a significant number of individual submissions, with the vast majority in non-template form, were received by the Commission concerned with the likely impacts of the Application (such as the proximity of the Premises to local schools, the rise in families with mortgages being particularly vulnerable to problem gambling losses, and impact on neighbourhood character). The Commission received approximately 45 submissions from individuals, couples and families in opposition to the Application. In addition, the Commission also received 27 short submissions in support of the Application from individuals and couples, for reasons including community benefiting from a modern, quality venue with entertainment options. In the Commission's view, the submissions in opposition of the Application outweighed both in content and number the submissions in support;
- (c) a number of community organisations, businesses and associations provided submissions to the Commission indicating concerns at the addition of a further gaming venue, its impact on gambling-related harms and an increase in demand for their services. These organisations included the Officer & District Community Association, Enliven Victoria, Berwick Salvation Army and the various businesses described at paragraph 24 above;
- (d) four petitions signed by individuals in opposition to the Application. Two petitions were provided by Mr McNabb, one of which related to this Application and was signed by 27 individuals, and the second entitled 'No pokies for Officer' and related to the Applicant's planning application, which was signed by approximately 291 individuals, predominately from Officer, Pakenham, Berwick and Beaconsfield, at a time when the Application proposed to include a medical centre and where Mr McNabb suggested the Premises was located in an 'educational hub'.<sup>137</sup> The other two petitions were provided by the Alliance for Gambling Reform, which made the petitions available online. The first, entitled 'Help Officer Stay Pokie Free', featured a request from Mr McNabb to sign the petition as, amongst other things, '[t]he Cardinia Planning Scheme denies us the right to object which exists in most other communities', and calling on the Minister for Planning to amend the Planning Scheme 'to ensure that every community has the right to be heard on matters relating to poker machines'. This petition was signed by 237 individuals, the vast majority of whom were not residents of Officer. The second was entitled 'No Pokies for Officer!', and contained the same wording as the second McNabb petition described above. This

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<sup>137</sup> Transcript of the Hearing, 4 April 2018, p-21.

particular petition was signed by 36 individuals, where again the vast majority of whom were not residents of Officer;<sup>138</sup>

- (e) as noted above at paragraph 27 above, two members of the public, Mr McNabb and Mr Petrovich, gave evidence before the Commission and were questioned by the Applicant, Council and the Commission; and
- (f) the production of a community video, made by community members with the assistance of the Victorian Local Governance Association (**VLGA**), which reflected the concerns raised by the individual submissions outlined above.<sup>139</sup>

182. At the time of writing the Ratio Report, most of this community attitudinal evidence was not available to Ms Peterson. Ms Peterson therefore weighed this impact as neutral in her report, given that the applications for EGMs at Club Officer, the Cardinia Club and Pink Hills were not particularly controversial within the community. During her evidence, Ms Peterson amended the weighting from neutral to a low disbenefit, although this did not change Ms Peterson's overall view that granting the Application would lead to a positive outcome. Ms Peterson also acknowledged that, with the benefit of hindsight, a community attitudinal survey might have been of some assistance but again, given existing access to EGMs, the extent to which the community opposes the Application should only have a relatively small weighting in the context of the '*no net detriment*' test.<sup>140</sup>

183. Ms Rosen characterised the community attitude as 'polarised'.<sup>141</sup> Ms Rosen noted residents expressed views on the potential impact of granting the Application on their wellbeing and sense of identity and that a large number of submissions focused, not against gaming on EGMs in general, but on the particular proposal.

184. In relation to the submissions referred to in paragraph 181(e) above, Mr Petrovich detailed how, in his view, the location of the Premises was not suitable, with schools and a childcare centre in the area and the Premises accessible for convenience gambling, as well as his concerns about the personal problems, family hardships and social disorders resulting from problem gambling. However, when questioned by the Applicant, Mr Petrovich acknowledged that the ODCA's submission was not the basis of an incorporated association motion and his view was informed only by the disbenefits and no consideration of any of the potential benefits of the Application.

<sup>138</sup> Somewhat oddly, Mr Rice and his daughter had signed one of the petitions in opposition to the Application. Mr Rice explained he signed the petition without reading it on an information night, in the belief that it was to get more information in the future in relation to the Application.

<sup>139</sup> In her affidavit, Ms Lyle noted her instructions that the Council was not involved in the video and had no role in organising the community members featured in it.



185. Mr McNabb emphasised that Officer was a growing community and, if the Application were approved '*[t]he concentration of poker machines in this area will be totally saturated*'.<sup>142</sup> Mr McNabb was also concerned about children's exposure to gaming. In questioning by the Applicant, Mr McNabb detailed the formation of the petitions described above and how his personal view that playing an EGM was not legitimate entertainment. Mr McNabb was of the view that there were no benefits to the Application, with no balancing exercise necessary, as involving all disbenefits. Mr McNabb also did not accept there was a difference between apprehending an impact and an actual impact flowing from a proposal.
186. After giving evidence, Mr McNabb provided the Commission with a statutory declaration dated 5 April 2018, in which he noted that at a public meeting on 27 April 2017 which Mr Rice had attended, Mr Rice had said that poker machines were a 'necessary evil' to make his business plan work. At the Hearing, Mr Rice denied saying this. The Commission does not believe Mr Rice made the 'necessary evil' statement. The Commission places no weight on Mr McNabb's further document.
187. Mr Rice also characterised the individual objectors, which he understood to number 48 at the time of his giving evidence, as predominately from the same family units. Mr Rice believed there were a core of approximately 15 objectors, who he believed did not want EGMs in any location, in contrast to 25 supporters. Mr Rice also characterised the objectors as only focusing on the negative aspects of the Application and essentially deaf to its benefits, although, when questioned by the Commission, Mr Rice admitted he had not read the Council's materials himself. Summarised, Mr Rice was of the view that the Commission giving weight to 48 people in a population of roughly 10,000, set to rise to 37,000, might deny one of the best public buildings Officer may ever see.

#### *The Commission's view*

188. In the Applicant's closing submissions, the Applicant's Counsel suggested that several of the submissions in opposition represented a general opposition to EGMs and warned the Commission should not extrapolate from the submissions the attitude of the entire community of the municipality. The Commission agrees that some of the submissions in opposition were simply in opposition to EGMs in general but considers that the vast majority related to the Application in question. The Commission considers that the level of opposition to this

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<sup>140</sup> Transcript of the Hearing, 4 April 2018, p-53.

<sup>141</sup> Transcript of the Hearing, 12 April 2018, p-384.

<sup>142</sup> Transcript of the Hearing, 4 April 2018, p-14.

Application reflects changing community expectations and represents a strong concern that the fabric of the community of Officer would be altered due to granting the Application.

189. The Applicant also argued that there is a material difference between community apprehension and the impact on community wellbeing. While the Commission accepts that the impact that actually results might be vastly different from what a portion of the community feared, the Commission notes the Court of Appeal's comments in *Romsey*,<sup>143</sup> and has taken into account community apprehension.
190. Overall, the Commission is of the view that the matters listed above at paragraph 181 represent a mixed attitude by the community of the Shire of Cardinia to this Application, although with the negative attitude outweighing the positive. In all of the circumstances, the Commission considers it appropriate to attribute low to moderate weight to this impact.

#### Conclusion on social impacts

191. After considering the social benefits of the proposal and balanced against the detriments, the Commission considers that, on balance, there is likely to be a small to moderate negative social impact of the proposal.

#### **Comments on SGS's quantitative assessment**

192. In the SGS Report, Mr Szafraniec had also prepared a quantitative assessment, to supplement the traditional qualitative approach. The assessment, used for the first time in relation to gaming, concluded that, apart from one result in the sensitivity testing, that there would be a net negative social and economic impact, as the quantified benefits were offset by the negative impact of problem gambling.
193. A number of assumptions underpinned the quantitative assessment, including a base case that a similar development (without EGMs) would take place on the site in the future, a 20-year evaluation period (with a seven per cent discount rate and coupled with assumptions in relation to cash flow per period),<sup>144</sup> and that 40% of expenditure at the Premises would be attributable to problem gambling.
194. Mr Szafraniec acknowledged a lot of complexities in assessing such applications which sometimes a purely quantitative analysis may not fully capture. Indeed, Ms Peterson noted that the sheer number of assumptions underlying the assessment meant that it could not be relied

<sup>143</sup> See *Romsey* (2008) 19 VR 422, particularly at [44], [49], [55]-[66].

<sup>144</sup> The assumptions as to discount rate and cash flow per period was not specified in the SGS Report, and only became apparent during Mr Szafraniec's questioning: Transcript of the Hearing, 12 April 2018, p-340.

upon. While encouraging more work in this emerging area, the Commission broadly agrees with Ms Peterson's view, and has placed no weight on the conclusions of Mr Szafraniec's quantitative assessment in forming its views.

## NET ECONOMIC AND SOCIAL IMPACT

195. The '*no net detriment*' test in section 3.3.7(1)(c) of the Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.<sup>145</sup>
196. According to Ms Peterson, the benefits of this Application, being the economic stimulus to the LGA generated by the Hotel and Motel (considered above in complementary expenditure), the proposed community contributions, the development of the Premises in line with best practices, employment creation and flow-on economic benefits should be given greater weight due to their direct impact on the community of the Shire of Cardinia and certainty of outcome. Ms Peterson accepted that the key disbenefit of the Application was the potential for increased problem gambling but was of the view that the likelihood of such increase was low to moderate due to the key protective factors of the size of the gaming venue, contribution to problem gambling initiatives and limited opening hours.
197. The Council witnesses did not agree with this conclusion, instead coming to the view that the Application would have, on balance, a net detrimental impact on the health and wellbeing of the municipal district. In particular, both Council witnesses emphasised the catchment area as featuring pockets of vulnerability and, given the venue is not proposed to operate until September 2022, warned as to the extrapolation of relatively positive 2016 SEIFA IRSD indices moving forward. Both viewed the benefits as outweighed by the negative impacts associated with the Application, in particular the increase in gambling-related harms resulting from increased incidents of problem gambling and accessibility of EGMs and the detrimental impacts on community health and connectedness. There was also evidence of a degree of community disquiet and opposition to the Application to which the Commission has had regard.
198. After consideration of the material before it, including the evidence provided at the Hearing, and weighted as outlined above and summarised in tabular form at Appendix One of these Reasons for Decision, the Commission has concluded that there is likely to be a net negative social and

<sup>145</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.



economic impact to the well-being of the community in the municipal district in which the Premises are located if the Application is approved.

## **CONCLUSION**

199. On the material that has been put before it, the Commission has determined that the '*no net detriment*' test has not been satisfied and, pursuant to section 3.3.7(1), the Commission must not grant the Application.

200. The Application is therefore refused.

***The preceding paragraphs are a true copy of the Reasons for Decision of Ms Deirdre O'Donnell, Deputy Chair, and Mr Des Powell AM, Commissioner.***

## Appendix One

### Summary of social and economic 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.

#### **Economic impacts**

	<b>Impact</b>	<b>Paragraph Reference</b>	<b>Comments relevant to weight</b>
<b>Benefits</b>	<i>Gaming expenditure not associated with problem gambling</i>	57 to 73	<p>The portion of new expenditure not attributable to problem gambling is an economic benefit.</p> <p>In relation to expenditure, the Commission concluded that the Premises would likely earn expenditure in its first year of operation post September 2022 of the Applicant's expenditure expert's upper bound estimate but that expenditure would likely rise in subsequent years to approach \$8.883 million within five years of operation. The Commission concluded that while transferred expenditure will be higher for the first year of operation of the Premises, it is likely to be in the order of 80% in the first year of operation, and is likely to be closer to 70% to 50% in subsequent years.</p> <p>Looking at indicators of social and economic status and indicators with lower representation amongst problem gamblers, the anticipated catchment has a mixed social profile with indicators above and below the metropolitan average. The anticipated catchment area is also anticipated to experience ongoing population growth.</p> <p>As a result of the anticipated transfer rate, the extent of new expenditure at the Premises is expected to be low to moderate.</p> <p>Marginal to low weight.</p>





	<i>Expenditure on capital works</i>	74 to 83	<p>The development of the Premises, including the motel, is estimated to cost \$17.4 million.</p> <p>The extent of the expenditure on capital works is of a sizeable nature but there is some uncertainty as to the extent to which the expenditure will be retained in the relevant municipal district in which the Premises are located.</p> <p>Marginal weight.</p>
	<i>Employment creation</i>	84 to 91	<p>The Applicant submitted that the Application will result in the creation of 40 EFT jobs at the Premises, including 12 EFT positions in the gaming room.</p> <p>The Commission accepted that the majority of the employees will be sourced from within the Shire of Cardinia but that some would likely be transferred from other gaming and hospitality venues.</p> <p>Additional employment is positive but uncertain.</p> <p>Marginal to low weight.</p>
	<i>Complementary expenditure</i>	92 to 99	<p>The Applicant estimated that complementary expenditure would be in the realm of \$4.5 million by 2022.</p> <p>The Commission accepts there will be substantial complementary expenditure but there is a level of uncertainty what extent this would generate increased economic activity at the Premises and within the local area. Part of this complementary expenditure might also be transferred from other venues in the Shire of Cardinia.</p> <p>Marginal to low weight.</p>
	<i>Supply contracts</i>	100 to 104	<p>The Applicant estimated that it will have to pay building maintenance contracts amounting to approximately \$919,000 per annum.</p> <p>A level of uncertainty as to whether cleaning costs will be performed by the Applicant's employees and the extent to which supply contracts would be retained in the Shire of Cardinia.</p> <p>Marginal weight.</p>



	Community contributions of \$120,000 per annum (indexed to CPI)	105 to 106	<p>The proposed community contributions represents an increase of \$120,000 per annum (indexed to CPI) as long as the EGMs are in operation at the Premises.</p> <p>These contributions (distributed in accordance with the proposed conditions of any approval of this application) will result in positive economic impact on community groups operating in Shire of Cardinia.</p> <p>Marginal weight.</p>
	Increased gaming competition in the Shire of Cardinia	107 to 111	<p>The Application will increase gaming competition in the Shire of Cardinia by providing an additional venue at which patrons may choose to play EGMs.</p> <p>Marginal to low weight.</p>
	Increased State Government revenue	112 to 113	<p>The economic benefit of increased State Government revenue from the taxation generated by expenditure on the 80 EGMs.</p> <p>Likely to be split across all Victorian municipalities and lack of evidence presented as to the impact on the Shire of Cardinia</p> <p>No weight.</p>
<b>Disbenefits</b>	Gambling expenditure associated with problem gambling.	114 to 153	<p>The portion of new expenditure attributable to problem gambling is an economic disbenefit.</p> <p>The socio-economic profile of the catchment area of the Premises indicates a lack of disadvantage, although with pockets of increased disadvantage, and a mixed profile in terms of general indicators of social and economic states and indicators with a higher representation amongst problem gamblers.</p> <p>Even with RSG practices and protective measures at the Premises, the Commission remains concerned that the Premises will attract problem gamblers and those at risk of problem gambling.</p> <p>Low to moderate weight.</p>



	Potential diversion of trade from retail facilities.	154 to 156	<p>Maximum impact of the potential diversion of trade from retail facilities in the municipality is at most equal to predicted new expenditure arising from this Application.</p> <p>Any diversion of trade is likely to be spread across a wide number of retail facilities and unlikely to materially impact any single retail facility.</p> <p>Marginal weight.</p>
	Diversion of trade from other gaming venues	157 to 159	<p>The Commission concluded that while transferred expenditure could be as high as 80% in the first year of the Premises' operation, this factor will decrease over time and there does remain some minor impact on other gaming venues.</p> <p>Marginal weight.</p>
	Increased demand for community support	160 to 163	<p>Increase in gambling-related harms is likely to increase demand on existing community support services available in the municipality.</p> <p>No direct evidence that current services are not in a position to handle any anticipated increase in demand resulting from this Application.</p> <p>Marginal weight.</p>



**Social impacts**

	<b>Impact</b>	<b>Paragraph Reference</b>	<b>Comment relevant to weight</b>
<b>Benefits</b>	Development of a new venue in Officer and Motel	166 to 169	<p>The Application includes a proposed development of the Premises to include the Hotel, including function rooms, a Sports Bar, a lounge and a children's play area, offices, and a 52-bedroom Motel.</p> <p>The introduction of EGMs at the Premises will enable the Applicant to develop facilities at the Premises and enable a greater range of services for a growing community.</p> <p>Low to moderate weight.</p>
	Increased gaming opportunities for those who enjoy gaming	170 to 172	<p>The Application will better serve the needs of gaming patrons through providing an additional venue at which they may choose to play EGMs in a growing community.</p> <p>Higher density of gaming venues in the catchment area than other parts of the Shire of Cardinia.</p> <p>Marginal to low weight.</p>
	Social benefit derived from increased community contributions	173 to 176	<p>The Applicant proposes community contributions (distributed in accordance with the proposed conditions of any approval of this application), provision of function rooms to community groups free of charge and the provision of a community bus.</p> <p>Uncertainty as to how the cash contributions would assist particular community organisations in the LGA. The Commission is however satisfied that the contributions will be made to community groups operating in the LGA and will be a positive social benefit.</p> <p>Marginal to low weight.</p>



<b>Disbenefits</b>	Possibility of increased incidence and impact of problem gambling on community	177 to 179	<p>A proportion of total gaming expenditure at the Premises will be associated with problem gambling contributed by a small proportion of total gaming patrons at the Premises.</p> <p>Adverse impacts include health, jobs, finances, emotional states and relationships.</p> <p>As noted above, the socio-economic profile of the catchment area of the Premises indicates a lack of disadvantage, although with pockets of disadvantage, and a mixed profile in terms of general indicators of social and economic states and indicates with a higher representation amongst problem gamblers.</p> <p>Even with RSG practices and protective measures at the Premises, the Commission remains concerned that the Premises will attract problem gamblers and those at risk of problem gambling.</p> <p>Moderate weight.</p>
	Community attitude	180 to 190	<p>There were a number of individual submissions to the Commission in opposition to the Application from individuals, businesses, associations and community organisations, and a video made by members of the community. There were also petitions signed by people in opposition to the Application. There were also individuals in support of the application.</p> <p>Overall, the Commission is satisfied that there is a mixed attitude by the community of the Shire of Cardinia although with the negative attitude outweighing the positive.</p> <p>Low to moderate weight.</p>