



**DECISION AND REASONS FOR DECISION**

In the matter of an application by KWR Hotels Pty Ltd under section 3.3.4(1) of the *Gambling Regulation Act 2003* for approval of the premises, the Royal Hotel Koo Wee Rup, 98-102 Station Street, Koo Wee Rup VIC 3981, as suitable for gaming with forty (40) electronic gaming machines.

**Commission:**

Ms Helen Versey, Deputy Chair  
Mr Andrew Scott, Commissioner

**Appearances:**

Ms Sarah Porritt of Counsel for the Applicant (instructed by BSP Lawyers)

Mr Ian Munt of Counsel for the Council (instructed by Marcus Lane Group)

Ms Brooke Hutchins as Counsel Assisting the Commission

**Date of Hearing:**

30 and 31 March 2021

**Date of Decision:**

30 April 2021

**Date of Reasons:**

30 April 2021

**Decision:**

The Application is refused.

**Signed:**

A handwritten signature in black ink, appearing to read "Helen Versey".

**Helen Versey**  
Deputy Chair

## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by KWR Hotels Pty Ltd (**the Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) for approval of the Royal Hotel Koo Wee Rup, located at 98-102 Station Street, Koo Wee Rup VIC 3981 (**Premises**), as suitable for gaming with forty (40) electronic gaming machines (**EGMs**) (**the Application**).
2. There are no EGMs operating close to the central township of Koo Wee Rup, and the only hotel in Koo Wee Rup being that located at the Premises. The closest gaming venue from the Premises is the Tooradin & District Sports Club, located approximately 10 kilometres away.<sup>1</sup>
3. The relevant municipal authority is the Shire of Cardinia (**the Council**). On 1 March 2021, the Council provided the Commission with a written submission dated 26 February 2021 in opposition to the Application.
4. The Commission considered the Application by way of a public inquiry.<sup>2</sup> A public hearing was conducted on 30 and 31 March 2020 (**the Hearing**). The Applicant was represented by Ms Sarah Porritt of Counsel, instructed by BSP Lawyers. The Council was represented by Mr Ian Munt of Counsel, instructed by Marcus Lane Group.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

5. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the GR Act. The GR Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities. For this reason, the GR Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some, and a potentially harmful activity for others.
6. The objectives of the GR 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-*

<sup>1</sup> NBA Report, page 41; SYM Plan Report, page 7

<sup>2</sup> A public inquiry is required to be conducted by the Commission in relation to the Application pursuant to section 28(e) 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).



Victorian Commission for  
Gambling and Liquor Regulation

- (i) *minimise harm caused by problem gambling; and*
- (ii) *accommodate those who gamble without harming themselves or others;*
- (ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*
- (b) *to ensure that gaming on gaming machines is conducted honestly;*
- ...
- (f) *to promote tourism, employment and economic development generally in the State.*

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

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

8. 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.*



9. The relevant provisions concerning this Application are to be found in sections 3.3.7 and 3.3.8 of the GR 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*
  - (c) *if applicable, the days on which 24 hour gaming is permitted on the premises.*
- ...

10. 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

<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.

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>

11. The GR Act does not specify the matters which the Commission must consider in deciding whether the ‘*no net detriment*’ test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:
  - (a) the likely economic impacts of approval;
  - (b) the likely social impacts of approval; and
  - (c) the net effect of those impacts on the well-being of the relevant community.<sup>5</sup>
12. 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.
13. 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>
14. 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>
15. The Commission also notes that on review, it has been indicated by VCAT that:

<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.

*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.

16. 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 GR 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>
17. In considering the exercise of this discretion:
  - (a) it must be exercised having regard to the purposes of the GR Act and, in particular, the specific purposes of Chapter 3 of the GR Act dealing with the regulation, supervision and control of gaming machines;<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 GR Act as a whole.<sup>15</sup>
18. 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 GR Act favour the grant of an approval, one would

<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.

<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].

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.

19. It is further 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.
20. 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**).
21. On 14 February 2017, Ministerial decision-making guidelines were published in the Government Gazette (**permanent residential accommodation Ministerial Guidelines**). Finally, in the instance that the Commission approves premises as suitable for gaming, section 3.3.9 provides for both mandatory conditions of approval and the Commission’s discretionary power to impose other conditions. These include:
  - (a) there must be a continuous 4 hour break from gaming after every 20 hours of gaming;
  - (b) there must not be more than 20 hours of gaming each day.
  - (c) that the applicant has obtained a permit under the Planning and Environment Act 1987 permitting the premises to be used for gaming on gaming machines; or
  - (d) that the approval does not take effect until the applicant has satisfied the Commission that it has complied with any other condition imposed by the Commission, as the Commission thinks fit.

#### **MATERIAL BEFORE THE COMMISSION**

22. The Applicant provided the Commission with the following material in support of its Application:
  - (a) ‘application for approval of premises for gaming’ form dated 7 December 2020 (**the Application Form**);
  - (b) Social and Economic Impact Statement prepared by Mr Nick Anderson, Managing Director of NBA Group (**NBA**) dated December 2020 (**the NBA Report**);
  - (c) report of Mr Tim Stillwell, partner of ShineWing Australia (**ShineWing**), dated 1 July 2020 (**ShineWing Report**);



Victorian Commission for  
Gambling and Liquor Regulation

- (d) statement of Mr Leigh Barrett, director of Leigh Barrett and Associates, dated 3 December 2020;
- (e) statement of Mr Luke Ponti, a registered architect and partner of BSPN Architecture, dated 8 December 2020;
- (f) statement of Mr Peter Deegan, a director of the Applicant, dated December 2019, attaching a company search, Credit Report, proposed rosters and letters of community support for the Applicant;
- (g) statement of Mr Kamal Goonwardena, gaming room manager of Cardinia Park Hotel 200 Beaconsfield-Emerald Road Beaconsfield, dated December 2020;
- (h) letter from Campbell Constructions Developments dated 29 July 2020;
- (i) floor plans for the Premises and the gaming room prepared by BSPN Architecture;
- (j) letter from NBA Group Pty Ltd to the Council dated 3 December 2020 evidencing the submission of an application for planning permission for the Premises;
- (k) copy of Notice of Application published in the Herald Sun newspaper dated 18 December 2020;
- (l) letter of consent signed by Mr Fredrick Deegan on behalf of KWR Property Investments Pty Ltd, owner of the Premises, dated 5 August 2020, authorising the Applicant to make the Application;
- (m) proposed conditions of any approval by the Applicant, attached to the Application Form;  
and
- (n) letter from BSP detailing the Applicant's response to the Council's Social and Economic Impact Statement dated 18 March 2021.



23. The Council provided the following material in opposition to the Application:
- (a) economic and social impact submission, dated 26 February 2021;
  - (b) report titled '*Proposed Gaming Venue, Royal Hotel Koo Wee Rup Social and Economic Impact Statement*' prepared by Ms Bonnie Rosen, Principal of SYM Plan, 28 February 2021 (**SYM Plan Report**);
  - (c) letter from Marcus Lane Group dated 26 March 2021 enclosing report titled *Reducing the Harm Caused by Gambling* by the Victorian Auditor-General's Office dated March 2021.
24. The following reports, prepared by Commission officers, was provided to the Applicant and the Council and was considered by the Commission:
- (a) *Economic and Social Impact Report*, second version dated 5 March 2021 (**VCGLR Report**);
  - (b) *Pre-Hearing Size, Layout and Facilities Report* dated 18 March 2021 (**VCGLR Premises Report**); and
  - (c) *Pre-Hearing Inspection and Compliance Report* in respect of the Royal Hotel Koo Wee Rup dated 17 March 2021 (**Compliance History Report**);
  - (d) *Pre-Hearing Inspection and Compliance Report* in respect of the Cardinia Park Hotel dated 17 March 2021;
25. In addition, the Commission received submissions from the following community organisations and associations operating in the Shire of Cardinia:
- (a) Southern Migrant Resource Centre, dated 19 March 2021;
  - (b) Springvale Monash Legal Service Inc dated 22 March 2021;
  - (c) Enliven Victoria dated 22 March 2021.
26. During the Hearing, the Commission was provided with:
- (a) a copy of the digital presentation by Mr Luke Ponti with representations of the plans for development of the proposed Premises (**Ponti Presentation**);
  - (b) written submissions by Ms Porritt of Counsel on behalf of the Applicant, dated 31 March 2021 and amended suggested conditions to attach to the approval;
  - (c) written submissions by Mr Munt of Counsel on behalf of the Council, dated 31 March 2021.
27. Commissioners Versey and Scott visited the Premises before the Hearing.

### PRELIMINARY MATTER

28. The Commission has considered this matter on all the available evidence before it. The Commission is aware that the COVID-19 pandemic, and associated restrictions implemented by government, are likely to have an impact on the social and economic conditions of Victoria, as well as the community of the Shire of Cardinia. The nature and extent of this impact on the municipality is not yet known.
29. Given that the GR Act expressly requires that “the Commission must use its reasonable endeavours to determine an application within the required period” (see section 3.3.8(1A)), the Commission has accordingly used its reasonable endeavours to determine this matter on the basis of the information and evidence before and available to it within the required period, noting that there is no information or evidence before the Commission that could confirm or reliably predict the impact of the COVID-19 pandemic on the social and economic conditions in the municipality.

### DECISION AND REASONS FOR DECISION

#### *Background*

30. 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 85,551, ranking the Shire of Cardinia 27 out of 31 metropolitan municipalities.<sup>17</sup> The Shire of Cardinia’s estimated annual population growth of 4.8% in 2020 is projected by the Department of Environment, Land, Water and Planning to be higher than the Victorian average of 2.3%.

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

31. Currently, there are five gaming venues operating within the Shire of Cardinia with approvals to operate 345 EGMs and with all 345 attached entitlements currently operating.<sup>18</sup> The maximum permissible number of gaming machine entitlements under which gaming may be conducted in the Shire of Cardinia is 573.<sup>19</sup>
32. The VCGLR Report notes that the Shire of Cardinia has an EGM density of 4 EGMs per 1000 adults, which is 14.3% lower than the metropolitan Local Government Area (**LGA**) average of 4.7 and 20% less than the State average of 5, placing the Shire of Cardinia as the 21<sup>st</sup> of 31

<sup>17</sup> Department of Environment, Land, Water and Planning, 2018.

<sup>18</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>19</sup> See the Ministerial Order under ss 3.2.4 and 3.4A.5(3A) of the GR Act, Victorian Government Gazette, No. S 318 Wednesday 20 September 2017, p.5.

metropolitan LGAs in terms of EGM density per 1000 adults.<sup>20</sup> Similarly, the VCGLR Report identifies that the Shire of Cardinia has a gaming venue density of 17,110 adults per gaming venue, which is 31.6% higher than the metropolitan LGA average of 13,001 and 59.5% higher than the State average of 10,724. This places the Shire of Cardinia as the 7<sup>th</sup> of 31 metropolitan LGAs in terms of gaming venue density, indicating there are fewer gaming venues per 1000 adults within the Shire of Cardinia than many metropolitan LGAs.<sup>21</sup>

33. Also as stated in the VCGLR Report, in the 2019-20 financial year, the Shire of Cardinia had an average gaming expenditure of \$248.81 per adult, which is 35.28% less than the metropolitan LGA average of \$384 and 34.1% less than the State average of \$377.57. Applying the Applicant's estimate of the increased gaming expenditure arising from the operation of 40 EGMs in the first year of operation would result in an increase in average gaming expenditure per adult of 5.55% in the LGA.

#### *Location*

34. The Premises is located at 96 – 100 Station Street, Koo Wee Rup, being the corner of Station Street and Moody Avenue. It is located in a Mixed Use Zone under the Cardinia Planning Scheme.
35. Koo Wee Rup comprises of two strips of shops and other non-residential uses, one runs along Station Street to the south, west and east of the Premises and the second runs along Rossiter Road to the east of the Premises. Residential dwellings adjoin the Premises to the west and north. There is light industrial land to the east of the Premises. Opposite the premises on Station Street is a Woolworths supermarket, butcher, café and restaurant with adjoining carpark.
36. Koo Wee Rup is a regional township operating as a service centre for the surrounding farming community. The township is located along the southern boundary of the municipality within the Urban Growth Boundary.<sup>22</sup>

#### *Details of the Premises*

37. The Premises was built in 1915 and is a prominent historic building in the town of Koo Wee Rup.<sup>23</sup> Since obtaining the leasehold of the Premises in 2014, the Applicant has undertaken refurbishments including improving the bistro and bar areas.<sup>24</sup> The Premises currently has a

<sup>20</sup> VCGLR Report, page 12.

<sup>21</sup> VCGLR Report, page 15.

<sup>22</sup> SYM Plan Report, page 23.

<sup>23</sup> NBA Report, page 10.

<sup>24</sup> Ibid.

bistro, sports bar/TAB and drive through bottle shop.<sup>25</sup> It holds live entertainment on the weekends.

38. The following developments to the Premises' offerings are proposed by the Applicant in the event of the approval of the Application:
- (a) upgrade to the existing bar, bistro and kitchen facilities;
  - (b) addition of a café on the ground floor;
  - (c) addition of a community hub on the ground floor;
  - (d) addition of a gaming room on the ground floor;
  - (e) additional car bay in the existing parking area;
  - (f) development of the second level into a dedicated function area with a satellite kitchen, full bar, external deck and corporate meeting facilities
- (collectively the **Proposed Developments**).<sup>26</sup>

#### *Catchment area of the Premises*

39. 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>27</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.
40. As the Shire of Cardinia is a metropolitan municipality, typically the catchment area would be a 2.5 kilometre radius from the Premises. In this application, the VCGLR Report applies a 5 kilometre radius from the Premises due to its geographical position in a sparsely populated area and its relative isolation.<sup>28</sup>
41. In the SYM Plan Report, Ms Rosen defines the primary catchment as a 2.5 kilometre radius and

<sup>25</sup> Statement of Mr Deegan, para 23.

<sup>26</sup> Statement of Mr Deegan, para 30; Proposed Plans; Ponti Presentation; NBA Report, page 26.

<sup>27</sup> See for example, *Romsey #2* [2009] VCAT 2275; *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 (7 April 2011).

<sup>28</sup> VCGLR Report, page 28.

secondary catchment as a 5 kilometre radius from the Premises.<sup>29</sup>

42. Mr Stillwell defined the catchment as extending to 10 kilometres.<sup>30</sup> Mr Anderson defined the primary catchment as 2.5 kilometres and the extended catchment as 20 kilometres radius from the Premises.<sup>31</sup> Mr Anderson applied a 20 kilometre extended catchment radius on the basis that he considers Koo Wee Rup to be a regional or rural setting.<sup>32</sup>
43. A bistro patron locality survey was undertaken by the Applicant, which showed that approximately 71% of bistro patrons live in the town of Koo Wee Rup, with the remaining 29% of patrons surveyed residing outside the town.<sup>33</sup>
44. Mr Stillwell estimates that 85% to 90% of the gaming patrons will be from Koo Wee Rup.<sup>34</sup> Mr Stillwell's view is that, empirically, gaming patrons are more heavily concentrated to the surrounding area of the venue as opposed to bistro patrons. Mr Stillwell's estimate is based on the bistro survey, his prior experience and empirical evidence derived from Social and Economic Impact Assessments prepared for VCGLR hearings.<sup>35</sup>
45. The Commission accepts Mr Stillwell's estimate that 85% to 90% of the gaming patrons will be from Koo Wee Rup.
46. Having regard to the above material, the Commission finds that the people most likely to be affected by the Application are the residents of Koo Wee Rup and its immediate surrounds.

### ***Reasons for Decision***

47. 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**

48. The first element in relation to which the Commission is required to be satisfied is that the Applicant has authority to make the Application in respect of the Premises.
49. In the Application Form, the Applicant noted that it was not the owner of the land on which the Premises is located. However, the Applicant provided evidence of the owners' authority for the Applicant to make the Application (referred to at paragraph 22(l) above).

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<sup>29</sup> SYM Plan Report, page 12.

<sup>30</sup> ShineWing Report, page 23.

<sup>31</sup> NBA Report, page 37.

<sup>32</sup> NBA Report, page 37.

<sup>33</sup> ShineWing Report, page 24.

<sup>34</sup> ShineWing Report, page 24.

<sup>35</sup> ShineWing Report, page 24.

50. 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

51. 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>36</sup>
52. The VCGLR Premises Report was prepared by Commission staff based on the Proposed Plans and the statement of Mr Ponti. The VCGLR Premises Report details that 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 gaming machine area, type and height of perimeter barriers, floor numbering and layout of gaming machines, windows, proximity of the gaming machine area 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. The Proposed Plans do not include a children's play area or permanent residential accommodation. Therefore, the Ministerial Guidelines referred to in paragraphs 19 & 20 above do not apply.
53. During the hearing, the Commission heard evidence from Mr Anderson, Mr Deegan, Mr Ponti and Mr Barrett in relation to the design and suitability of the Premises for the management and operation of EGMs.
54. Mr Barrett 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 any other area of the Premises;
  - (b) there is no direct entry from the outside of the Premises into the proposed gaming room;
  - (c) the gaming room ceiling is proposed to have noise attenuation treatment to minimise the sound of the EGMs in the rest of the Premises;
  - (d) there is no line of sight into the gaming room from any other area in the Premises due to the proposed placement of screening;

- (e) the proposed layout allowed for significant surveillance of patrons and entrances to the gaming room by staff from the gaming bar and cashier's station.<sup>37</sup>

55. Based on the evidence above, the Commission is satisfied that this second element has been met.

#### 'NO NET DETRIMENT' TEST

56. 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

57. 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

58. 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>38</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>39</sup>

#### *Expenditure estimates*

59. In the ShineWing Report, Mr Stillwell gave evidence that, adopting a benchmarking approach, he would anticipate the level of gross gaming expenditure generated from an introduction of 40 EGMs at the Royal Hotel would be between \$1,550,520 and \$1,854,677 per annum with 85% of

<sup>36</sup> Section 3.3.7(2) of the GR Act.

<sup>37</sup> Statement of Mr Barrett, page 6.

<sup>38</sup> See *Romsey #2* [2009] VCAT 2275 at [351] per Bell J.

<sup>39</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.

this achieved within the first 12 months of trade (estimated to be commencing from 16 August 2022) being between \$1,317,942 and \$1,576,475.<sup>40</sup>

60. In terms of transferred expenditure, Mr Stillwell adopted a notional transfer rate of 25% based on the following:
- (a) There is only one gaming venue located within a 10 kilometre radius of the Premises, with the next most proximate gaming venues located in Pakenham and Officer being approximately 15 to 20 kilometres away.
  - (b) Given the location and profile of the Koo Wee Rup township, there exists an inherent necessity for residents in the immediate catchment area to travel to access amenities in Pakenham and other areas where there are currently gaming venues. For residents who conduct gaming activities, a material proportion would most likely transfer their gaming activities to the Premises due to the comparative accessibility of the new venue.
  - (c) There would be patrons residing in the immediate catchment area who do not currently play gaming machines as there are currently no gaming venues located in the town. As such, it is highly likely that some of these residents would commence to undertake gaming activities at the Premises with the introduction of EGMs and would not be transferring gaming expenditure from other venues.
  - (d) The results of the bistro patron survey, detailed at above at paragraph 43.<sup>41</sup>
61. Mr Stillwell estimates that the 75% new expenditure will equate to between \$1,162,890 and \$1,391,008 per annum. 85% of this new expenditure is estimated to be derived within the first 12 months, being between \$988,457 and \$1,182,356.<sup>42</sup>
62. Mr Anderson assessed new expenditure that is derived from non-problem gamblers as an economic benefit that he gives a weighting of low to moderate. This weighting takes into account the 'mitigating factors that have been incorporated into the proposed gaming designs and the projections in this instance.'<sup>43</sup>
63. Ms Rosen identified that EGM expenditure not directly associated with people affected by gambling-related harm is considered an economic benefit to the municipality. However, she offsets this benefit against a number of factors identified in the SYM Plan report that predominately relate to the costs of gambling-related harms. Ms Rosen ultimately concludes

<sup>40</sup> ShineWing Report, page 27.

<sup>41</sup> ShineWing Report, page 24.

<sup>42</sup> ShineWing Report, page 25.

<sup>43</sup> NBA Report, pg 82.



that the potential economic impact associated with EGM expenditure not associated with gambling-related harms is assessed as a low negative.<sup>44</sup>

*The Commission's view*

64. 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.
65. In all the circumstances and with reference to the catchment area of the Premises, the Commission accepts the evidence of Mr Stillwell in relation to anticipated gaming expenditure as outlined in paragraphs 59 to 61 above, and finds that:
- (a) it is likely that within the first 12 months of the operation of EGMs at the Premises, (not before 16 August 2022) EGM expenditure will occur between \$1,317,942 and \$1,576,475;
  - (b) in subsequent years, EGM expenditure at the Premises will likely rise to between \$1,550,520 and \$1,854,677 per annum;
  - (c) new expenditure is likely to be between \$988,457 and \$1,182,356 in the first 12 months of the operation of the EGMs, and between \$1,162,890 and \$1,391,008 per annum thereafter.
66. The Commission notes that in reaching her impact weighting, Ms Rosen reduced potential benefits by offsetting associated disbenefits. The Commission considers that this amounted to double-counting given that she separately attributed a weighting to the same disbenefit impact. Where Ms Rosen has adopted this approach in other impact weightings, the Commission has taken this into account when assessing the evidence of the parties.
67. 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 101 to 125 below with respect to the incidence of problem gambling. Of the problem gambling that occurs within the Premises, the anticipated transfer rate suggests the majority of these are likely to be residents of Koo Wee and its immediate surrounds. The expenditure rate from the introduction of the 40 EGMs is relatively modest in the context of the municipality. The Commission finds that the portion of new expenditure not attributable to problem gambling is an economic benefit that is given a marginal weight.

*Expenditure on capital works*

68. A potential economic benefit associated with this Application is that arising from the expenditure on the Proposed Developments.

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<sup>44</sup> SYM Plan Report, page 49.

69. The Applicant estimates that the construction costs of the Proposed Developments are approximately \$4 million.<sup>45</sup> Mr Deegan gave evidence that the Proposed Developments depended on the success of the Application.<sup>46</sup>
70. The Applicant intends to engage a construction company based in the Shire of Cardinia, C & M Commercial Holdings Pty Ltd trading as Campbell Constructions, to undertake the Proposed Developments.<sup>47</sup> Mr Deegan told the Commission that it is the intention that local people will predominately be employed for the Proposed Developments.<sup>48</sup> This is supported by the letter from Campbell Constructions dated 29 July 2020, setting out that the Proposed Developments will take approximately 6-7 months and will employ 45 full-time staff, based on a 40 hour week over this period. It states that “[these workers] live in the Cardinia Shire.”
71. Mr Anderson and Mr Deegan explained during the hearing that while the intention is to predominately use local contractors to undertake the Proposed Developments, there may be specific trades that are not available locally and need to be procured from outside of the Shire of Cardinia.<sup>49</sup>
72. Mr Anderson considers the capital works to be an economic benefit that attracts a ‘significant weight.’<sup>50</sup> In support of this weighting, he identifies the \$4 million cost as being ‘a significant economic benefit for a small town of this nature’ and points also to the intention to use local people from the Shire of Cardinia.<sup>51</sup>
73. Ms Rosen gave evidence that the investment of \$4 million for the Proposed Developments is an economic benefit in the short term.<sup>52</sup> In the SYM Plan Report, Ms Rosen groups expenditure on capital works, supply contracts and complementary expenditure together, and assesses these three factors collectively under the description ‘economic stimulus’.<sup>53</sup> In Ms Rosen’s view ‘the economic stimulus may be of marginal benefit to the local economy if the supply contracts, complementary expenditure and additional jobs are derived from the municipality and the proposal site’s catchment.’<sup>54</sup>

### *The Commission’s view*

<sup>45</sup> Statement of Mr Deegan, para 30.

<sup>46</sup> Statement of Mr Deegan, para 30.

<sup>47</sup> Transcript of the Hearing, 30 March 2021, page 119.

<sup>48</sup> Transcript of the Hearing, 30 March 2021, page 117.

<sup>49</sup> Transcript of Hearing, 30 March 2021, pages 80 and 119.

<sup>50</sup> NBA Report, page 6.

<sup>51</sup> NBA Report, page 79.

<sup>52</sup> SYM Plan Report, page 48.

<sup>53</sup> SYM Plan Report, page 42

<sup>54</sup> SYM Plan Report, page 48.



74. The Commission accepts Mr Deegan's evidence that the Proposed Developments 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>55</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>56</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 Proposed Developments (at least in the manner presented to the Commission) would not proceed if this Application were not to be successful.
75. The Commission regards the expenditure of capital works to be a benefit. Here, the Commission accepts that construction of the Premises will cost approximately \$4 million and that short term employment generated for the construction will predominately benefit people from the Shire of Cardinia. Given the quantum of the expenditure in the context of the Shire of Cardinia as a whole, the Commission considers it appropriate to assign this benefit a low weight.
76. 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 132 to 136.

#### Employment creation

77. The economic benefit of employment creation arising from this Application fall broadly into two categories:
- (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.

<sup>55</sup> [2013] VCAT 1545.

<sup>56</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.

78. In relation to short term employment benefits, as noted above, it is accepted that the Proposed Developments will be predominantly undertaken by individuals who live in the Shire of Cardinia.
79. 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 68 to 76 above.
80. 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.
81. In this regard, Mr Deegan gave evidence that 14 equivalent full time employee (**EFT**) positions would be created. These positions would comprise of 9 EFT positions and 5 full time positions across the gaming room, bistro and function zone.<sup>57</sup> Further, Mr Deegan gave evidence that all efforts would be directed to fulfilling these staffing requirements from within Koo Wee Rup and immediate surrounds. He estimates that 90% of the additional staffing positions would be filled by people who live within the municipality.<sup>58</sup> With regard to these matters, Mr Anderson views employment creation to be a positive economic benefit that he gives a 'moderate' weight.<sup>59</sup>
82. In the SYM Plan Report, Ms Rosen considers the short term employment associated with the Proposed Developments and the permanent gaming positions together.<sup>60</sup> She assesses the economic benefit of the grouped employment generation as 'marginally positive'. In arriving at this view, she raises concern with the lack of evidence that occupations associated with the EFT positions created by the Application will address unemployment in the municipality and catchment given that gaming room employees require a specific set of skills. She considers this to be particularly relevant given the relatively high number of people employed in farming and low number of people employed in hospitality in Koo Wee Rup compared with the Shire of Cardinia, and Shire of Cardinia compared with greater Melbourne.<sup>61</sup>

*The Commission's view*

83. The Commission is of the view that granting the Application will generate employment at the Premises, 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 14 EFT positions at the Premises.

<sup>57</sup> Statement of Mr Deegan, para 41.

<sup>58</sup> Statement of Mr Deegan, para 42.

<sup>59</sup> NBA Group, page 81.

<sup>60</sup> SYM Plan Report, page 47.

<sup>61</sup> SYM Plan Report, pages 47 – 48.



84. The Commission accepts also that efforts will be made by the Applicant to employ people from the municipality. While it is the 'expectation' of the Mr Deegan that this will occur, it is not clear on the evidence whether this can be achieved. Nonetheless it accepts that at least some, if not most, of these positions will be filled by people from within the municipality.
85. Overall, the Commission considers the additional employment arising from the Application as positive, and gives this benefit marginal to low weight.

Complementary expenditure

86. 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.
87. The Applicant estimates that total internal complementary expenditure in the first 12 months will be \$1.3 million.<sup>62</sup>
88. Mr Anderson gave evidence that the Premises currently has a good reputation for quality food and live entertainment. He believes the addition of the café and function rooms will add to this income stream and increase the local economy through increased patronage at the Hotel. Mr Anderson finds this is an economic benefit that he gives a low weight.<sup>63</sup>
89. Ms Rosen identifies that value of the complementary expenditure as a potential economic benefit to the municipality.<sup>64</sup> As outlined above at paragraph 73, this forms part of her grouped 'economic stimulus'.

*The Commission's view*

90. The Commission accepts a degree of complementary expenditure will occur at the Premises, however it is uncertain on the evidence what this level will be. The patron survey described at paragraph 43 above indicates the Premises attracts predominately local people. There is insufficient evidence before the Commission to find that this would change should the

<sup>62</sup> Statement of Mr Deegan, para 49.

<sup>63</sup> NBA Report, page 80.

<sup>64</sup> SYM Plan Report, page 13.

application be granted. For these reasons, the Commission finds complementary expenditure to be an economic benefit that it accords marginal weight.

### Supply contracts

91. The Applicant considers that the approval of the Application will result in contracts for food and beverage suppliers, various gaming and non-gaming service providers (e.g. cleaners, security, utility) and other contracts/utilities for the Premises, all of which are separate to the anticipated gaming revenue to be generated through operation of EGMs.
92. In the Application Form, the Applicant identifies each of proposed supply contractors and estimates supply contracts in the amount of \$557,500 over the first 12 months of operation. This includes \$29,000 for cleaning, \$69,000 for security, \$19,500 for café goods and \$360,000 for food and beverage. Of this, up to \$29,000 is anticipated to be generated within the Shire of Cardinia (comprising of \$17,000 worth of goods for the café and \$12,000 of security costs).<sup>65</sup> During the Hearing, Mr Deegan gave evidence that these calculations were based on the Cardinia Park Hotel's performance, with a slight downward adjustment.<sup>66</sup>
93. Mr Anderson considers the supply contracts to be an economic benefit that he ascribes a low weight. This assessment reflects the uncertainty about the amount of the supply contracts to be given to local businesses.<sup>67</sup>
94. The Commission accepts the Applicant's evidence that there will be supply contracts in the amount of approximately \$557,500 which have a positive economic benefit. However, with only \$29,000 able to be identified as going to local suppliers, the benefit to the local municipality is minimal. As such, the Commission gives this economic benefit a marginal weight.

### Community contributions

95. In determining the net economic and social impact of applications of this nature, both the Commission<sup>68</sup> and VCAT<sup>69</sup> have regularly treated community contributions as a positive benefit. However, for the proposed contribution of \$100,000 annually 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

<sup>65</sup> Attachment to Application Form regarding question 6.1.

<sup>66</sup> Transcript of Hearing, 30 March 2021, pg 126.

<sup>67</sup> Transcript of Hearing, 30 March 2021, pg 37.

<sup>68</sup> See, for example, *Richmond Football Club Ltd at Wantirna Club premises* [2015] VCGLR 31 (24 July 2015).

<sup>69</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.

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.

*The Commission's view*

96. Having regard to the evidence and submissions made with respect to the community contributions that are set out in paragraphs 139 to 140 below, such contributions can also have a positive economic impact. The Commission considers the community contributions 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*

97. Increasing competition in gaming in the Shire of Cardinia is a factor in light of the statutory purposes of Chapter 3 of the GR Act<sup>70</sup> and the consumer benefits that derive from competition.
98. The VCGLR Report identifies that, on the basis of an estimated adult population in the Shire of Cardinia of 85,551 for 2019, this Application would (if approved):
- (a) increase the number of approved venues within the municipality by one;
  - (b) increase the overall number of EGMs within the municipality by 40 to 385;
  - (c) increase the EGM density of the municipality in which the Premises are situated from 4.03 EGMs per 1,000 people to 4.5 EGMs per 1,000 people (compared with the metropolitan average of 4.7 EGMs per 1,000 people and State average of 5 EGMs per 1,000 people).
99. As detailed at paragraph 60 above, the evidence shows that, should the Application be approved, there will be a low transfer rate from other venues in the Shire of Cardinia.

*The Commission's view*

100. 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. On the other hand, the evidence shows the transfer rate is likely to be minimal. On balance, the Commission considers the impact of increased competition to be an economic benefit to which it gives marginal weight.

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<sup>70</sup> GR Act, section 3.1.1(2).

*Gambling expenditure associated with problem gambling*

101. To the extent that a portion of new expenditure is attributable to problem gambling, this represents an economic disbenefit.<sup>71</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>72</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 individuals within a number of problem gambling severity index (**PGSI**) risk categories: ‘problem gamblers’, ‘moderate-risk’ gamblers and ‘low-risk’ gamblers, as well as across the community more broadly.
102. In assessing the extent of the economic disbenefit of gambling expenditure associated with problem gambling below, the Commission has had regard to the expenditure evidence and its findings set out in paragraphs 0 to 66 above.

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

103. 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.<sup>73</sup>
104. The VCGLR Report identifies that, within the 5 kilometre radius of the Premises:
- (a) the SEIFA rankings show that, of the SA1s within a 5 kilometre radius of the Premises, 25% are in the 1<sup>st</sup> quintile, 25% in the 2<sup>nd</sup> quintile and 50% in the 3<sup>rd</sup> quintile.<sup>74</sup> The SEIFA

<sup>71</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 and is careful not to double count in doing so.

<sup>72</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.

<sup>73</sup> This approach accords with VCAT treatment of this issue in *Molwyn Pty Ltd v Mornington Peninsular* [2015] VCAT 1982 (23 December 2015) at [68].

<sup>74</sup> VCGLR Report, page 37.





for the five kilometre radius of the Premises (1,005.50) is 1.52% lower than the Shire of Cardinia, 1.49% lower than metropolitan Melbourne and 0.49% lower than Victoria;<sup>75</sup>

- (b) the unemployment rate is 6%, being lower than the employment rate of the Shire of Cardinia which is 6.95% and higher than the Victorian and metropolitan Melbourne rates of 5.7% and 5.39% respectively;<sup>76</sup> and
- (c) housing stress is 79.31%, which is higher than housing stress in the Shire of Cardinia, Victorian and metropolitan Melbourne averages at 58.5%, 60.2 and 64.5 respectively;<sup>77</sup>

105. In the NBA Report and his evidence at the Hearing, Mr Anderson details the socio-economic characteristics of the immediate 2.5 kilometres around the Premises, the 20 kilometre radius around the premises and the Shire of Cardinia. Mr Anderson considered that, with 71% of the current patrons of the Premises from Koo Wee Rup, it is appropriate to focus on this area for potential new gaming patrons of the Premises.<sup>78</sup>

106. Based on 2016 Census data, Mr Anderson views the 2.5 kilometre radius of Koo Wee Rup as 'having an average level of socio-economic disadvantage and financial vulnerability that would not make [the residents] significantly more susceptible to gambling-related harms.'<sup>79</sup> Mr Anderson's reasoning included consideration of the following matters:

- (a) the SEIFA breakdown, when ranked into deciles with one being the most disadvantaged and 10<sup>th</sup> the most advantaged, ranks the residents living within the 2.5 kilometre catchment area as ranging from the 2<sup>nd</sup> decile to the 6<sup>th</sup> decile. His evidence is that that 90% of this catchment ranks in the 4<sup>th</sup> decile and above, 'indicating an average to low level of disadvantage';<sup>80</sup>
- (b) the financial markers often associated with high-risk problem gambling, indicate that Koo Wee Rup has: a rate of unemployment that is lower than the Victorian average; an average personal income of only 3% less than the Victorian average; the rate of mortgage stress is on par with the balance of Victoria; and the rate of rental stress is lower than other areas within Cardinia.<sup>81</sup>

<sup>75</sup> VCGLR Report, page 36.

<sup>76</sup> VCGLR Report, page 40.

<sup>77</sup> VCGLR Report, page 33.

<sup>78</sup> NBA Report, page 75.

<sup>79</sup> NBA Report, page 75.

<sup>80</sup> NBA Report, pages 63 and 75.

<sup>81</sup> NBA Report, page 76.

107. Ms Rosen gave evidence that overall, the Shire of Cardinia would not be considered to be experiencing high levels of socio-economic disadvantage with regard to its score of socio-economic disadvantage, household stress, and rental of social housing relative to the South Eastern Metropolitan Region and Greater Melbourne.<sup>82</sup> However, the analysis of indicators of vulnerability to gambling-related harms indicates that the community of Shire of Cardinia is, to some extent, vulnerable to gambling-related harms, as it has relatively high rates of the following when compared with Victoria: welfare recipients per 100 people, unemployment, number of debtors and family incidents per 100,000 people.<sup>83</sup>
108. In relation to the community within 5 kilometres of the Premises, Ms Rosen's view is that it is at an elevated risk of gambling-related harms. In arriving at this conclusion, Ms Rosen points in her evidence to a number of considerations regarding the Koo Wee Rup and the area within 5 kilometres of the Premises, including the following:
- (a) based on its SEIFA rating of 988.1, Koo Wee Rup is the third most disadvantaged district in the Shire of Cardinia;<sup>84</sup>
  - (b) Koo Wee Rup: has lower proportions of welfare recipients compared to Cardinia Shire and similar proportions of welfare recipients to Victoria; higher proportions of low income households, people renting social housing, people aged 35-74 years, Aboriginal and Torres Strait Islander people and people with below Year 11 schooling relative to Cardinia Shire; similar proportions of households with housing stress, people in the nominated personal annual income group, people who did voluntary work, and people aged 18-24 years; and it is one of three localities in Cardinia Shire which has a concentration of people renting social housing.<sup>85</sup>
  - (c) Cardinia Shire Council does not provide any services or support to people affected by gambling-related harms. Support for people directly and indirectly affected by gambling-related harms is provided by Gambler's Help Southern and the Responsible Gambling Foundation. Although there are no services providing support for people affected by gambling-related harms in Koo Wee Rup, the health and community organisations and agencies in Koo Wee Rup provide services for people with mental and physical health, and for those affected by homelessness, financial vulnerability and domestic violence. Nevertheless, feedback from the stakeholders indicates that due to the geographic isolation of the Koo Wee Rup township, these services are limited and are likely to

<sup>82</sup> SYM Plan Report, page 43.

<sup>83</sup> SYM Plan Report page 44 and Appendix 5.

<sup>84</sup> SYM Plan Report, page 23.

<sup>85</sup> SYP Plan Report, page 45 and Appendix 6.

experience an increase in demand due to population growth and the impacts of the COVID-19 pandemic.<sup>86</sup>

109. The submissions made by community organisations in relation to this application, both to the Commission and in response to enquiries by Ms Rosen, also raise concern with gambling related harm in the context of Koo Wee Rup's community profile.<sup>87</sup>

*The Commission's view*

110. The Commission agrees that it is appropriate in the circumstances of this Application to pay particular attention to the potential for gambling related harm on people living within 5 kilometre from the Premises, predominately being residents of Koo Wee Rup. The Commission finds that the socio-economic profile of this group is mixed, and that its characteristics suggest they are at greater risk to gambling related harm than the Shire of Cardinia more generally.

*The convenience of the Premises*

111. Mr Anderson considers the Premises to be a destination venue at the edge of the main activity centre in Koo Wee Rup, with patrons needing to make a conscious effort to attend.<sup>88</sup> He gave evidence that the businesses to the west of the Premises are not considered as 'everyday convenience shopping' and it is therefore suggested that the Premises is not en route to everyday shopping, as the majority of retailers and sensitive land uses are located to the east of the Premises.<sup>89</sup> In his opinion, given the catchment of the venue and the regional setting, it is likely that the majority of the patrons will make a conscious decision to drive to the Premises.<sup>90</sup>
112. The NBA Report describes a pedestrian count conducted by the Applicant between the 29<sup>th</sup> of July and 4<sup>th</sup> August 2019 outside the Koo Wee Rup Woolworths supermarket. The stated outcome of this survey was that approximately 75% of pedestrians remained on the south side of the Main Street, and 25% on the side of the Premises. Of the 9,735 people counted, only 10 people crossed the street to the Hotel during the period of the survey.<sup>91</sup> Mr Anderson points to these results to support a finding that the Premises is not on an "ant-trail" to everyday shopping needs and that the introduction of gaming at the rear of the Hotel, with no promotional signage for the EGMs, will not unduly increase the risk of problem gambling in the township.<sup>92</sup>
113. Mr Barrett gave evidence 'the application proposes a significant increase in the range of recreational opportunities at Royal Hotel. In my opinion, it could, therefore, be consistent with

<sup>86</sup> SYM Plan Report, page 46.

<sup>87</sup> See paragraph 25 above; SYM Plan Report, pages 52-53 and Appendix 3.

<sup>88</sup> NBA Report, page 56

<sup>89</sup> NBA Report, page 18.

<sup>90</sup> NBA Report, page 54.

<sup>91</sup> NBA Report, Appendix 8, page 4.

<sup>92</sup> NBA Report, page 55.

the definition of a *destination* venue as described by the Victorian Department of Justice as “a place that people will go to as an event... [that could be] located in a more suburban environment.”<sup>93</sup>

114. Ms Rosen accepts that the Premises is not located in an existing shopping complex or strip shopping centre listed in schedule to Clause 52.25 of the Cardinia Planning Scheme.<sup>94</sup> She gave evidence that, nevertheless, based on the locational characteristics of the Premises, it is highly accessible and therefore has the potential to contribute to convenience gambling. Reasons cited for this position include that the Premises is located:

- (a) within the existing and proposed commercial precinct of Koo Wee Rup;
- (b) on a prominent corner site along one of the two main thoroughfares in the township;
- (c) on the main street between non-residential (retail, hospitality and light industrial uses) to the west and the strip shopping centre to the east and is therefore likely to be on an “ant trail”;
- (d) in a manner functionally and visually integrated with one shopping complex (opposite to the south) and a strip shopping centre on the northern side of Station Street to the east. The functional integration with the shopping complex to the south is facilitated by a pedestrian refuge between the two sites; and
- (e) pedestrian, cycle and vehicular movement along both Station Street and Moody Street is intense relative to the rest of the township.<sup>95</sup>

115. In its closing submissions, the Council submitted that for residents of Koo Wee Rup and its rural hinterland, the Premises will be a much more convenient place to use EGMs than the closest competing venues in Tooradin, Pakenham, Officer and Beaconsfield, which are all a long drive away. The Premises is in the centre of town. Introducing EGMs into the Premises, when there are not already EGMs in Koo Wee Rup, would make EGM gaming significantly more convenient for the community there.<sup>96</sup>

#### *The Commission's view*

116. The Commission agrees with Council's submission. The Commission does note, however, that whether a venue is described as “destination” or “convenience” is not binary but exists on a continuum. In this case the Commission considers the venue to be more a convenience, than a

<sup>93</sup> Statement of Mr Barrett, page 5.

<sup>94</sup> SYM Plan Report, page 56.

<sup>95</sup> SYM Plan Report, page 56.

<sup>96</sup> Outline of Submissions on Behalf of the Council, pages 33-34.

destination, venue. The Premises is in a central Koo Wee Rup location in walking distance, or a very short drive, from the only strip shopping centre and the only supermarket in town.

*Proposed Responsible Service of Gambling measures*

117. 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.

118. Mr Anderson's view is that 'any noticeable change in problem gambling as a direct result of the Application is deemed to be negligible'. The basis of this view expressed by Mr Anderson includes that the design of the proposed gaming room has considered RSG measures as directed by the *Best Practice Guide* of the RGF and recommendations made by Leigh Barrett and Associates concerning the layout of the floorplan.<sup>97</sup> Proposed responsible gaming initiatives include:

- (a) all management and gaming room staff will be fully trained, licenced and qualified in the Responsible Service of Gaming and Alcohol;
- (b) Gambler's Help Eastern have been contacted to oversee training and venue support, should the Application be approved;
- (c) building design considerations to the gaming room layout;
- (d) introduction of additional practices and procedures including: security on the door of the Gaming Lounge; minimum one floorwalker present every shift; café area will be open and food available all times gaming is provided; external RSG review and training to be conducted by Leigh Barrett; code of conduct to be adopted; no gaming 'player loyalty' schemes to be implemented; proposed gaming hours of operation provide a minimum 7-hour shutdown window, with an 11-hour shut down on Sundays.<sup>98</sup>

119. Mr Barrett gave evidence that he had been engaged by the Applicant to provide advice and assistance in relation to the Cardinia Park Hotel, where Mr Deegan is the current gaming nominee. This advice and assistance included recommendations about the layout and operation of the venue and the gaming room from a responsible gaming/customer care perspective and the continuous provision of regulatory compliance services at Cardinia Park Hotel since 20 October 2014.<sup>99</sup> Mr Barrett observed that the management and staff at the Cardinia Park Hotel have consistently demonstrated a commitment to customer care practices and working

<sup>97</sup> NBA Report, page 93.

<sup>98</sup> NBA Report, pages 33-34.

<sup>99</sup> Statement of Mr Barrett, pg 4.

relationships with local Gambler's Help services. It is his expectation that these practices would be adopted at the Premises if the Application is approved.<sup>100</sup>

120. Mr Barrett also stated that he has discussed the Application with Mr Deegan and has visited the Premises on six occasions.<sup>101</sup> Mr Barrett is satisfied that the success of this Application would have minimal impact on the potential for problem gambling in Koo Wee Rup, based on the following factors which he believes the application addresses from a responsible gambling perspective:

- (a) level of interaction between staff and customers;
- (b) comprehensive staff training and venue policies and procedures pertaining to venue-wide customer care;
- (c) size of venue and gaming room (number of EGMs) in comparison to other activities available in the venue;
- (d) layout of the venue and gaming room;
- (e) hours of operation of the gaming room; and
- (f) availability and promotion within the Premises of its broad entertainment offer.<sup>102</sup>

121. Relevant to how gaming is to be conducted at the Premises is the detail of the potential management of the Premises. As outlined above, Mr Deegan has broad experience in operating and managing hospitality and gaming venues within Victoria. Mr Deegan is trained in RSG and actively oversees gaming operations at the Cardinia Park Hotel.<sup>103</sup>

122. Mr Goonwardena is the gaming room manager of the Cardinia Park Hotel. He will be responsible for setting up the gaming room at the Premises if all approvals are obtained.<sup>104</sup> In his statement and oral evidence, Mr Goonwardena detailed the responsible gambling practices implemented at the Cardinia Park Hotel, including through specific examples of how particular instances we managed.<sup>105</sup>

### *The Commission's view*

<sup>100</sup> Statement of Mr Barrett, pg 4.

<sup>101</sup> Transcript of Hearing, 30 May 2019, pg 99.

<sup>102</sup> Transcript of Hearing, 30 May 2019, pg 100; Statement of Mr Barrett, page 7.

<sup>103</sup> Transcript of Hearing, 20 March 2020, page 113.

<sup>104</sup> Statement of Mr Goonwardena, page 2.

<sup>105</sup> Transcript of Hearing, 30 March 2020, pages 110-115; Statement of Mr Goonwardena, pages 2-4.

123. The Commission finds that should the Application be approved, this would result in the introduction of 40 EGMs to Koo Wee Rup, a town that currently does not have any. As set out above at paragraph 61, it is accepted by the Commission that these EGMs would see between \$1,162,890 and \$1,391,008 new expenditure. Without specifically quantifying the amount, the Commission accepts that a proportion of expenditure will be associated with problem gambling.
124. 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 the Applicant's witnesses, will contribute towards mitigating the potential harm caused by problem gambling. Specifically, the Commission is satisfied that the Applicant (through Mr Deegan and Mr Goonwardena) has significant experience as a gaming operator, and would likely employ the same robust RSG practices as were described at Cardinia Park Hotel.
125. Balancing these findings, 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 moderate weight. Issues associated with the negative social impacts associated with problem gambling are considered further in paragraphs 144 to 148 below.

*Potential diversion of trade from retail and gaming venues*

126. Mr Anderson's view is that the introduction of gaming at the existing Premises in an area of the Shire of Cardinia that does not currently have any EGMs is not envisaged to have a detrimental impact on the gaming venues in the wider area.<sup>106</sup>
127. As detailed above at paragraph 60, Mr Stillwell gave evidence that only 25% of the gaming expenditure expected to be generated from the Application will be transferred.
128. Mr Anderson also considers that the potential for diversion of trade from non-gaming expenditure to be 'low since this is one of the few venues available in the township of Koo Wee Rup and already has an existing patronage from far and wide.'<sup>107</sup> On this basis he concludes that the impact of introducing gaming at the Premises will be low on non-gaming venues in the area.<sup>108</sup>

*The Commission's view*

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<sup>106</sup> NBA Report, page 88.

<sup>107</sup> NBA Report, page 88.

<sup>108</sup> NBA Report, page 89.

129. The Commission accepts that the diversion of trade from other venues in the Shire of Cardinia is likely to be low. The diversion that does occur is assessed as an economic disbenefit that the Commission gives a marginal weight.

Conclusion on economic impacts

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

Social Impacts

131. 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.

Additional and improved services and facilities at the Premises

132. Ancillary to the capital works expenditure that will occur if this Application is granted, the Proposed Developments will also result in improved services and facilities being available to the community. Access to such services and facilities is an outcome which the Commission<sup>109</sup> and VCAT<sup>110</sup> have regularly determined is a positive social impact associated with applications of this nature.

133. The nature of the Proposed Developments has been described in detail in paragraph 38 above.

134. In his evidence, Mr Deegan explained the benefits to arise from the availability of additional function facilities at the Premises.<sup>111</sup> He told the Commission that over the past four years, the Premises has hosted a variety of functions, however the vast majority of requests received are unable to be met due to a lack of facilities available at the Premises. He said that within the local municipality there are very few options for a member of the community to hold a function in a safe and friendly licensed environment such as the Royal. He believes there is a strong demand for a dedicated area to be developed in order to cater for private functions at the Premises.<sup>112</sup>

135. Ms Rosen considers that as the Premises has recently undergone renovations, additional renovations carry a marginal social benefit for existing and future patrons of the hotel. She acknowledges that the use of new function rooms by local businesses and sporting groups is an in-kind contribution which is a social benefit, however notes that the rooms are not available free

<sup>109</sup> See, for example, *Glenroy RSL Sub-branch Inc at Glenroy RSL premises* [2015] VCGLR 40 (22 October 2015).

<sup>110</sup> See, for example, *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

<sup>111</sup> Statement of Mr Deegan, para 24; Transcript of Hearing, 30 March 2021, pages 117-118.

<sup>112</sup> Statement of Mr Deegan, para 24; Transcript of Hearing, 30 March 2021, pages 117-118.



of charge and there are other function rooms in Koo Wee Rup, and as there is no guarantee as to the rooms' availability, the social benefit is considered marginal.<sup>113</sup> Ms Rosen notes further that the number of patrons who will use these facilities compared with the size of the community in the Premises' trade area is relatively small.

*The Commission's view*

136. The Commission finds that the introduction of the Proposed Developments would bring a social benefit, particularly with regard to the function room and community hub. The Commission finds the Proposed Benefit is a social benefit, upon which it places a low weight.

*Increased gaming opportunities for those who enjoy gaming*

137. 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.

*The Commission's view*

138. 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 and findings as to gaming expenditure set out in paragraphs 59 to 66 above, the Commission finds that granting approval of the Application will serve the needs of non-problem gaming patrons. As granting the Application would see the introduction of EMGs in the only hotel venue in Koo Wee Rup, this benefit is to be weighed against the disbenefit to local community members who wish to avoid EGMs (including both those who are problem gamblers and those who are not). Overall, the Commission considers this to be a social benefit and one on which it places marginal weight.

*Social benefit derived from increased community contributions*

139. 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.

140. Mr Deegan gave evidence that, if the Application were approved, the Applicant would:

- (a) commit to a \$100,000 annual cash contribution to be directed towards local community organisations and sporting groups; and

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<sup>113</sup> SYM Plan Report, page 67.

- (b) the cash contributions would be allocated in the form of grants. Community groups could apply for a grant which will be distributed at the discretion of the Applicant in consultation with key stake holder.<sup>114</sup>

141. In the NBA Report, Mr Anderson sets out additional in-kind forms of community benefit to an estimated cost of approximately \$100,000 per annum, that will be provided in the event the Application is successful. This includes free community group function room hire, the use of a community bus and community hub facilities.<sup>115</sup>

142. Mr Anderson also gives evidence that the proposed donations have already been accepted in principle by LifeChanger, which seeks to provide resources and skill training for young people and help build their resilience.<sup>116</sup> The NBA Report also exhibits letters from local clubs expressing a willingness to accept additional financial support from the Applicant should the Application be approved.<sup>117</sup>

*The Commission's view*

143. The Commission notes the significance of any such contributions is assessed on the effect on the community. The Commission accepts that in this matter, the Applicant's proposal provides a level of certainty about such an effect, given the evidence identifying particular groups and organisations in the Shire of Cardinia that will be assisted. As such, the Commission accepts the proposed community contributions will have a positive social impact to which it accords a low weight.

*Possibility of increased incidence and impact of problem gambling on community*

144. 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. Associated with these costs, the Commission also has considered the economic cost of providing community support services to assist those experiencing such social harms. Accordingly, the Commission accepts there is potential for negative social costs through possible increased problem gambling.

145. The Commission refers to evidence and findings set out in paragraphs 103 to 125 with respect to the economic impact of problem gambling on the community.

<sup>114</sup> Statement of Mr Deegan, pars [47]-[48].

<sup>115</sup> NBA Report, page 35.

<sup>116</sup> NBA Report, page 76

<sup>117</sup> NBA Report, Annexure 5.

146. The Commission also notes Ms Rosen’s evidence that this Application is ‘the riskiest proposal that I have been involved in’ in the gambling harm context, because of its socioeconomic and physical context and because of the important role that this particular venue plays in the social fabric of the community.<sup>118</sup>

*The Commission’s view*

147. Overall, the Commission finds that this Application will result in the introduction of 40 EGMS in Koo Wee Rup, and this will be associated with new expenditure as summarised in paragraph 61 above. In the Commission’s view, the new expenditure arising from the Application is a modest but not insubstantial level of new expenditure, particularly in light of the profile of the township.

148. As noted above, the Commission finds that Koo Wee Rup does exhibit factors indicating 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. In this respect the Commission nevertheless considered that the RSG protection elements identified above at paragraphs 117 to 122 would mitigate the impact to some extent. 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

149. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,<sup>119</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.

150. The evidence before the Commission indicates that there has been a mixed community attitude towards the Application. In summary:

- (a) the NBA Report includes correspondence from two local sporting groups and LifeChanger in support of the Application;<sup>120</sup>
- (b) 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 Hearing;

<sup>118</sup> Transcript of Hearing, 31 March 2021, pages 176 to 177.

<sup>119</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>120</sup> NBA Report, Annexure 5.

- (c) the SYM Plan Report raises feedback from six community organisations who provide services to Koo Wee Rup. These organisations oppose the Application;<sup>121</sup>
- (d) three community organisations 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 are the Southern Migrant Resource Centre, Springvale Monash Legal Service Inc and Enliven Victoria as set out at paragraph 25 above.

151. Mr Anderson noted in the NBA Report there is a potential for negative community attitude arising from the granting of the Application,<sup>122</sup> however he did not identify this as a factor and ascribe it a weight in his table of benefits and disbenefits.<sup>123</sup>

152. Ms Rosen identified community sentiment as a negative social impact that she weighted as 'significant likely'. No community survey was conducted, leaving the Commission without the capacity to further assess the extent of the broader community attitude.<sup>124</sup>

#### *The Commission's view*

153. Based on the material before it, the Commission is of the view that the matters listed above at paragraph 150 represent a mixed attitude by the community of the Shire of Cardinia to this Application, with a tendency towards a negative attitude. In the circumstances, the Commission considers community attitudes a social disbenefit to which it attributes marginal weight.

#### Conclusion on social impacts

154. 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 negative social impact of the proposal.

### **NET ECONOMIC AND SOCIAL IMPACT**

155. The '*no net detriment*' test in section 3.3.7(1)(c) of the GR Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any

<sup>121</sup> SYM Plan Report, page 52.

<sup>122</sup> NBA Report, page 5.

<sup>123</sup> NBA Report, pages 90-91

<sup>124</sup> SYM Plan Report, page 68.

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>125</sup>

156. According to Mr Anderson, there will be a net social and economic benefit to the local community of Koo Wee Rup and the Shire of Cardinia if the Application is approved. Mr Anderson accepted that a disbenefit of the Application is the potential for increased potential gambling, and that new expenditure is mostly likely to be from Koo Wee Rup residents. However, he is of the view that the likelihood of such increase is minimised due to the protective factors of the location, the venue catchment patron profile, the venue design and proven commitment to RSG by the Applicant.
157. Ms Rosen ultimately found that the proposal is likely to cause or exacerbate gambling-related harms to the community of Koo Wee Rup and the Shire of Cardinia and that these disbenefits will cause disproportionate harm to those who are most at risk. Accordingly, her view is that on balance, the social and economic impact of the proposal on the wellbeing of the community of Cardinia Shire will be significantly negative.
158. 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 low negative social and economic impact to the well-being of the community in the municipal district in which the Premises are located if the Application is approved.

#### **OTHER RELEVANT CONSIDERATIONS**

159. On the material that has been put before it, the Commission has determined that the ‘*no net detriment*’ test has not been satisfied and is also satisfied of the other matters in section 3.3.7(1). The Commission must not grant the Application. The Commission is therefore not empowered to further exercise its discretion as to whether or not to grant the approval.
160. The Application is therefore refused.

***The preceding paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey, Deputy Chair, and Mr Andrew Scott, Commissioner.***

<sup>125</sup> *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.

## 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>	58 to 67	<p>The portion of new expenditure not attributable to problem gambling is an economic benefit.</p> <p>It is likely that within the first 12 months of the operation of EGMs at the Premises, (not before 16 August 2022) EGM expenditure will occur between \$1,317,942 and \$1,576,475. In subsequent years, EGM expenditure at the Premises will likely rise to between \$1,550,520 and \$1,854,677 per annum. New expenditure is likely to be between \$988,457 and \$1,182,356 in the first 12 months of the operation of the EGMs, and between \$1,162,890 and \$1,391,008 per annum thereafter.</p> <p>Various factors suggest that the extent of problem gambling at the Premises is likely to be relatively low.</p> <p>The quantum new expenditure not attributable to problem gambling is relatively low.</p> <p>Marginal weight.</p>
	<i>Expenditure on capital works</i>	68 to 76	<p>The Proposed Development is estimated to cost \$4 million and involve engagement of a contractor from the Shire of Cardinia employing predominately local people.</p> <p>Low weight.</p>



	<i>Employment creation</i>	77 to 85	<p>The Applicant submitted that the Application will result in the creation 14 EFT positions. These positions would comprise of 9 EFT positions and 5 full time positions across the gaming room, bistro and function zone.</p> <p>Expectation is that employees will be from local area. Unclear on evidence whether this will be possible.</p> <p>Marginal to low weight.</p>
	<i>Complementary expenditure</i>	86 to 90	<p>The Applicant estimated that complementary expenditure would be approximately \$1.3 million in the first 12 months of operation.</p> <p>A degree of complementary expenditure will occur at the Premises, however it is uncertain on the evidence what this level will be. The patron survey described at paragraph 43 above indicates the Premises attracts predominately local people. There is insufficient evidence before the Commission to find that this would change should the application be granted.</p> <p>Marginal weight.</p>
	<i>Supply contracts</i>	91 to 94	<p>The Applicant estimated that supply contracts would be approximately \$557,500 in the first 12 months of operation.</p> <p>However, with only \$29,000 able to be identified as going to local suppliers, it cannot be found the majority of the benefit will be to the municipality.</p> <p>Marginal weight.</p>
	Community contributions	95 to 96	<p>The proposed community contributions are in the amount of \$100,000 per annum.</p> <p>The community contributions will result in positive economic impact on local community organisations in the Shire of Cardinia.</p> <p>Marginal weight.</p>



	Increased gaming competition in the City of Melton	97 to 100	<p>The Application will increase gaming competition in the City of Melton by providing an additional venue at which patrons may choose to play EGMs.</p> <p>Marginal weight.</p>
<b>Disbenefits</b>	Gambling expenditure associated with problem gambling	101 to 125	<p>The portion of new expenditure attributable to problem gambling is an economic disbenefit.</p> <p>The socio-economic profile of the local community is mixed, and that its characteristics suggest they are at greater risk to gambling related harm than the Shire of Cardinia more generally.</p> <p>The Premises is the only hotel in Koo Wee Rup, located centrally.</p> <p>Responsible gambling initiatives and protective factors will contribute towards mitigating the potential harm caused by problem gambling. The Applicant has significant experience as a gaming operator, and would likely employ the same robust RSG practices as evidenced at the Cardinia Park Hotel.</p> <p>Moderate weight.</p>
	Potential diversion of trade from retail and other gaming facilities	126 to 129	<p>The Application would see a low transfer rate. Any diversion of trade is likely to be low.</p> <p>Marginal weight.</p>





### Social impacts

	Impact	Paragraph Reference	Comment relevant to weight
<b>Benefits</b>	Additional and improved services and facilities at the Premises	132 to 136	<p>The Application includes a proposed development of the Premises to upgrades to the existing bar, bistro and kitchen facilities, addition of a café, community hub and gaming room on the ground floor and the development of the second level into a dedicated function area with a satellite kitchen, full bar, external deck and corporate meeting facilities.</p> <p>These developments would bring a social benefit, particularly with regard to the function room and community hub.</p> <p>Low weight.</p>
	Increased gaming opportunities for those who enjoy gaming	137 to 138	<p>The Application will better serve the needs of gaming patrons through the introduction of a new venue at which they may choose to play EGMs.</p> <p>Granting approval of the Application will serve the needs of non-problem gaming patrons (in particular residents of Koo Wee Rup and the immediate surrounds). This is to be weighted against the disbenefit to local community members who wish to avoid EGMs,</p> <p>Marginal weight.</p>
	Social benefit derived from increased community contributions	139 to 143	<p>The Applicant proposes community contributions of \$100,000 annual cash contributions and in-kind contributions with an estimated cost of \$100,000.</p> <p>The Applicant's proposal provides a level of certainty about such an effect, given the evidence identifying particular groups and organisations in the Shire of Cardinia that will be assisted.</p> <p>Low weight.</p>



<b>Disbenefits</b>	Possibility of increased incidence and impact of problem gambling on community	144 to 148	<p>A proportion of total gaming expenditure at the Premises will be associated with problem gambling contributed by gaming patrons at the Premises.</p> <p>Application will result in the introduction of 40 EGMS in Koo Wee Rup, and this will be associated with new expenditure, the majority of which will come from residents of Koo Wee Rup and its immediate surrounds.</p> <p>Koo Wee Rup does exhibit factors indicating vulnerability to problem gambling. Granting this Application has the potential to somewhat increase the incidence and impact of problem gambling in the Shire of Cardinia.</p> <p>Moderate weight.</p>
	Community attitude	149 to 153	<p>There were a number of submissions to the Commission in opposition to the Application from individuals, associations and community organisations.</p> <p>The Council's decision to not make a submission does not automatically indicate positive support for the Application. The Council's position in this matter should be treated as neutral.</p> <p>Overall, the Commission is satisfied that there is a mixed attitude by the community of the City of Melton with a slight preference towards a negative attitude.</p> <p>Marginal weight.</p>