



Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by Castello Powell Hotel Pty Ltd for amendment of its venue operator's licence to vary the number of electronic gaming machines permitted in the approved premises, Powell Hotel located at 202 Ballarat Road, Footscray, from thirty (30) to forty-seven (47).

Commission:

Ms Helen Versey, Deputy Chair
Dr Dina McMillan, Commissioner

Appearances:

Ms Louise Hicks, Counsel for the Applicant (instructed by Williams Winter Solicitors)
Mr Adam Baker, Counsel Assisting the Commission

Date of Hearing:

17 August 2018

Date of Decision:

3 September 2018

Date of Reasons:

18 October 2018

Decision:

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

Signed:

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

Ms Helen Versey
Deputy Chair

REASONS FOR DECISION

INTRODUCTION

1. This is an application by Castello Powell Hotel Pty Ltd (**the Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) to amend its venue operator's licence to increase the number of Electronic Gaming Machines (**EMGs**) permitted in the Powell Hotel, located at 202 Ballarat Road, Footscray (**the Premises**), from 30 to 47 (**the Application**).
2. The relevant municipal authority is the Maribyrnong City Council (**the Council**). The Council made an economic and social impact submission to support their objection to the Application, although it did not appear at the Hearing.
3. The Commission considered the Application by way of public inquiry.¹ To this end, a public hearing was conducted on 17 August 2018 (**the Hearing**). The Applicant was represented by Ms Louise Hicks of Counsel, instructed by Williams Winter Lawyers.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

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

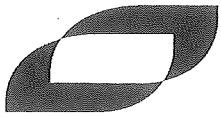
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(2) *The main objectives of this Act are—*

(a) *to foster responsible gambling in order to-*

(i) *minimise harm caused by problem gambling; and*

¹ A public inquiry is required to be conducted in relation to the Application pursuant to section 28(g)(iii) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (Vic) (**VCGLR Act**). As to the manner in which the Commission is to conduct an inquiry, see generally Pt 3 Div 2, and Pt 2 Div 3 of the VCGLR Act.

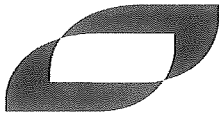


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- (ii) *accommodate those who gamble without harming themselves or others;*
- (ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*
- (b) *to ensure that gaming on gaming machines is conducted honestly;*
- (c) *to ensure that the management of gaming equipment and monitoring equipment is free from criminal influence and exploitation;*
- (d) *to ensure that other forms of gambling permitted under this or any other Act are conducted honestly and that their management is free from criminal influence and exploitation;*
- (e) *to ensure that-*
 - (i) *community and charitable gaming benefits the community or charitable organisation concerned;*
 - (ii) *practices that could undermine public confidence in community and charitable gaming are eliminated;*
 - (iii) *bingo centre operators do not act unfairly in providing commercial services to community or charitable organisations;*
- (f) *to promote tourism, employment and economic development generally in the State.*

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

- (1) *The purpose of this Chapter is to establish a system for the regulation, supervision and control of gaming equipment and monitoring equipment with the aims of—*
 - (a) *ensuring that gaming on gaming machines is conducted honestly; and*
 - (b) *ensuring that the management of gaming equipment and monitoring equipment is free from criminal influence or exploitation; and*
 - (c) *regulating the use of gaming machines in casinos and other approved venues where liquor is sold; and*
 - (d) *regulating the activities of persons in the gaming machine industry; and*



- (e) *promoting tourism, employment and economic development generally in the State; and*
- (f) *fostering responsible gambling in order to—*
 - (i) *minimise harm caused by problem gambling;*
 - (ii) *accommodate those who gamble without harming themselves or others.*

(2) *The purpose of this Chapter is also to—*

- (a) *provide for the allocation of gaming machine entitlements in order to maximise the financial and social benefits to the Victorian community within the regulatory framework applying to the allocation of entitlements;*
- (b) *promote a competitive gaming industry with the aim of providing financial and social benefits to the Victorian community.*

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

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

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

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

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

...

- (c) *in the case of ... an amendment to increase the number of gaming machines permitted in an approved venue, must be accompanied by a submission—*



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- (i) *on the net economic and social benefit that will accrue to the community of the municipal district in which the approved venue is located as a result of the proposed amendment; and*
- (ii) *taking into account the impact of the proposed amendment on surrounding municipal districts—*

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

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

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

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

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

- (1) *Without limiting the matters which the Commission may consider in deciding whether to make a proposed amendment the Commission must not amend a venue operator's licence unless—*
 - (a) *the Commission is satisfied that the amendment of the licence does not conflict with a direction, if any, given under section 3.2.3; and*
 - (b) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is*

² The Commission was provided with and notes the Correspondence between Williams Winter Solicitors for the Applicant and the Council dated 1 and 2 May 2018 which satisfies this requirement.



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satisfied that the regional limit or municipal limit for gaming machines for the region or municipal district in which the approved venue is located will not be exceeded by the making of the amendment; and

- (c) *if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the net economic and social impact of the amendment will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located;*

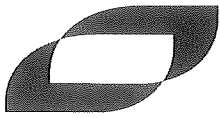
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13. Section 3.4.20(1)(c) provides for what is now commonly described as the '*no net detriment*' test. It requires the Commission to be satisfied that there is no net detriment arising from the approval through positively and objectively establishing that the net economic and social impact will not be detrimental to the well-being of the community.³
14. 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.⁴
15. 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.⁵ The test will be satisfied if, after weighing any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.
16. 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

³ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.

⁴ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, [42]-[43] per Warren CJ, Maxwell P and Osborn AJA.

⁵ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (Romsey No. 2)* [2009] VCAT 2275, [332], [348] per Bell J cited in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [58] per Dwyer DP.



consequences, and vice versa.⁶ 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.⁷

17. The Commission also notes the position taken by VCAT that:

A table of likely economic and social benefits and disbenefits, and with some comments relevant to the relative weight to be given to particular factors ... is a useful way of transparently dealing with the 'no net detriment' test, and might perhaps be considered for wider application.⁸

The Commission has utilised this approach for the purpose of considering the 'no net detriment' test in this matter.

18. If the Commission is not satisfied that the 'no net detriment' test is met, that is clearly fatal to the application before it, as given the opening words of section 3.4.20(1) of the GR Act, satisfaction of the test is a mandatory pre-condition to approval. However, although section 3.4.20(1) sets out certain mandatory considerations for the Commission, the provision is not exhaustive. If the Commission is satisfied that the 'no net detriment' test is met, it still has an ultimate discretion as to whether or not to grant the approval.⁹ The Commission must decide whether to make the proposed amendment, with or without any changes from that proposed by the applicant, even where the applicant has satisfied the minimum threshold of the 'no net detriment' test.¹⁰

19. In exercising this discretion, the Commission:

- (a) must have 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;¹¹ and

⁶ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [57] per Dwyer DP.

⁷ See *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation (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.

⁸ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [60] per Dwyer DP.

⁹ See *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; see also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [97] and following per Dwyer DP (with respect to section 3.3.7 GR Act).

¹⁰ GR Act, section 3.4.20(2).

¹¹ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [98] per Dwyer DP.



(b) 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.¹²

20. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*¹³ that, if all of the mandatory considerations under the GR Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval – other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.
21. Finally, pursuant to section 3.4.20(1)(a) of the GR Act the Commission must be satisfied that the proposed amendment of the licence does not conflict with a Ministerial direction, if any, given under section 3.2.3 of the GR Act. Additionally, pursuant to section 9(4) of the VCGLR Act, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation.
22. There is no relevant direction issued pursuant to section 3.2.3 of the GR Act that relates specifically to this Application. Further, the Commission has had regard to the Ministerial decision-making guidelines relating to gaming venues and is satisfied that there are none that are relevant to this Application.

MATERIAL BEFORE THE COMMISSION

23. The Applicant provided the Commission with the following material in support of the Application:
- (a) Gaming Application form “Amendment to venue operator licence – vary gaming machines” dated 13 February 2018 (**the Application Form**);
- (b) Social and Economic Impact Statement prepared by Mr Nick Anderson, the Managing Director of the NBA Group dated 24 April 2018 (**NBA Report**). Mr Anderson gave oral evidence at the Hearing, and the NBA Report was tendered as evidence;

¹² *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 the *Romsey* case (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

¹³ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [98].



- (c) Expenditure Analysis Report prepared by Mr Michael Clyne of PVS Australia Pty Ltd dated April 2018 (**PVS Report**). Mr Clyne gave oral evidence the Hearing and the PVS Report was tendered as evidence;
 - (d) Undated witness statement of Mr Paul Giustiniano, Chief Executive Officer of the parent company of the Applicant, the Castello Group. Mr Giustiniano gave oral evidence at the Hearing and his witness statement was tendered as evidence;
 - (e) Undated witness statement of Ms Patricia MacLennan, the Operations Manager of the Castello Group. Ms MacLennan gave oral evidence at the Hearing and her witness statement was tendered as evidence; and
 - (f) A copy of the public notice appearing in the Maribyrnong & Hobsons Bay Star Weekly on 2 May 2018.
24. On 12 June 2018, the Council wrote to the Commission indicating that it would be making submissions in relation to the Application, and on 6 July 2018, it provided written submissions including a Social and Economic Impact Assessment Report dated June 2018, objecting to the Application (**the Council Report**). The Council did not make an appearance at the Hearing. The Council Report did not include any objections from surrounding municipalities.
25. The following material, prepared by Commission staff, was provided to the Applicant and the Council, and considered by the Commission:
- (a) an *Economic and Social Impact Report* dated July 2018 (**VCGLR Report**);
 - (b) an updated *Economic and Social Impact Report* dated August 2018 (**Updated VCGLR Report**); and
 - (c) a *Pre-Hearing Inspection and Compliance Report* dated 19 July 2018 (**Pre-Hearing Report**).
26. In addition, the Commission received the submissions objecting to the Application from the following organisations:
- (a) Young Leaders of the West;
 - (b) Health West;
 - (c) Women's Health West;
 - (d) North Western Melbourne Primary Health Network; and



(e) Forty-one individuals.

27. At the Hearing, the Applicant provided written submissions for the Application dated 7 June 2018, settled by Ms Hicks.
28. Prior to the Hearing, Deputy Chair Versey and Commissioner McMillan visited the Premises.

DECISION AND REASONS FOR DECISION

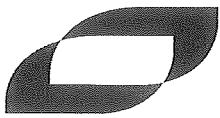
Background

The Applicant

29. The Applicant is owned by a parent company, the Castello Group. The Castello Group currently owns eight venues (including the Premises), all with varying numbers of EGMs. The Castello Group purchased the Premises in December 2015.

Location

30. The Premises are located on the corner of Ballarat Road and Gordon Street, Footscray in the City of Maribyrnong. There is a carpark accessible from Gordon Street, and the site is on the western side of Footscray.
31. The City of Maribyrnong is a Local Government Area (**LGA**) between five and eleven kilometers west of Melbourne. The LGA is bounded by the City of Moonee Valley in the north, the City of Melbourne in the east, the City of Hobsons Bay in the south and the City of Brimbank in the west. The western boundary runs along Duke Street and the Newport-Sunshine rail line, while the southern boundary is the West Gate Freeway. The eastern boundary is the Maribyrnong River, approximately 900 metres from the Premises.
32. The VCGLR Report and Updated VCGLR Report (**VCGLR Reports**) state that the LGA has an adult population 72,110. It is the smallest and one of the most densely populated municipalities in the Melbourne metropolitan area.
33. There are currently nine venues in the LGA that are licenced to operate EGMs with a total of 454 licenced machines and attached entitlements.
34. The LGA is subject to a municipality limit of 471 EGMs. The VCGLR Reports indicate that EGM density within the LGA is currently 6.3 per 1000 adults. This is 23.7 per cent greater than the metropolitan LGA average of 5.1 per 1000 people and 16.3 percent greater than the State

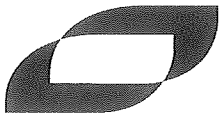


average of 5.4 per 1000 people. It also has the eighth highest density of EGMs for metropolitan LGAs. If the Application was granted, the EGM density would increase 0.04 per cent to 6.53 per 1000 people.

35. The VCGLR Reports also indicate that between July 2017 and June 2018 the expenditure on EGMs within the LGA was \$54.9 million. The EGM expenditure per adult is \$762, which is 34 per cent greater than the metropolitan average of \$568 per adult, and 38.5 per cent greater than the State average of \$550 per adult. If the Application was granted, the EGM expenditure per adult would increase one percent to \$769 per adult.
36. The VCGLR Reports concluded that socio-economic data indicates that the resident population in the immediate surrounding area and the LGA have mixed conditions in comparison to metropolitan Melbourne, with areas of disadvantage. The immediate surrounding area, in general, has relatively high unemployment and homelessness, moderate Social and Economic Indexes for Areas (**SEIFA**), housing stress and number of people receiving pensions, and relatively high household incomes. The LGA has relatively high crime, SEIFA disadvantage, unemployment and homelessness, with moderate household income, housing stress and number of people receiving government pensions. However, as noted in the NBA Report and in Mr Anderson's oral evidence, which the Commission discusses further below at paragraph 70 and following, the area has been the subject of noticeable improvement in social and economic indicators since 2011 that is likely to continue, and the overall level of disadvantage for the LGA is anticipated to continue to decline.

Nature of the Premises

37. The Premises have a maximum licence capacity of 465 patrons and is open daily from 9.00AM to 5.00AM.
38. The Premises comprise:
 - (a) a main bar and bistro with a capacity for 190 patrons which is open for meals between 11.30AM and 9.00PM daily;
 - (b) a gaming lounge which houses the present 30 EGMs;
 - (c) a sports bar which includes pool tables, TAB facilities and television screens showing sport; and
 - (d) an outdoor area.
39. The Hotel employs 26 staff members with 5 being full-time and the remainder being casual.



Catchment area of the Premises

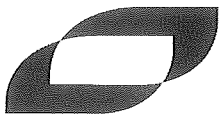
40. The '*no net detriment*' test refers to the community of the municipal district in which the approved venue is located. In determining the impact of an application of this nature on a municipal district, previous Commission and VCAT decisions have had particular regard to the area served by the relevant premises, which is generally referred to as the 'Catchment Area'.¹⁴ The determination of the likely catchment area in this instance is important in the Commission's consideration of the identity of those residents which will be most affected by the Application in terms of gambling-related harms and benefits.
41. The NBA Group conducted a patron and postcode survey of bistro patrons between 29 June and 12 July 2018, during which time a total of 840 meals were served. The survey revealed that 76 per cent of patrons were from within a 2.5-kilometer radius of the Hotel. A further approximately 13 per cent of patrons were from within a 5-kilometer radius of the Hotel. While the survey was not of gaming room patrons, Mr Anderson gave evidence that it is accepted that patrons generally travel up to 2.5 kilometers to play EGMs in suburban settings and he believed the survey supported this conclusion. The Commission accepts Mr Anderson's evidence that a 2.5 kilometre radius is the appropriate catchment area, and notes that generally bistros draw from a wider area than EGMs.

Issues for determination

42. Pursuant to section 3.4.20 of the GR Act, the Commission cannot grant the Application unless it is satisfied of the following matters:¹⁵
- (a) The amendment to the venue operator's licence does not conflict with a Ministerial Direction given under 3.2.3 of the GR Act;
 - (b) that the relevant regional or municipal limit for EGMs applicable to the LGA will not be exceeded by the granting of the Application;
 - (c) the '*no net detriment*' test being satisfied; and
 - (d) if premises are to be added to the venue operator's licence, and they are within 100 metres of another venue where the Applicant, or an associate, is the operator, the Commission is satisfied the management of the venues are genuinely independent of each other.

¹⁴ See *Romsey No. 2* at [88]; and *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 at [158] per Judge Hampel and Liston SM.

¹⁵ The Commission also considered and was satisfied as to the matters set out in section 3.4.20(1)(a) and (d) of the GR Act.



43. If, having determined that these matters have been satisfied, the Commission is then required to exercise its discretion under section 3.4.20 to determine whether the Application should be granted; that is, whether or not the proposed amendment to the venue operator's licence should be made.¹⁶

A. Directions given under section 3.2.3 of the GR Act

44. As noted above at paragraph 22, there are no Ministerial Directions given under section 3.2.3 of the GR Act that are relevant to the Application.

45. On this basis, the Commission is satisfied that granting the Application would not conflict with a direction given under section 3.2.3 of the GR Act, and therefore considers that this mandatory pre-condition set out in section 3.4.20(1)(b) of the GR Act is satisfied.

B. Municipal Regional Limit

46. As noted above at paragraph 34, the LGA is limited to 471 EMGs.¹⁷ The granting of the Application would result in the limit being reached and not exceeded. Accordingly, the Commission considers that this mandatory pre-condition set out in section 3.4.20(1)(b) of the GR Act is satisfied.

C. 'No net detriment' test

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

Economic Impacts

Expenditure on capital works

48. Mr Giustiniano gave evidence that should the Application be granted, the Applicant proposes to refurbish the bistro, kitchen and gaming lounge at the Hotel at a cost of \$500,000. The refurbishment would result in the introduction of a themed gourmet burger bar and smokehouse in the bistro. He stated that while there is currently a "pop-up" burger bar that was reasonably

¹⁶ The Commission noted that an amendment to the venue operator's licence may be made subject to any conditions the Commission deems appropriate: GR Act, section 3.4.20(3).

¹⁷ See Ministerial Order pursuant to sections 3.2.4 and 3.4A.5(3A) of the GR Act, dated 20 September 2017.



successful, the refurbishment and kitchen extension would make it permanent as well as modernising the bistro area itself. He also gave evidence that the works at the Premises would involve renovations to the gaming room, namely, the installation of additional screening at the entrances to the gaming room which would have the effect of removing visibility of the EGMs from persons walking to the TAB or entering from the carpark, upgraded CCTV and lighting, and the removal of the ATM at the entrance to the gaming room.

49. He further gave evidence that the capital works to the Premises would be done “in-house” by the Castello Group and the cost estimate was based upon his personal experience. There were no plans in respect of the refurbishment of the bistro and kitchen provided to the Commission, although he gave evidence that it should be completed within 12 months. The Application did include plans for the refurbishment of the gaming lounge to accommodate the additional EGMs should the Application be granted.
50. The Commission notes that the Applicant has agreed to complete the renovations to the bistro and gaming room within 12 months if the Application is granted. The Commission accepts that the expenditure on the renovations is an economic benefit and one that will occur within a relatively short period of time. However, given the work will be completed “in-house” rather than through a tender process offered to local industry or tradespeople, the Commission has placed marginal weight on this benefit.

Additional employment

51. It was somewhat unclear what level of additional employment would flow from the Application being granted.
52. The Application Form stated that the direct gaming employment created should the Application be granted would be 15 full-time equivalent (FTE) positions. The NBA Report stated that there would be 5 FTE gaming staff, fully qualified and RSG trained and between 5-10 FTE venue staff to be employed across the balance of the venue in the bar, bistro and kitchen areas.
53. In their witness statements, Mr Giustiniano and Ms MacLennan stated that the direct additional employment in the gaming room was 5 FTE positions, including a permanent floor walker and described the positions as one full-time, one part-time and three casual employees.
54. When it was put to Mr Giustiniano by the Commission at the Hearing that his description of the positions created did not amount to 5 FTE positions, he stated that he believed that an average of 5 FTE positions would be created but it would be dependent upon the increase in patronage of the gaming room from the Application being granted. Ms MacLennan gave evidence that most of



the hotel's employees live in the local area and that she hoped to continue that practice with the additional staff resulting from the Application being granted.

55. The Commission accepts that there will be additional employment of between 4 and 5 FTE positions in the gaming room resulting from this Application being granted, and a further 5 to 10 staff as a result of the venue refurbishment and increased patronage associated with this. However, because the increase in staffing is dependent on the increase in patronage to the Premises as a result of the Application, there is some uncertainty regarding the level of additional staff that will be employed in the bar, bistro and kitchen area. The Commission notes that the Applicant is hopeful that additional staff would be from the local area however it is not possible to be certain of this. Accordingly, the Commission places marginal weight on this benefit.

Gaming expenditure not associated with problem gambling

56. To the extent gambling expenditure is not associated with problem gambling, it has been recognized that such expenditure can be treated as an economic positive.¹⁸ As Bell J notes in *Romsey No. 2*, this approach also brings into account the benefit obtained from pure consumption by the lone gambler who does not use EGMs for social reasons.¹⁹
57. The PVS Report and Mr Clyne at the Hearing, gave evidence regarding the likely increase in gaming expenditure, should the Application be granted.
58. He noted that following the decline in expenditure in the financial year 2012-2013, which was associated with the ban in the placement of ATMs in gaming venues, actual expenditure in the LGA (approximately \$52.8M in 2012-2013 to \$54M on 2016-2017) and metropolitan Victoria (\$1.95B in 2012-2013 to \$2.05B in 2016-2017) has remained flat, which he attributes to a mature gaming industry.
59. As to the Premises, there has been a decline in gaming expenditure (most notably between financial years 2014-2015 and 2015-2016) over the period from the financial year 2012-2013 at approximately \$4.5M and the financial year 2016-2017 at approximately \$4M. Given the Premises were purchased by the Applicant in December 2015, neither Mr Giustiniano nor Ms MacLennan could give evidence as to the reasons for the decline. However, it was suggested that the stabilization in revenue between financial years 2015-2016 and 2016-2017 was due to the change

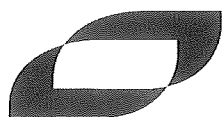
¹⁸ See *Romsey No. 2* at [351] per Bell J.

¹⁹ *Ibid.* Bell J further notes at [352] that the other approach is to say (as Morris J did on *Branbeau Pty Ltd v VCGLR* [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 the Application, this benefit is treated as an economic benefit.



in ownership which led to the introduction of a greater focus on service, promotional activity, and competitive pricing.

60. Mr Clyne used the Geotech model to predict the change in gaming expenditure should the Application be granted. The model is premised upon the theory that an interested consumer's choice of venue is based on consideration of travel time and venue attractiveness such that a person's probability of patronage is inversely proportional to travel time and directly proportional to venue attractiveness.
61. The model forecast that there would be a yearly increase of \$2,521,543 in gaming expenditure with the addition of 17 EGMs, of which 79 per cent was transferred expenditure, with the remaining being new expenditure of \$532,802. Mr Clyne gave evidence that he believed the 79 per cent transferred expenditure amount to be low because:
 - (a) *the LGA has shown little growth in gaming expenditure over the past few years;*
 - (b) *the history of the venue shows that it has the capacity to absorb greater gaming revenue; and*
 - (c) *there was a shift in gaming revenue between surrounding venues relating to venue attractiveness.*
62. Mr Clyne further stated that while he believed there was capacity for greater transferred expenditure, that it would take longer than 12 months to achieve.
63. The Council Report did not directly address or lead any evidence to contradict the forecast in the PVS report. In the absence of any contrary evidence, the Commission accepts the estimated increase in expenditure for the first 12 months and the estimate of transferred expenditure and new expenditure as outlined in the PVS Report and confirmed in Mr Clyne's evidence.
64. In assessing the extent of the benefit associated with this increase in gaming expenditure, the Commission has had regard to the evidence in paragraphs 70 and following, below, with respect to gambling expenditure associated with problem gambling. Generally, the Commission considers that the proportion of new expenditure not attributable to problem gambling is an economic benefit, and it is accepted that not all the new expenditure can be attributed to problem gambling. To that extent, the Commission considers the additional gaming expenditure from an increase of 17 EGMs to the Premises not associated with problem gambling to be an economic benefit on which it places marginal weight.



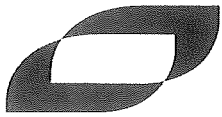
Increased gaming competition

65. One of the purposes GR Act, at section 3.1.1(2)(b), is to foster a competitive gaming industry, and the Commission considers that increased competition is a consumer benefit.
66. Mr Giustiniano gave evidence that the Applicant was seeking the additional EGMs to remain competitive with surrounding venues. His evidence was that 50 EGMs was the optimum number of machines to provide a “full aspect” of entertainment at the Premises.
67. Mr Clyne gave evidence that 50 EGMs for a venue the size of the Premises was necessary to remain competitive, and in his view, based on 22 years of experience in the industry, patrons wanted a variety of EGMs with different denominations and different jackpots, and this number of EGMs was the optimum number to provide this variety. He also gave evidence that the most significant factor in increasing the Premises’ attractiveness is the increase in machine numbers.
68. There are nine gaming venues within the LGA, so there is already notable competition. Also, Mr Clyne remarked that the gaming market of the LGA and Greater Melbourne was mature and 79 per cent of new expenditure from the additional EGMs is transferred expenditure, suggesting that much of the new expenditure will come from other venues.
69. In light of the increased venue attractiveness the additional EGMs will cause, the relatively high transferred expenditure, the nine surrounding gaming venues, and the already mature gaming market, the Commission’s view is that the additional EGMs with the granting of the Application will result in increased gaming competition in the LGA. The Commission further believes that the additional EGMs would result in the Premises being better able to compete in the gaming market, whilst retaining a fairly small size. The Commission places marginal weight on this benefit.

Gaming expenditure associated with problem gambling

70. To the extent that a proportion of the new expenditure is attributable to problem gambling, this represents an economic disbenefit.²⁰ In assessing this impact (and other effects of problem gambling), the Commission recognizes that harms associated with problem gambling may be associated directly or indirectly because of gambling undertaken by those who may be defined as ‘problem gamblers’, as well as those who may otherwise be regarded as ‘low risk’ or ‘moderate risk’ gamblers.

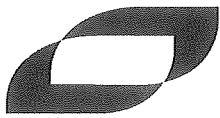
²⁰ The Commission recognizes that, on review, the key likely disbenefit of ‘problem gambling’ has, for convenience been treated under the ‘social impacts’: see *Mount Dandenong Tourist Hotel Pty Ltd v Greater Shepparton CC* [2012] VCAT 1899 at [121] per Smithers PM and Hewet SM ff; *Kingfish Victoria* at [47] per Martin PM and Naylor M. However, this approach has not been uniformly been adopted: see *Castlemaine* at [178]ff per Dwyer DP. For completeness, the Commission considers both the economic and social impacts of problem gambling in assessing the Application.



71. In assessing the extent of this disbenefit, the Commission has regard to the expenditure evidence discussed above at paragraph 61. However, this analysis does not include estimates of transferred expenditure because such expenditure cannot be said to exacerbate problem gambling.²¹
- (a) *Demographic profile of the area*
72. The extent to which new expenditure associated with problem gambling will be regarded as a disbenefit will be informed by an analysis of the social and economic profile of the LGA and catchment area surrounding the Premises. This is because communities characterized by socio-economic disadvantage and greater vulnerability are more susceptible to gambling-related harms.²²
73. In the NBA Report and at the hearing, Mr Anderson gave evidence that it is accepted that patrons generally travel 2.5 kilometers to play EGMs in a suburban setting and 5 kilometers in outlying areas. The Patron Survey conducted by NBA support this conclusion.
74. Mr Anderson's evidence was generally that there has been an improvement in social and economic indicators between 2011 and 2016 in line with the gentrification of the LGA. He noted that the LGA's social and economic profile has improved between 2011 when it was 46th out of 80 LGAs and 2016 when it was 58th, where 1st position is the highest level of disadvantage and 80th is the least. He also noted that the LGA's SEIFA ranking improved from the 6th decile to the 8th decile (where 1st is the most disadvantaged and 10th is most advantaged) between 2011 and 2016 which is a significant jump.
75. He further noted that at the Statistical Area Level 1 (**SA1**) within 2.5 kilometers of the Premises, the Premises are in an area with a SEIFA ranking in the 4th decile in Victoria in 2016 indicating moderate disadvantage and this improved from the 3rd decile in 2011. He explained that the SA1 area is located on the periphery of a commercial and light industrial area of Footscray which would tend to have a negative impact on the overall ranking of the residential areas.
76. At the SA2 level there was considerable improvement from the 3rd decile in 2011 to the 5th decile in 2016, and there was also significant improvement in the postcode area of Footscray, from the 4th decile in 2011 to the 7th decile in 2016.

²¹ See *Bakers Arms* at [11] per Code PM and Nelthorpe M; and *Kilsyth and Mountain District Basketball Association Inc v VCGLR* [2007] VCAT 2 at [40] per Morris J.

²² This common-sense approach accords with the VCAT's treatment of this issue. See *Molwin Pty Ltd v Mornington Peninsular SC* [2015] VCAT 1982 at [68] per Smithers SM.



77. Within SA1 approximately 65 per cent of the area is in the 6th decile or above, however, there are pockets of significant disadvantage including the Gordon Street Housing Complex (**Gordon Street Complex**), a public housing establishment that is approximately one kilometer from the Premises. Mr Anderson explained the areas of significant disadvantage on the basis that the area is predominantly commercial and industrial property and this leads to an impression of broader disadvantage when in fact the area contains only a small population surrounded by industry. Furthermore, he noted that SA1 contained Victoria University and there would consequently be a high number of students in the area.
78. Mr Anderson gave evidence that while there had not been substantial change in social and economic indicators to the west of the Premises within the postcode area, between 2011 and 2016, in the same period there had been a complete transformation of the area to the east resulting in significant improvement and gentrification and that those improvements were responsible for the jump from 4th to 7th decile.
79. As to the patrons who are not from within SA1 per the Patron Survey, as noted above approximately 13 per cent come from within 5 kilometers of the Premises. That includes the areas of Braybrook and Sunshine which have large areas of disadvantage and are in the 1st decile on the SEIFA scale. Again, Mr Anderson explained that the area included industrial and commercial property and pointed out that there were approximately three gaming venues that operate in Braybrook and Sunshine along Ballarat Road, which patrons would have to pass before arriving at the Premises.
80. Notwithstanding the surrounding areas of disadvantage, the Commission accepts Mr Anderson's evidence that Footscray and the LGA is currently undergoing significant gentrification and some of the industrial areas which affect the demographic indicators are being replaced by residential development. While the Commission accepts these nearby areas contain significant social and economic disadvantage, it is also accepted that because of the gentrification there will be improvement in the level of disadvantage of the area.
81. Income levels in the postcode of Footscray are slightly lower than Greater Melbourne. In contrast, the LGA is greater than the Greater Melbourne average, as stated below (2016 figures):

Median Weekly Income	Footscray	LGA	Greater Melbourne
Personal	\$673	\$703	\$673
Family	\$1,660	\$1,913	\$1,826
Household	\$1,314	\$1,551	\$1,542



82. As to housing stress, Footscray and the LGA have a lower rate of mortgage stress (4.60 per cent and 6.20 per cent respectively) compared to Greater Melbourne (8.10 per cent). However, they have a substantially greater level of rental stress (24.40 per cent and 15.30 per cent respectively) compared to Greater Melbourne (11.00 per cent). The rental stress rate of Footscray is significant because 58.80 per cent of properties are rented in the area (compared to 30 per cent in Greater Melbourne).
83. One factor contributing to the higher density of rental properties was attributed to the presence of Victoria University. The Commission accepts this. This also contributes to a greater proportion of residents of Footscray and the LGA attending tertiary education; and possessing a degree or higher level of educational attainment, when compared to Greater Melbourne.
84. In relation to unemployment, Mr Anderson's evidence was that Footscray's unemployment rate was 10 per cent, which was greater than both the LGA at 8.3 per cent and Greater Melbourne at 6.8 per cent.
85. Mr Anderson accepted that the addition of 17 EGMs may result in increased problem gambling which would come at an economic cost, however, he believed that risk was low for the following reasons:
- (a) Mr Giustiniano and Ms MacLennan had a proven track record in Responsible Service of Gambling;
 - (b) The improvements that are to be undertaken in removing the bottle shop and making clear the separate entrance to the bistro giving patrons entering from the carpark an obvious choice not to enter the gaming room;
 - (c) Even with the additional EGMs, the gaming room will still be a moderate size with fewer than 50 EGMs and will be neither large, nor anonymous; and
 - (d) The improving demographic profile of the area.
86. Furthermore, Mr Anderson pointed to the PVS report which estimated 79 per cent of the additional expenditure for the first 12 months of operation of the additional machines would be transferred expenditure amounting to \$1,988,741, and \$532,802 would be new expenditure. That new expenditure represented 1 per cent of total gaming expenditure within the LGA.

87. The Council's submission noted the proximity of the Premises to the Kinnears Ropeworks Residential Development (**Kinnears Development**),²³ the Gordon Street Complex and Footscray Hospital (**Hospital**).
88. As to the Kinnears Development, the Commission notes that it is not yet complete. When it is completed, it will contain approximately 1,400 new one-, two-, and three-bedroom dwellings, walking distance from the Premises. The majority of these will be sold at market rate, however, it will also contain 70 dwellings for affordable housing. The Council, Health West and the North-Western Melbourne Primary Care Network submitted that the increase of 17 EGMs at the Premises will increase its attractiveness to patrons and therefore increase its attractiveness to people experiencing gambling-related harm.
89. It is accepted that the residents of the affordable housing portion of the Kinnears Development may have relatively greater social and economic disadvantage than the remainder of the residents. Against this however, is the fact that a substantial majority of the Kinnears Development is not designated for affordable housing and Mr Anderson's evidence that it will contain relatively high-value medium-density dwellings. Accordingly, the Commission places limited weight on any consideration of what impact of the Kinnears Development will have on any increase in gambling revenue caused by problem gambling.
90. As for the Gordon Street Complex, Mr Anderson, in his oral evidence acknowledged that while theoretically the residents in the Gordon Street Complex may be vulnerable to gambling-related harms, he pointed out that there were no studies to support this. He did not consider that an increase in the number of EGMs at the Premises would significantly increase the risk to the residents at the Gordon Street complex experiencing gambling-related harms.
91. The Young Leaders of the West Report drew the Commission's attention to the risk of young people suffering gambling-related harm and submitted that risk will increase in line with the venue's increased attractiveness as a result of the renovations to the bistro if the Application is granted. The Commission accepts that there is a risk that young people are vulnerable to gambling-related harm. However, the Commission notes that there was no evidence provided that the young people attracted to the improved facilities of the bistro will also be attracted to the gaming room. The fact that these two activities are separated by the physical layout of the venue also supports this. Further, the risk associated with young people using EGMs at the Premises

²³ The Commission notes also that Health West and the North-Western Melbourne Primary Care Network also made submissions in respect of the Kinnears Development.

can be mitigated by Responsible Service of Gaming practices, which the Commission deals with below at paragraph 93 and following.

92. Lastly, the Council states that it is concerned that the increase in the number of EMGs will increase the venue's attractiveness to shift workers at the hospital. No evidence was provided to support this submission. Mr Anderson addressed the submission specifically in his oral evidence and concluded that there were no studies to suggest that hospital workers were more vulnerable to gambling-related harm than other shift workers. The Commission agrees that there is no evidence that the additional machines at the Premises will increase the attractiveness to hospital workers specifically or that hospital shift-workers are more vulnerable than other shift-workers to gambling harms. The Commission notes that none of the health organisations made submissions in this regard.

(b) *Responsible Service of Gaming*

93. The Commission has also considered the Applicant's Responsible Service of Gaming (**RSG**) practices in assessing the effect of additional gaming expenditure associated with problem gambling.
94. Mr Giustiniano and Ms MacLennan, who both have completed RSG training themselves and have been employed by the Castello Group since 2001 and 2002 respectively, gave evidence as to the Applicant's policy on RSG. The Commission accepts they have strong and proactive policies in this regard with an emphasis on engagement with patrons. The Applicant provides complimentary finger food, tea, coffee and soft drink throughout the Premises which patrons have to order from the counter to ensure that they have breaks in play, which is an accepted responsible gaming protective measure. Staff are encouraged to interact with patrons and walk around the gaming room which results in them getting to know regular patrons. Lastly, Ms MacLennan gave evidence that staff turnover is exceptionally low.
95. Mr Giustiniano tendered a register listing the number of patrons playing the EGMs and the number of patrons taking advantage of the complimentary food and beverages. The register is completed on the hour, every day. Lastly, the Premises are audited quarterly for compliance with RSG, the Responsible Gambling Code of Conduct, and the Self-Exclusion Program.
96. When the Commissioners visited the Premises, they witnessed the staff interacting with patrons and they appeared to know several by name. Mr Giustiniano also gave evidence that should the application be granted; the employment of additional staff would include a dedicated floor-walker in the gaming room at all times.



97. Mr Giustiniano and Ms MacLennan gave evidence that they have a good relationship with the Gamblers Help North Western Support Program, specifically, Support Worker Rob Wootton. The Premises has hosted the Program and Mr Wootton has conducted training with Applicant's staff. Ms MacLennan gave evidence that she received daily shift reports which noted any issues at the Premises, and she passed important information on to Mr Giustiniano.
98. Mr Giustiniano gave evidence that the bottle shop in the carpark on the Premises will be demolished to make the bistro entrance more visible, and improved signage to the bistro will be installed. While this is not dependent on the Application being granted, it is relevant because it will improve access to the Premises, in particular providing a more obvious route of entry other than via the gaming room.
99. In light of the above, the Commission considers that the Applicant is proactive in its RSG practices and accepts that this, together with the proposed improvements to screening of the gaming room and relocation of the ATM, may assist to mitigate any risk of an increase in incidents of gambling harms that might result from the grant of this Application.

The Commission's view

100. The social and economic profile of the SA1 and LGA, while showing disadvantage on a number of metrics outlined above at paragraphs 72-84, is complex. Further, the area is undergoing substantial gentrification. The Commission acknowledges there are pockets of disadvantage close to the Premises, but this is balanced against the improvement in SEIFA rankings at the LGA, SA1, SA2 and postcode levels between 2011 and 2016, which is anticipated to continue.
101. The Commission accepts that the evidence shows a number of factors which will help reduce the disbenefit of additional gaming expenditure associated with problem gambling, specifically:
- (a) *strong policies and proactivity in RSG;*
 - (b) *new expenditure representing one per cent of total gaming expenditure;*
 - (c) *the removal of the bottle shop to improve access to the Premises without having to enter via the gaming room;*
 - (d) *improvements to the gaming room including better screening and the removal of the ATM from the entrance lobby near the gaming room to the sports bar; and*
 - (e) *the provision of a dedicated floor walker.*



102. The Commission considers that there is an economic disbenefit of additional gaming expenditure associated with problem gambling. However, this is mitigated by the factors summarized at paragraph 101, and accordingly the Commission places marginal weight on this disbenefit.

Diversion of trade from other gaming and non-gaming venues

103. The PVS Report estimated that 79 per cent of the additional gaming expenditure from the addition of 17 EGMs would be transferred expenditure, from which it must follow that surrounding gambling venues would suffer a fall in gaming expenditure. In answer to questions from the Commission Mr Clyne estimated that the reduction would be spread evenly and at most the highest impact on a surrounding venue would be 5 per cent of its current expenditure, which would be unlikely to result any adverse effect such as reduction in staff. No evidence was given on diversion of trade from non-gaming venues.

104. The Commission places no weight on this disbenefit.

Conclusion

105. After considering the economic benefits and balanced against the detriments, the Commission considers that, on balance, the Application is likely to result in a neutral economic impact on the community.

Social Impacts

Increases in gaming opportunities for those who enjoy gaming

106. This is a positive impact if the Application will better serve the needs of gaming patrons through providing additional opportunities and choice for those who choose to play EGMs.

107. Mr Anderson gave evidence in respect of the Patron Survey that during the 10-day survey period there were 12 hours of peak utilisation reported representing 4 per cent of the time the venue is open. The additional EGMs are not therefore required to meet demand.

108. However, the Commission notes Mr Clyne's and Mr Giustiniano's evidence that 50 EGMs was the optimal number to provide the necessary variety of gaming that patrons wanted.

109. The Commission accepts that there will be increased variety and gaming options for patrons should the Application be granted, and to that end there is a social benefit. However, given the limited demand for the additional machines, the Commission places nil to marginal weight on this benefit.



Improved facilities enabling greater range of services

110. Separate to the economic benefit that may be associated with expenditure involved in capital works at the venue, there are potential social benefits to the community that may arise having regard to the nature of the renovations that are intended to take place.
111. As detailed above at paragraph 48 and following, the proposed renovation works include a refurbishment of the gaming room and bistro area.
112. The Commission accepts that there will be an improvement in the public amenity of the Premises should the Application be granted through better food offerings and a more modern appearance of the gaming room and bistro, although it must be conceded that the renovations are limited relative to the size of the Premises.
113. The Commission places marginal weight on the positive social impact of improved facilities at the Premises.

Social benefit derived from community contributions arising out of the Application

114. In determining the net economic and social impact of applications of this nature, both the Commission²⁴ and VCAT²⁵ have regularly treated community contributions proposed by an applicant as a positive social benefit by improving the social fabric of the community in which they are made. As noted in paragraph 16 above, it does not matter whether impacts are considered on the social or economic side or both so long as they are not double-counted. In this Application the Commission has decided to consider the impacts associated with the proposed community contributions as a single impact under 'Social Impacts'. The Commission has taken into account both the economic and social benefits generally associated with community contributions forming part of EGM increase applications, and given appropriate weight to that impact in its cumulative form.
115. The Applicant has stated that it will donate \$75,000 in cash every year to local community groups, sporting clubs and schools should the Application be granted. Mr Giustiniano gave evidence that he has already spoken to the West Footscray Neighbourhood House, which was a local community group providing a number of community programs regarding sponsorships and donations. He also stated that the Applicant would like, if possible, to have an agreement with

²⁴ For example, *Application by the Richmond Football Club* [2015] VCGLR (24 July 2015) at [70] per Commissioners Cohen and Owen.

²⁵ See for example, *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130 at [67] per Martin PM and Naylor M (*Kingfish Victoria*), and *Bakers Arms* at [66].

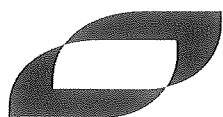


Council to provide money for Council to distribute to local community groups as the Castello Group has done with other municipalities.

116. The Applicant consented to the community contribution being a condition of the amendment to its licence if the Application is granted which would require that:
- (a) the contributions commence within four weeks of installation of the additional EGMs; and,
 - (b) whilst the EGMs are in operation at the Premises, these contributions must continue and if they are not made, the operation of the additional EGMs must cease immediately.
117. The Commission accepts the community contributions will have a positive economic and social impact. The Commission is further satisfied that the contributions will only occur if the Application is granted and will be made to a variety of community organisations operating in the LGA. Accordingly, the Commission considers the community contributions to be a positive benefit on which it places marginal to low weight.

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

118. Wherever accessibility to EGMs is increased, there is a risk of increased gambling-related harms, which leads to other costs such as adverse health outcomes, family breakdowns and other negative social outcomes. Accordingly, the Commission accepts that there is potential for negative social impact through increased gambling expenditure.
119. The Commission refers to and relies upon the evidence set out above at paragraphs 70 to 99 with respect to the economic impact of problem gambling on the community, which equally apply to the social impact of problem gambling. As is concluded there, the Commission accepts that there is potential for increased risk in gambling-related harms as a result of granting the Application. The Commission accepts that harms associated with gambling are wide-ranging and attributable to all categories of gamblers ('low risk', 'moderate risk' and 'high risk') and across the community more broadly.
120. Mr Anderson accepted that there was a marginal social disbenefit associated with the possibility of increased incidence and potential impact of problem gambling on the community in relation to the Application.
121. The Commission accepts that a proportion of the new expenditure estimated to arise as a result of this Application will be associated with problem gambling, however notes that the extent of new expenditure compared to transferred expenditure is relatively low. It agrees that there is an



increased risk of gambling-related harm should the Application be granted and this is a social disbenefit of the Application and notes that the socio-economic profile of the surrounding area, whilst mixed, is still moderately disadvantaged. However, as noted above at paragraph 93 and following, the Applicant has good RSG policies, there will be improved access to the Premises that does not involve walking through the gaming room, there will be an additional floor-walker at all times and the ATM at the entrance to the gaming room will be removed.

122. Taking into account the above matters, the extent to which this Application will increase the incidence and impact of problem gambling is, with the above factors in mind, relatively low. Accordingly, the Commission places marginal weight on this disbenefit.

Community attitude

123. As was determined in *Romsey No. 1*, the Commission recognizes that while community apprehension is not an overriding factor (in the sense that the Application is not a referendum on gaming), it is a relevant factor in the consideration of social impact within and as part of the '*no net detriment*' test.
124. As noted above, the Council, as the representative body of the relevant community, opposed the Application and submitted the Council Report which outlined the Council's policy relating to gambling, but did not appear at the Hearing.
125. A total of four community organisations Health West, Women's Health West, the North-Western Melbourne Primary Health Network and Young Leaders of the West. These objections directed their concerns towards gambling at large and made submissions that the Application would disadvantage the community. They also made some comments specific to the Application, including that the community contributions are not a benefit as they are donations from a gambling venue and that the proposed renovations are not a benefit as they would attract new patrons who can experience harm from gambling.
126. Forty-one individual members of the public submitted objections to the Application. It appears that most of the individual objectors, who identified where they lived, lived within the LGA. However, the Commission notes that there were some objectors who did not live within the LGA and others who did not indicate where they lived. None of these objectors made an appearance at the Hearing. These objections included submissions that any increase in EGMs in the community will exacerbate existing problems and that the renovations would make the venue more attractive to those who may be at risk of gambling related harm.



127. The Applicant did not provide any evidence as to the community's attitude, whether positive or negative, in relation to the Application.
128. The Commission is satisfied that the objections received indicate there is some negative community attitude to this Application. However, the Commission notes that most of the objections generally articulated a negative attitude to EGMs rather than identifying the harm arising out of this particular Application. Accordingly, the Commission places marginal weight on this social disbenefit.

Conclusion on social impacts

129. After considering the possible benefits of the Application and balanced against the various disbenefits, the Commission considers that, on balance, there is likely to be a neutral social impact of the Application.

Net economic and social impact

130. The '*no net detriment*' test in section 3.4.20 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 likely impacts, the Commission is satisfied that the net economic and social impact of approval on the well-being of a relevant community will be neutral or positive.
131. After consideration of the material before it, including the evidence provided at the Hearing (and weighted as outlined above and summarized in tabular form at Appendix B of these Reasons for Decision), the Commission has concluded that the social and economic impact to the well-being of the community of the municipal district in which the Premises are located if the Application is granted will be neutral.

D. Independence from other gaming venues

132. Section 3.4.20(1)(d) requires the Commission to be satisfied that, if premises are proposed to be added to the Applicant's licence as an approved venue and the Applicant (or an associate of the Applicant) operates an approved venue within 100 metres of the Hotel, that the management and operation of the Hotel and other approved venue are genuinely independent of each other.
133. The Commission finds that the Application is not proposing to add the Hotel to the Applicant's venue operator's licence (as it already exists on the licence), nor does the Applicant (or an associate) operate an approved venue within 100 metres of the Hotel.



134. On this basis, the Commission considers that the mandatory pre-condition set out in section 3.4.20(1)(d) is not applicable to this Application.

Determination of the Application

135. The Commission has determined that on the evidence before it, the 'no net detriment' test has been satisfied and the total number of EGMs will not exceed the relevant municipal limit. The Commission notes that there remains a discretion to determine whether or not to grant the Application. The Commission is satisfied that the Applicant understands and will continue to act in accordance with its obligations, so far as is reasonable, to take measures to prevent problem gambling. It considers that this will work towards minimising gambling-related harm and accommodating those who gamble without harming themselves or others. Further the Commission is not aware of any other matter that would warrant it to refuse to grant the Application.

136. Accordingly, the Commission is satisfied that it should exercise its discretion in favour of the Application and make the proposed amendment to the licence to increase the number of EGMs permitted in the Premises from thirty (30) to forty-seven (47), subject to the conditions specified at Appendix A below.



Appendix A

Conditions of the Decision of the Commission dated 3 September 2018 to vary the number of EGMs permitted in the approved premises, Powell Hotel located at 202 Ballarat Road, Footscray, from thirty (30) to forty-seven (47)

1. Community Contributions

- (a) The Venue Operator will make annual cash contributions in the sum of \$75,000.00 per annum whilst and so long as any of the additional 17 electronic gaming machines (**the Additional EGMs**) are in operation at the Premises (**the Contributions**).
- (b) The Contributions will be donated to not-for-profit community groups and sporting organisations providing services and facilities to residents in Maribyrnong (**the Maribyrnong Community**).
- (c) The Contributions are to be made by quarterly payments of \$18,750.00 commencing within four (4) weeks of the commencement of the operation of the Additional EGMs. The Venue Operator will distribute half the Contributions, and will provide the other half of the Contributions to the Maribyrnong City Council for distribution.
- (d) The Venue Operator must provide evidence of payment of its Contributions to the Victorian Commission for Gambling and Liquor Regulation (**Commission**) as soon as practicable after each quarterly payment is made to the Maribyrnong City Council and to recipients in the Maribyrnong Community.
- (e) If the Maribyrnong City Council advises the Venue Operator and/or the Commission that it is not willing to participate in the process of the distribution of the Contributions, the Venue Operator will determine the allocation of all the Contributions for the purposes set out in paragraph 2 above.
- (f) If the Contributions are not made as required herein the operation of the Additional EGMs at the Premises must cease immediately for as long as the Contributions (or part thereof) remain outstanding.

2. The Works

- (a) The works to the Premises proposed by the Venue Operator, being the refurbishment of the bistro, internal painting, internal flooring, upgrade to bistro entry, upgraded internal lighting and security cameras, upgrades to internal furniture and screening in the gaming lounge (**the Works**) must be substantially completed within 12 months of approval of this application (**the Completion Date**).



- (b) If the Works are not substantially completed by the Completion Date, the operation of the Additional EGMs must cease immediately until the Works are substantially completed.
- (c) The Venue Operator must satisfy the Commission that the works have been substantially completed by way of written confirmation. Such confirmation is to be received by the Commission by the Completion Date, or such later date as agreed to in writing by the Commission. If the Venue Operator fails to provide the Commission with written confirmation by the Completion Date, the operation of the Additional EGMs must cease immediately until the Commission is provided with the required written confirmation.
- (d) The Commission may, upon the request of the Venue Operator, agree to extend the time for substantial completion of the Works. The request must be made not less than sixty (60) days before the Completion Date. Any request for an extension of time must include an explanation as to why the Works have not been substantially completed by the Completion Date.
- (e) If the Commission agrees to extend the time for substantial completion of the Works in accordance with condition 2(d), the Commission may require that any of the Additional EGMs cease operation during the period of extension of time granted by the Commission.

Appendix B

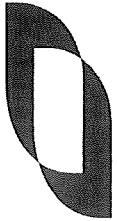
Summary of economic and social impacts

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

Economic impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	Expenditure on capital works by way of investment in renovations of the Premises	48-50	<p>The Applicant proposes to undertake renovations to the bistro, kitchen and gaming lounge valued at \$500,000. The works will be undertaken “in-house” by the Castello Group and be substantially completed within 12 months. The Commission is mindful not to double count the benefits associated with the renovation expenditure in relation to both the estimated employment impacts and the social impact that may result from improved facilities.</p> <p>Marginal weight is ascribed to this benefit.</p>
	Additional employment	51-55	<p>The Commission is satisfied that the Application being granted will result in approximately 4 to 5 full-time equivalent positions being created in the gaming room and a further 5 to 10 staff as a result of the refurbishment and increased patronage associated with this, although there is some uncertainty in relation to the staffing resulting out of increased patronage.</p> <p>Marginal weight is ascribed to this benefit.</p>

	Impact	Paragraph numbers	Comment relevant to weight
	Gaming expenditure not associated with problem gambling	56-64	<p>The portion of new expenditure not attributable to problem gambling is an economic benefit. The grant of the Application is estimated to result in increased gaming expenditure of \$2,521,543, of which 79 per cent is transferred expenditure, resulting in \$532,802 new expenditure. The RSG practices at the Premises will contribute to minimising the risk that new expenditure is associated with problem gambling.</p> <p>Marginal weight is ascribed to this benefit.</p>
	Increased gaming competition	65-69	<p>This benefit carries weight as competition is a relevant purpose pursuant to the GR Act, and increased competition is a consumer benefit. In light of the increased venue attractiveness the additional EGMs will cause, the high transferred expenditure, the nine surrounding gaming venues, and the already mature gaming market, the Commission's view is that the additional EGMs with the granting of the Application will result in increased gaming competition in the LGA.</p> <p>Marginal weight is ascribed to this benefit.</p>



Disbenefit		
Gambling expenditure associated with problem gambling	70-102	<p>The social and economic profile of the SA1 and LGA while showing disadvantage on a number of metrics is complex and the area is undergoing substantial gentrification. There are pockets of disadvantage close to the Premises, but this is balanced against the improvement in SEIFA rankings at the LGA, SA1, SA2 and postcode levels between 2011 and 2016 which is anticipated to continue.</p> <p>The evidence shows a number of factors which will help minimize this disbenefit, namely: strong policies and proactivity in RSG; new expenditure representing one per cent of total gaming expenditure; the removal of the bottle shop to improve access to the Premises without having to enter via the gaming room; improvements to the gaming room including better screening and the removal of the ATM from the entrance lobby to the sports bar; and provision of a dedicated floor walker.</p> <p>Having regard to all factors and circumstances, the Commission considers there is a risk of increased problem gambling expenditure associated with this Application.</p> <p>Marginal weight is ascribed to this disbenefit.</p>
Diversion of trade from other gaming venues and non-gaming venues	103-104	<p>The PVS Report and Mr Clyne estimates that 79 per cent of the additional expenditure generated by the additional EGMs would be transferred, and that surrounding venues would not experience greater than a five per cent decline in gaming expenditure. The Commission accepts this evidence.</p> <p>No weight is ascribed to this disbenefit.</p>

Social impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	Increased gaming opportunities for those who enjoy gaming	106-109	<p>Granting the Application will better serve the needs of gaming patrons by providing additional opportunities and choice for those who choose to play EGMs. While the additional EGMs are not required to meet demand, the Commission accepts Mr Clyne's and Mr Giustiniano's evidence that 47 EGMs provide the gaming options that patrons wanted.</p> <p>Nil to marginal weight is ascribed to this benefit.</p>
	Improved facilities enabling greater range of services	110-113	<p>The Commission accepts that there will be an improvement in the public amenity of the Premises should the Application be granted through better food offerings and a more modern appearance of the gaming room and bistro, although it is noted that the works involve improvements to the Premises rather than an extension of the services offered.</p> <p>Marginal weight is ascribed to this benefit.</p>
	Social benefit derived from increased community contributions	114-117	<p>The Applicant has stated that should the Application be granted, it will donate \$75,000 in cash every year to local community groups, sporting clubs and schools (distributed in accordance with conditions of any approval of this Application).</p> <p>The Commission accepts the community contributions will have a positive social and economic impact.</p> <p>Marginal to low weight is ascribed to this benefit.</p>



	Impact	Paragraph numbers	Comment relevant to weight
Disbenefits	Possibility of an increased incidence and potential impact of problem gambling on the community	118-122	<p>The Commission agrees that there is an increased risk of gambling-related harm should the Application be granted, and this is a social disbenefit of the Application. The Commission accepts that harms associated with gambling are wide-ranging and attributable to all categories of gamblers ('low risk', 'moderate risk' and 'high risk') and across the community more broadly.</p> <p>The Applicant has good RSG policies, there will be improved access to the Premises that does not involve walking through the gaming room, there will be a dedicated floor-walker at all times and the ATM at the entrance to the gaming room will be removed.</p> <p>The Commission considers the extent to which the risk of gambling-related harm will increase is mitigated by the RSG practices at the Premises.</p> <p>Marginal weight is ascribed to this disbenefit.</p>
	Community attitude	123-128	<p>The Council, Health West, Women's Health West, the North Western Melbourne Primary Health Network, Young Leaders of the West and forty-one individual members of the public made submissions opposing the Application. Most of the objections generally articulated a negative attitude to EGMs rather than identifying the harm arising out of this particular Application. None of these objectors made an appearance at the Hearing.</p> <p>The Applicant did not provide any evidence as to the community's attitude in relation to the Application.</p> <p>Marginal weight is ascribed to this disbenefit.</p>