



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 Players Hotel Pty Ltd to amend its venue operator's licence to vary the number of electronic gaming machines at the approved premises, Players Hotel, located at 1-5 Scott Street, Dandenong from twenty-five (25) to fifty (50).

Commission:

Ms Helen Versey, Deputy Chair
Dr Dina McMillan, Commissioner

Appearances:

Ms Louise Hicks of Counsel for the Applicant (instructed by Williams Winter Lawyers)
Mr Ian Munt of Counsel for the Council
Mr Cameron Warfe, Counsel Assisting the Commission

Date of Hearing:

11 June and 2-3 July 2019

Date of Decision:

1 August 2019

Date of Reasons:

1 August 2019

Decision:

The application is refused.

Signed:

Helen Versey
Deputy Chair



REASONS FOR DECISION

INTRODUCTION

1. This is an application by the Castello Players Hotel Pty Ltd (**Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**Commission**) to amend its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) permitted in Players Hotel, located at 1-5 Scott Street, Dandenong (**Premises**), from twenty-five (25) to fifty (50) (**Application**).
2. The relevant municipal authority is the Greater Dandenong City Council (**Council**). By correspondence dated 10 May 2019 to the Commission, the Council stated that it intended to make an economic and social impact submission in relation to the Application, and did so on 4 June 2019.
3. The Commission considered the Application at a public inquiry¹ with a hearing conducted over three days, namely 11 June and 2-3 July 2019 (**Hearing**). The Applicant was represented by Ms Louise Hicks of Counsel, instructed by Williams Winter Lawyers. The Council was represented by Mr Ian Munt of Counsel.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

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

...

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

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

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



- (i) *minimise harm caused by problem gambling; and*
 - (ii) *accommodate those who gamble without harming themselves or others;*
- (ab) *to ensure that minors are neither encouraged to gamble nor allowed to do so;*
- (b) *to ensure that gaming on gaming machines is conducted honestly;*
- (c) *to ensure that the management of gaming equipment and monitoring equipment is free from criminal influence and exploitation;*
- (d) *to ensure that other forms of gambling permitted under this or any other Act are 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*



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

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

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

(1) Subject to this section, after receiving a copy of a request for an amendment referred to in section 3.4.18(2), a municipal council may make a submission to the Commission—

(a) addressing the economic and social impact of the proposed amendment on the well-being of the community of the municipal district in which the approved venue is located; and

(b) taking into account the impact of the proposed amendment on surrounding municipal districts.

...

11. Section 3.4.20 sets out matters that are required to be considered by the Commission with respect to such a proposed amendment. Relevantly for this Application, that section provides:

(1) Without limiting the matters which the Commission may consider in deciding whether to make a proposed amendment the Commission must not amend a venue operator's licence unless—

(a) the Commission is satisfied that the amendment of the licence does not conflict with a direction, if any, given under section 3.2.3; and

(b) if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the regional limit or municipal limit for gaming machines for the region or municipal district in which the approved venue is located will not be exceeded by the making of the amendment; and

² The Applicant provided the Commission with a letter dated 28 March 2019 from the Council acknowledging receipt of the application, which the Commission regarded as sufficient evidence for the purposes of s 3.4.18(2) of the GR Act.



- (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;*

...

12. 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
13. The GR Act does not specify the matters that 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
14. As such, the ‘*no net detriment*’ test is a composite test requiring consideration of a single net impact in economic and social terms on the well-being of the community.⁵ 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.
15. The Commission recognises that the task of identifying likely benefits and disbenefits will not always be straightforward given the overlap of socio-economic issues, and the quality and availability of relevant data and cogent evidence. Some economic outcomes may have social consequences, and vice versa.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

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 (**‘the Romsey case’**).

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

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



economic side, or the social side, or both, so long as it is included and not double-counted in the ultimate composite test.⁷ The Commission has adopted the same approach as VCAT in setting out a table of likely economic and social benefits both to enhance clarity of Commission decisions and facilitate greater consistency between the Commission and VCAT.⁸

16. 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
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;¹¹ 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.¹²
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*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

⁷ See *Romsey No. 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 See e.g., *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 of the 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.

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 [2013] VCAT 101, [98].



exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.

19. Finally, pursuant to section 9(4) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011 (VCGLR Act)*, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation.

MATERIAL BEFORE THE COMMISSION

20. Before the Hearing, the Applicant provided the Commission with the following material in support of its Application:
 - (a) application form – amendment to venue operator licence – vary gaming machines received by the Commission on 28 March 2019 (the **Application Form**);
 - (b) social and economic impact statement prepared Mr Nick Anderson, Managing Director of NBA Group dated March 2019 (**NBA Report**) and the addendum note to the NBA Report prepared by Mr Anderson, dated July 2019 (**NBA Addendum Report**);
 - (c) report of Mr Michael Clyne, consultant for PVS, dated March 2019 (**Original PVS Report**), the explanatory report prepared by Mr Clyne, dated June 2019 (**PVS Explanatory Report**), and an updated report prepared by Mr Clyne, dated June 2019 (**Final PVS Report**);
 - (d) witness statement of Mr Giuseppe Paul Giustiniano, CEO of the Castello Group (including the Applicant), dated 25 March 2019 and addendum dated [date?];
 - (e) witness statement of Mr Eli Bryson-Skipp, general manager of the Applicant, dated 26 June 2019; and
 - (f) a copy of the public notice appearing in the Dandenong Star Journal newspaper dated 1 April 2019.
21. On 4 June 2019, the Council provided the Commission and the Applicant with an economic and social impact submission in respect of the Application, which included a Social and Economic Impact Assessment prepared by Mr Hayden Brown, advocacy officer for the Council (**Council Report**). In the economic and social impact submission form, the Council noted that the neighbouring City of Casey raised concerns in respect to the Application. On 26 June 2019, the Council also submitted an addendum to the Council Report.



22. The following material, prepared by Commission staff, was provided to the Applicant and the Council and considered by the Commission:
 - (a) a report titled *Economic and Social Impact Report* dated May 2019 (**VCGLR Report**); and
 - (b) a report titled *Pre-Hearing Inspection and Compliance Report* dated 6 June 2019 (**Pre-Hearing Report**).
23. In addition, the Commission received correspondence in opposition to the Application from the following local community organisations:
 - (a) enliven Victoria;
 - (b) the Dandenong Corps of the Salvation Army; and
 - (c) Cambodian Association of Victoria.
24. The Commission also received five letters in opposition to the Application from local residents and persons residing outside the City of Greater Dandenong.
25. Prior to the Hearing, the Applicant amended its Application in relation to the operating hours at the Premises so that the closing time on each day would change from 5am to 4am.
26. During the Hearing, the following material was provided to the Commission in relation to the Application:
 - (a) research report from the Victorian Responsible Gambling Foundation (the **Foundation**) entitled, 'Behavioural indicators of responsible gambling consumption dated October 2016;
 - (b) data outlining the annual gaming expenditure and net machine revenue (**NMR**) for each approved premises within Greater Dandenong for 2017/18;
 - (c) written submissions from the Applicant;
 - (d) proposed conditions to attach to approval of the Application, were the Commission to approve the Application; and
 - (e) written submissions from the Council.
27. The following witnesses gave oral evidence at the Hearing:
 - (a) Mr Giuseppe Giustiniano, CEO of the Castello Group;
 - (b) Mr Eli Bryson-Skipp, General Manager of the Applicant;



- (c) Mr Nick Anderson, Managing Director of NBA Group;
- (d) Mr Michael Clyne, consultant for PVS; and
- (e) Mr Hayden Brown, advocacy officer for the Council.

28. Prior to the determination of this matter, both of the Commissioners visited the Premises.

DECISION AND REASONS FOR DECISION

Background

Location

29. The Premises is located in the City of Greater Dandenong (**Greater Dandenong**),¹⁴ a metropolitan LGA located 30km south-east of Melbourne and covers an area of 130 square kilometres. Major centres in Greater Dandenong include Dandenong, Springvale and Noble Park. According to the VCGLR Report, Greater Dandenong has an estimated adult population of 131,033, which ranks it 12th out of the 31 metropolitan LGAs with regard to population size. The annual rate of population growth projected by Victoria in Future (**VIF**) is 1.6% as compared with the Victorian average of 2.3%.
30. The Premises is located at 1-5 Scott Street, Dandenong and is on the periphery of the Central Dandenong Activity Centre. The Premises is surrounded primarily by commercial businesses with some retail and food uses in the immediate area. There are industrial areas to the west and south-east of the Premises, with residential areas substantially to the north-west, north-east and south.
31. The Castello Group also operates the Jim Dandy Hotel, located approximately 450 metres from the Premises on the strip-shopping mall on Lonsdale Street, Dandenong. The Jim Dandy Hotel currently operates 30 EGMs.
32. If approved, the Application would result in the closure of the Jim Dandy Hotel, a transfer of 25 EGMs to the Premises and the removal of 5 EGMs operating within Greater Dandenong. The Applicant has entered into a Section 173 Agreement with the Council to secure this outcome and restrict the use of the Jim Dandy Hotel site to a non-gaming use (conditional on the successful approval of this Application).

¹⁴ Where reference is made in these reasons to Greater Dandenong, this is a reference to the local government area (**LGA**).

Current gaming in Greater Dandenong

33. A regional cap of the permissible number of gaming entitlements made under a Ministerial Order pursuant to sections 3.2.4 and 3.4A.5(3A) of the GR Act applies to Greater Dandenong.¹⁵ The maximum permissible number of gaming machine entitlements in the area covered by the LGA of Greater Dandenong is 989. Currently, there are 15 gaming venues operating within Greater Dandenong with approvals to operate a total of 981 EGMs (with 958 attached entitlements).
34. Greater Dandenong has an EGM density of 7.3 EGMs per 1000 adults, which is 48.1% more than the metropolitan LGA average (4.9) and 39% more than the State average (5.3). This ranks Greater Dandenong as the 2nd of 31 metropolitan LGAs in terms of EGM density per 1000 adults.
35. The VCGLR Report notes that in the 2017-18 financial year, Greater Dandenong had an average gaming expenditure of \$927 per adult, which is 68.3% more than the metropolitan LGA average (\$551) and 73.9% more than the State average (\$533). Applying the estimate of increased gaming expenditure as received from the Applicant in the first year of operation of the additional 25 EGMs at the Premises, approval of this Application would result in an increase in average gaming expenditure per adult from \$927 to \$933. In the 2017/2018 financial year, the expenditure on gaming for Greater Dandenong was \$121,420,072.78. Of that amount, the Applicant's 25 EGMs at the Premises had generated \$3,463,261.13 (NMR of \$138,530.45), while the 30 EGMs at the Jim Dandy Hotel had generated \$2,666,041.65 (NMR of \$88,868.06).

Socio-economic profile of Greater Dandenong

36. Greater Dandenong is characterised by a significantly below average socio-economic profile, and is ranked as the LGA with the highest level of disadvantage within metropolitan Melbourne. It is ranked 1st of 31 metropolitan LGAs and 2nd of 79 LGAs in Victoria on the Socio-Economic Indexes for Areas (**SEIFA**) scale of disadvantage (**IRSD**),¹⁶ indicating significant disadvantage within the LGA (1st being the LGA with the greatest disadvantage).
37. In relation to the immediate surrounding area of the Premises (i.e. within 2.5 kilometres),¹⁷ the SEIFA IRSD index is 6.14% lower than the SEIFA IRSD index for Greater Dandenong, and 16.77% lower than the SEIFA IRSD index for Victoria. On the SEIFA IRSD, a lower score indicates more disadvantage, therefore the immediate surrounding area is more disadvantaged than both

¹⁵ Victorian Government Gazette S318, 20 September 2017.

¹⁶ SEIFA is a product developed by the ABS to assist in the assessment of the welfare of Australian communities. The SEIFA Index allows the ranking of regions/areas, providing a method of determining the level of social and economic well-being in each region.

¹⁷ The VCGLR Report adopts a 2.5km radius as the immediate surrounding area for applications to amend EGM venue operator's licences for venues within metropolitan LGAs.



Greater Dandenong and Victoria. 95% of SA1s¹⁸ in the immediate surrounding area are in the 1st quintile¹⁹ of SEIFA scores respectively (significantly more than the metropolitan average of 16.2%). This also suggests that the area immediately surrounding the Premises experiences much higher levels of disadvantage than the metropolitan average.

38. The VCGLR Report also indicates that:

- (a) the unemployment rate in Greater Dandenong is 8.2%. This is higher than the metropolitan and State averages of 5%. The unemployment rate for the immediate surrounding area is 9.1%, being 80.4% higher than the metropolitan average;
- (b) the equivalised household income in Greater Dandenong is \$775.19, which is lower than the metropolitan and State averages of \$1,082.94 and \$1,028.24 respectively. The equivalised household income in the immediate surrounding area is \$714.16, being 34.1% lower than the metropolitan average;
- (c) many residents in Greater Dandenong are welfare recipients, with the LGA ranked 2nd of 31 metropolitan LGAs for pensions and allowances per 1,000 adults;
- (d) the homelessness rate in Greater Dandenong is 15.4%, significantly higher than the metropolitan and State averages of 5.6% and 5.1% respectively; and
- (e) the crime rate in Greater Dandenong, with 13,881 reported crimes per 100,000 adults, is third highest of metropolitan LGAs and 45.2% higher than the metropolitan average.

Nature of the Premises

39. The Premises currently offers a limited range of entertainment options and amenities to patrons, consisting of:

- (a) a public bar;
- (b) a sports bar and TAB facility;
- (c) a lounge area with pool tables; and
- (d) a gaming room with 25 EGMs.²⁰

¹⁸ SA1s have been designed by the ABS as the smallest unit for the release of Census data, and generally have a population of 200 to 800 persons, with an average of 400 persons.

¹⁹ SEIFA index of relative disadvantage is divided into five quintiles each comprising 20% of areas (Statistical Areas Level 1 (SA1s)) ranked by socioeconomic status from the most disadvantaged (lowest / 1st quintile) to least disadvantaged (highest / 5th quintile). High disadvantage is indicated by a low SEIFA score (and low disadvantage by a high score).

²⁰ The gaming room is open daily between 9am to 5am (Monday to Saturday), and 10am to 5am (Sunday).



40. The Premises was purchased by the Castello Group in approximately 2014 with the intention of upgrading the venue and introducing new entertainment and food options for its patrons. The approval of this Application would result in capital works at the Premises, including the introduction of a kitchen and dining facilities at the Premises.

Catchment area of the Premises

41. The '*no net detriment*' test refers to 'the community of the municipal district in which the approved venue is located'. In determining the impact of an application 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'.²¹ The determination of the likely catchment area in this instance is important in the Commission's consideration of the identity of those residents which will be most affected by the Application in terms of gambling-related benefits and harms.
42. In the NBA Report and oral evidence, Mr Anderson noted that research has found people generally travel up to 2.5 kilometres to play EGMs in a suburban setting, which in this case would include the suburbs of Dandenong, West Dandenong and Doveton.²² This is generally consistent with the membership data provided in Mr Giustiniano's addendum note, which shows that approximately 60% of the Premises' patrons reside in these suburbs.
43. The PVS Report states that, for the purpose of the Geotech model, the area surrounding the venue from where patrons are drawn, and in which competing venues are located, is comprised of a number of statistical areas including trade area, local network and local government area.²³ The trade area is defined as the statistical area in which the majority of the venue's customers are domiciled and it is divided into primary (>20% probability of patronage of the venue from residents of these areas), secondary (12 to 20% probability of patronage from these areas) and tertiary areas (4 – 12% probability of patronage from these areas). For the Premises, the PVS Report indicates that the primary trade area is within approximately 3km of the Premises and consists primarily of the suburbs of Dandenong, West Dandenong, Dandenong North and Dandenong South (which is primarily an industrial area). The secondary and tertiary trade areas extend out to approximately 3.5km to the west and east (including Doveton) and up to 5km to the north and south.

²¹ See for example, *Romsey No. 2* [2009] VCAT 2275; *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 (7 April 2011).

²² NBA Report paragraph 94.

²³ Final PVS Report, page 7.



44. In the Council Report and in oral submission, Council agreed with Mr Anderson's evidence that the catchment area of the Premises is likely to be within a 2.5 kilometre radius of the Premises, which was also consistent with Council policy.²⁴
45. In this instance, the Commission considers that the gaming room patron survey provides a reliable indication of the likely gaming patrons for the Premises, with the greatest proportion of those patrons residing in the suburb of Dandenong (almost half). Having regard to the material and evidence put forward by the Applicant and the Council, and noting the VCGLR Report analysing the surrounding area as a radius of 2.5km around the Premises, the Commission considers that the appropriate catchment area of the Premises consists primarily of the suburb of Dandenong together with its surrounding area out to a radius of 2.5km (**Catchment Area**).

Issues for determination

46. Pursuant to section 3.4.20 of the GR Act, the Commission cannot grant the Application unless it is satisfied of the following matters:
 - (a) that the amendment of the venue operator's licence does not conflict with a direction given under section 3.2.3 of the GR Act;
 - (b) that the relevant municipal limit for EGMs applicable to Greater Dandenong will not be exceeded by the making of the amendment the subject of the Application;
 - (c) that the net social and economic impact of the increase in EGMs permitted in the Premises will not be detrimental to the well-being of the community of Greater Dandenong (the '*no net detriment*' test); and
 - (d) if premises are proposed to be added to the licence as an approved venue and the premises are situated within 100 metres of an approved venue of which the Applicant is the venue operator, that the management and operation of the approved venue and the proposed approved venue are genuinely independent of each other.
47. 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 or not the Application should be granted; that is, whether or not the proposed amendment to the venue operator's licence should

²⁴ Council Report, pages 5-6.

be made.²⁵

A. Directions given under section 3.2.3

48. Pursuant to section 3.4.20(1)(a) of the GR Act, the Commission must be satisfied that the proposed amendment does not conflict with a Ministerial direction, if any, given under section 3.2.3 of the GR Act. There is no relevant direction issued pursuant to section 3.2.3 of the GR Act that relates specifically to this Application.
49. 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 the mandatory pre-condition set out in section 3.4.20(1)(a) of the GR Act is satisfied.

B. Regional cap

50. As noted in paragraph 35 above, Greater Dandenong is subject to a regional cap on the number of EGMs under a Ministerial Order under sections 3.2.4 and 3.4A.5 of the GR Act. The maximum permissible number of gaming machine entitlements in the area covered by the LGA is 989.
51. As outlined on page 8 of the VCGLR Report, there are 981 licensed EGMs over 15 gaming venues within the capped region, but only 958 attached EGMs. As outlined in paragraph 32 above, the Applicant intends to close the Jim Dandy Hotel, transfer of 25 EGMs to the Premises and remove the remaining 5 EGMs operating within Greater Dandenong. As such, any approval of this Application would actually decrease the number of licensed EGMs to 976 and decrease the number of attached EGMs to 953.
52. Overall, the Commission is satisfied that granting the Application would not cause the relevant regional cap for gaming machines for Greater Dandenong to be exceeded, and therefore considers that mandatory pre-condition set out in section 3.4.20(1)(b) of the GR Act is satisfied.

C. 'No net detriment' test

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

²⁵ An amendment may be made subject to any conditions the Commission thinks fit: GR Act, section 3.4.20(3).



Economic Impacts

54. The materials before the Commission and the evidence adduced at the Hearing provided the evidentiary basis for a range of economic benefits and disbenefits associated with this Application.

Expenditure on capital works

55. A potential key economic benefit associated with this Application is that arising from the expenditure on the proposed redevelopment of the Premises.

56. In relation to the proposed renovations of the Premises, the Applicant submitted that refurbishment and renovation works (**Works**) would occur at the Premises, including:

- (a) introduction of a café/bistro dining area;
- (b) relocation and refurbishment of the gaming room;
- (c) refurbishment of the TAB and sports bar; and
- (d) new exterior signage and paintwork.

57. The proposed renovations to the Premises are expected by the Applicant to cost approximately \$750,000. The Applicant asserted that without approval of the Application, it would not be in a position to implement the proposed renovations. The Applicant indicated (in its proposed conditions, if the Application is granted) that the works for renovating the Premises would take approximately 18 months to substantially complete.

58. Mr Giustiniano gave evidence that previous renovations and maintenance work at the Premises had been completed by local contractors and that the Applicant would seek to similarly engage local contractors for the Works if the Application was approved.

59. The Council Report addressed the economic impact of the Works in a minor way, indicating that it would be funded largely by gambling revenue. Ultimately, the Council accepted that the capital expenditure for the Works would constitute, at its highest, a marginal benefit for the community of Greater Dandenong.²⁶

60. The Commission accepts that the Applicant intends to undertake the Works if the Application is granted, and also accepts that, given the modest nature of the proposed Works, local contractors would likely be sourced within Greater Dandenong. Therefore, the Commission considers this expenditure is an economic benefit and, in the circumstances, gives it marginal to low weight.

²⁶ Council closing submissions, paragraphs 53-54.

Further, the Commission is careful to ensure that benefits associated with the renovation expenditure are not double counted, having regard to the social impact that may result from the improved facilities. This aspect is considered further below at paragraphs 117 to 121.

Additional employment

61. According to the Applicant, employment benefits associated with this Application would include the guaranteed redeployment of all eight staff from the Jim Dandy Hotel to the Premises, in addition to the creation of four additional equivalent full time (**EFT**) positions at the Premises, consisting of:
 - (a) an additional 3 EFT positions in the kitchen as chefs; and
 - (b) an additional 1 EFT position as food and beverage attendants.
62. Mr Giustiniano gave evidence that approximately 80% of the staff at the Premises are from the local area, and would expect that any new staff would similarly reside within the local area.²⁷ The Applicant submitted that the creation of additional employment should be considered in light of the above average unemployment within Greater Dandenong.
63. The Council Report addressed the economic impact of the additional employment by stating that any rise in employment must be balanced by a decline in employment elsewhere as increased gaming expenditure is matched by a fall in expenditure on other goods and services. However, the Council did not identify any specific businesses in the vicinity of the Premises whose revenue would be affected by the grant of the Application to the extent that existing employment levels at those businesses would be reduced.
64. Overall, the Commission finds that the majority of additional gaming employment at the Premises would be filled through the redeployment of staff from the Jim Dandy Hotel, with additional employment creation occurring in relation to the establishment of a bistro at the Premises. The Commission considers additional employment as a positive impact, and in light of the above average unemployment rate within Greater Dandenong, the Commission considers it is an economic benefit to the community to which it should attribute marginal weight.

²⁷ Statement of Mr Giustiniano, paragraph 32.



Increased gaming competition in Greater Dandenong

65. Increasing competition in gaming in Greater Dandenong is a factor to be considered by the Commission in light of the statutory purposes of the Act²⁸ and the consumer benefits that derive from competition.
66. In the Final PVS Report, Mr Clyne indicated that the Premises has five gaming competitors within its primary trade area. These venues are the Jim Dandy Hotel with 30 EGMs, the Albion Hotel with 24 EGMs, the Dandenong RSL with 63 EGMs, the Dandenong Workers Social Club with 77 EGMs and the Dandenong Club with 103 EGMs.
67. Mr Clyne gave evidence regarding his estimation of the likely increase in gaming expenditure for the Premises should the Application be granted. He expected that if the Application was granted the gaming expenditure over the first year of the additional EGMs' operation at the Premises would increase by approximately \$4,112,914 per annum.²⁹
68. Taking into account the Premises' gaming competitors (although noting the expected closure of the Jim Dandy Hotel), the Premises being an existing venue, and the understanding that higher rates of transferred expenditure occur where there is greater concentration of competitors, Mr Clyne estimated that the transfer rate within Greater Dandenong would be between 82% and 100%. In other words, a minimum of \$3,370,533 of the \$4,112,914 per annum would be transferred expenditure from other venues within the local network of the Premises.
69. Having regard to the estimated adult population of 131,033 in Greater Dandenong, the Commission notes that this Application, if approved, would:
- (a) decrease the total number of licensed EGMs in the municipality by five, from 981 to 976;
 - (b) decrease the total number of approved venues in the municipality by one;
 - (c) maintain EGM density in the municipality at 7.3 per 1,000 adults, as compared with the metropolitan average of 4.9 and the State average of 5.3 EGMs per 1,000 adults; and
 - (d) on the basis of Mr Clyne's figures, would result in an estimated increase of up to \$742,381 of new expenditure to the LGA in the first year of operation.

²⁸ See GR Act, s 3.1.1(2).

²⁹ Mr Clyne used the 'Geotech model', which predicts the future revenue performance of an increase in EGMs and the proportion of the venue that is being transferred from other venues based on factors such as venue attractiveness, facilities and distance from other venues.

70. Despite the Application resulting in a decrease in total EGMs and approved venues within Greater Dandenong, Mr Giustiniano stated that the transfer of 25 EGMs from the Jim Dandy Hotel to the Premises (along with the proposed renovations at the Premises) will turn two inferior gaming venues into one more attractive and competitive venue within Greater Dandenong. In the Final PVS Report, Mr Clyne indicated that the Venue Attractiveness score for the Premises as a result of this Application would significantly increase from 250 to 618, based primarily on the doubling of EGMs from 25 to 50.³⁰
71. In its closing submissions, the Council submitted that increased competition would be a marginal benefit at best.³¹
72. Considering the matters discussed above, the Commission considers that the installation of 25 additional EGMs at the Premises will improve its attractiveness in a competitive market, however this must be balanced with the subsequent decrease in competition arising as a result of the closure of the Jim Dandy Hotel. In light of the relative underperformance of the Jim Dandy Hotel and the fact that both venues are operated by the Castello Group, the Commission finds that the impact on competition resulting from the closure of the Jim Dandy Hotel would be minimal. In addition, the Commission notes that, even with the removal of 5 EGMs from Greater Dandenong, the EGM density in the LGA will remain almost 50% higher than the metropolitan level (the second highest in Melbourne).
73. Accordingly, the Commission considers it appropriate to attribute no to marginal weight to this economic benefit.

Gaming expenditure not associated with problem gambling

74. To the extent that gaming expenditure is not associated with problem gambling, it has been recognised that such expenditure can be treated as an economic positive.³² As Bell J notes in *Romsey No. 2*, this approach also brings to account the benefit obtained from pure consumption by the lone gambler who does not use EGMs for social reasons.³³
75. The Commission notes from the VCGLR Report that the average net EGM expenditure per adult in Greater Dandenong was \$927 (based on spending in the 2017/8 financial year), significantly

³⁰ Final PVS Report, paragraph 17.

³¹ Council Closing Submissions, paragraph 57.

³² See *Romsey No. 2* [2009] VCAT 2275 [351] per Bell J.

³³ *Ibid.* Bell J further notes at [352] that the other approach is to say (as Morris J did in *Branbeau Pty Ltd v Victorian Commission for Gambling and Liquor 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.

more than the average for metropolitan Melbourne (\$551) and the State (\$533).³⁴

76. Based on the patron counts prepared by the Applicant, the Premises' gaming room approaches full utilisation on numerous occasions each week. While the number of hours of peak utilisation does vary, there are sufficient periods of high usage to indicate a need for additional EGMs.
77. Mr Clyne estimated that the additional EGMs would derive additional gross gaming expenditure at the Premises of \$4,112,914 in the first 12 months after installation.
78. Of the gross gaming expenditure derived from the additional 25 EGMs at the Premises, Mr Clyne estimated that between 82% and 100% would be transferred expenditure from other venues within the local network of the Premises, and that up to \$742,381 in the first year of the additional EGMs' operation would be new expenditure.
79. The Council Report did not lead any alternative estimate to Mr Clyne's gross gaming expenditure figures for the Premises from the additional 25 EGMs. However, Mr Brown stated that the outputs of the Geotech model in past cases indicated a potential to underestimate the anticipated increase in gaming expenditure following the approval of the Application. Mr Brown also highlighted the existed high levels of gaming expenditure (together with below average equivalent incomes) within the Catchment Area.³⁵
80. The Commission acknowledges the limitations of the Geotech model in the unique circumstances of this Application as set out by Mr Clyne in his evidence. However, the Commission notes that no alternative evidence to Mr Clyne's gross gaming expenditure figures for the Premises from the additional 25 EGMs was provided. In the circumstances, the Commission accepts Mr Clyne's analysis in relation to the estimate of gross gaming revenue, but does not accept that 100% of this expenditure will be transferred. The Commission considers that the anticipated rate of transferred expenditure is more likely to be closer to the rate generated by the Geotech model (82%) than Mr Clyne's adjusted estimate.
81. In assessing the extent of the benefit associated with this increased gaming expenditure, the Commission has had regard to the evidence outlined in paragraphs 83 to 98 below with respect to gambling expenditure associated with problem gambling. In particular, the Commission notes the following in respect to the Premises:
 - (a) within the primary trade area of the Premises there are already 322 EGMs over six venues

³⁴ See VCGLR Report, page 17.

³⁵ Council Report, page 13.



(including the existing 25 accessible at the Premises and the 30 at the Jim Dandy Hotel);

- (b) the gaming room operates 20 hours each weekday and Saturdays, and 19 hours each Sunday (to be reduced to 19 and 18 hours respectively as part of this Application);
- (c) the median weekly household income for residents living within the immediate 2.5km radius of the Premises sits well below the metropolitan average, and are lower in proximity to the Premises relative to the rest of Greater Dandenong;
- (d) unemployment in Greater Dandenong is 8.2% (ranked 2nd of 31 metropolitan LGAs), compared with metropolitan Melbourne at 5%;
- (e) homelessness in Greater Dandenong is ranked the highest by metropolitan LGAs, with triple the rate of homelessness across the State (15.4 versus 5.1 per 1,000 adult population);
- (f) Greater Dandenong is ranked second highest by metropolitan LGAs for pensions and allowances per 1,000 adults;
- (g) Greater Dandenong has the third highest crime rate for metropolitan LGAs (behind only the City of Melbourne and the City of Yarra);
- (h) in the 2017-18 financial year, Greater Dandenong had an average gaming expenditure which is 68.3% more than the metropolitan LGA average and 73.9% more than the State average; and
- (i) 95% of residents within the 2.5km radius from the Premises are in the two lowest State SEIFA deciles.

82. Generally, the Commission considers that the portion of new expenditure not attributable to problem gambling is an economic benefit. Having regard to the matters discussed in paragraphs 75 to 81 above regarding the Premises and in the section below related to problem gambling, the Commission considers that a substantial portion of new expenditure at these Premises would likely be associated with problem gambling. Accordingly, the Commission attributes this benefit no to marginal weight.

Gambling expenditure associated with problem gambling

83. To the extent that a portion of the new expenditure is attributable to problem gambling, this represents an economic disbenefit.³⁶ In assessing this impact (and other effects of problem

³⁶ 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 v Greater*

gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gambling undertaken by those who may be defined as ‘problem gamblers’, as well as those who may be otherwise regarded as ‘low-risk’ or ‘moderate-risk’ gamblers.

84. In assessing the extent of this disbenefit, the Commission has regard to the expenditure evidence set out in paragraphs 77 to 80 above. In doing so, the Commission recognises that in considering this aspect of the ‘*no net detriment*’ test it does not include consideration of transferred expenditure because such expenditure cannot be said to exacerbate problem gambling.³⁷

The potential vulnerability of Greater Dandenong to gambling-related harms

85. 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 of Greater Dandenong, and particularly those living in the Catchment Area surrounding the Premises. This is because communities characterised by socio-economic disadvantage and greater vulnerability are considered to be more susceptible to the harms arising from problem gambling.³⁸
86. In relation to the Premises, the Applicant accepted that overall the Catchment Area surrounding the Premises exhibits signs of very high disadvantage and that the indices scores of the socio-economic index for areas (**SEIFA**) indicate that the catchment area is highly disadvantaged in socio-economic terms on the basis that (in summary):
- (a) the LGA is ranked the second most disadvantaged municipality in the State. Approximately 95% of residents within the 2.5km radius from the Premises are in the lowest two State SEIFA deciles;
 - (b) the equivalised household income for residents within the 2.5km radius of the Premises is 34.1% lower than that of metropolitan Melbourne;
 - (c) the unemployment rate in Greater Dandenong as at the end of 2018 (8.2%) was the 2nd highest level in Victoria and well above the metropolitan rate (5%); and

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* [2013] VCAT 101 at [178] and following per Dwyer DP. For completeness, the Commission considers both the economic and social impacts of problem gambling in assessing this Application.

³⁷ See *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192 at [11] per Code PM and Nelthorpe M; *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J.

³⁸ This approach accords with the VCAT’s treatment of this issue in *Molwin Pty Ltd v Mornington Peninsula SC* [2015] VCAT 1982 (23 December 2015), [68].



(d) homelessness in Greater Dandenong is ranked highest LGA in the State.

87. In the NBA Report, Mr Anderson accepted that Greater Dandenong and the Catchment Area exhibited significant levels of socio-economic disadvantage. Despite this, Mr Anderson considered that the risk of an increase of problem gambling is marginal on the basis that the Application involved a transfer of EGMs from a highly exposed existing venue (Jim Dandy Hotel) to a less convenient and accessible venue (the Premises) servicing the same catchment area.³⁹ Overall, Mr Anderson considered that the closure of the Jim Dandy Hotel and the responsible service of gaming (**RSG**) measures proposed by the Applicant (discussed below) would mitigate some of the risk of harm associated with problem gambling, and assigned this impact a low weighting.⁴⁰
88. In contrast, the Council argued that the social and economic factors in paragraph 86 above would suggest that the risk of increased incidence in problem gambling at the Premises would likely be increased should this Application be granted. The Council also referred to the following:
- (a) while not located in a strip-shopping area like the Jim Dandy Hotel, the Premises is still relatively conveniently located within central Dandenong;
 - (b) the Premises would operate as a high risk, late-night venue (operating later each night than the Jim Dandy Hotel currently operates); and
 - (c) the total EGM expenditure and EGM expenditure per adult in Greater Dandenong being significantly above the averages for metropolitan municipalities and Victoria.
89. The Council further submitted that:
- (a) the increased number of EGMs and proposed Works at the Premises would have the potential of increasing the attractiveness of the venue for all categories of gamblers (including problem gamblers);
 - (b) the Applicant's proposed employment of an additional staff person in the gaming room would do little more than serve increased demand for the gaming room rather than increase passive surveillance over that space;
 - (c) the increased density of EGMs within the gaming room would further impact the ability of staff to supervise patrons and identify signs of problem gambling;

³⁹ NBA Report, paragraph 117.

⁴⁰ NBA Report, Table 10.1.



- (d) despite the proposed relocation of the gaming room at the Premises, the gaming room's presence would still remain evident to patrons, particularly at those times when access to toilets is only available through the gaming room; and
- (e) because of the LGA's substantial social and economic disadvantage, its community would be least able to bear the costs of additional gambling-related harm.

RSG practices

90. In considering the extent to which any new expenditure may give rise to an increased risk of problem gambling, the manner in which gaming is to be conducted at the Premises is also a relevant consideration. Specifically, in relation to the Applicant's Responsible Service of Gaming (**RSG**) practices, the Applicant submitted that:
- (a) the Applicant, as part of the Castello Group, is an experienced venue operator with a sound and dedicated approach to RSG, including adherence to the Responsible Gambling Code of Conduct;
 - (b) the Premises, as a small-medium venue, would be less likely to be attractive to those with a propensity to excessive gambling;
 - (c) the relocation of and renovations to the gaming room to the rear of the venue (including the installation of screens to limit direct views into the gaming room from non-gaming areas of the Premises) will improve RSG measures at the Premises;
 - (d) all staff are thoroughly trained in RSG application and the appropriate steps to take when incidents of problem gambling are identified within the Premises;
 - (e) additional staff (including an additional floorwalker) will increase surveillance and mitigate the risk of anonymity within the expanded gaming room.⁴¹
91. The Commission also notes that the Pre-Hearing Report detected no known issues at the Premises from a gaming and liquor inspection on 4 June 2019 and that (apart from two past breaches under the *Liquor Control Reform Act 1998*) no issues have been recorded in previous inspections conducted at the Premises.
92. Notwithstanding the above, the Council stated that, while it had no cause to challenge the Applicant's implementation of RSG practices, there was no scientific research base in the materials before the Commission that in any way suggested the Applicant's RSG practices, either

⁴¹ NBA Report, paragraphs 123-132.



individually or taken together, have any material impact upon the incidence or severity of gambling-related harm.⁴²

The Commission's view

93. Having regard to all of the evidence and circumstances, should this Application be granted, the Commission considers that there is a risk of increased problem gambling expenditure associated with this Application. That increased expenditure would come from the new expenditure the additional 25 EGMs would generate of approximately \$742,381 in the first 12 months of operation.
94. The Commission refers to its assessment of the socio-economic profile of the Catchment Area and Greater Dandenong generally and finds that the majority of the Premises' gaming room patrons have a significant level of socio-economic disadvantage and financial vulnerability that would make them more susceptible to gambling-related harms.
95. The Commission considers from the evidence before it that the increased size of the gaming room and the proposed renovations at these Premises would have the potential of increasing the attractiveness of the venue for all categories of gamblers (including problem gamblers as well as for those for whom gambling would be associated with some measure of harm).
96. In relation to the RSG practices of the Applicant, the Commission is not entirely persuaded on the available information that the impact would be significantly lessened by factors raised by the Applicant. The Commission finds that many of these factors are existing RSG measures that would remain extant regardless of the Application. With respect to the proposed additional floorwalker, the Commission considers that this is more likely to maintain, rather than improve, the existing level of supervision within the Premises' gaming room, in light of the proposed increase from 25 to 50 EGMs and the associated reduction in line-of-sight within the gaming room following the installation of the additional 25 EGMs.
97. Finally, while the Commission accepts that there would be some benefit associated with the relocation of the gaming room from the front to the rear of the Premises, this factor must be balanced with the consequential impacts of the proposed new gaming room, including the increased density of EGMs, more restrictive surveillance opportunities, and the requirement for patrons to walk through the gaming room to access toilet facilities at times when the bistro is closed.
98. Accordingly, and having regard to all the circumstances and factors, the Commission considers

⁴² Council Report, pages 19-20.

with respect to this Application that the potential expenditure associated with problem gambling is a negative economic impact upon which it should place a low to moderate weight.

99. Issues relating to the negative social impacts associated with problem gambling regarding the Premises are considered further in paragraphs 130 to 134 below.

Diversion of trade from other gaming venues

100. In the Final PVS Report, Mr Clyne estimated that at least 82% of gaming expenditure would be transferred from other gaming venues within the local network of the Premises (resulting from the closure of the Jim Dandy Hotel and transfer of 25 EGMs to the Premises). With reference to the impact on surrounding venues within Greater Dandenong, the Final PVS Report states that four venues in particular would be likely to experience significant losses in revenue if the Application were approved.⁴³ Those venues are the Albion Hotel (-10.11%), the Dandenong RSL (-9.74%), the Dandenong Workers Social Club (-8.91%) and the Dandenong Club (-7.78%).⁴⁴
101. In the Final PVS Report and at the Hearing, Mr Clyne accepted that the loss of this gaming revenue would impact these venues, however he stated that he did not consider that the above losses would have a significant impacts on these venues. He gave evidence that most of these venues had excellent facilities, including bistros and other services, that would require a maintenance of staffing at those venues.
102. The Commission accepts the Applicant's evidence that at least 82% of anticipated increased expenditure would be derived from other venues, located within Greater Dandenong and neighbouring LGAs. The Commission considers that a transfer rate of this size is not insignificant, however in light of the competitive market and relative stability of the affected venues, the Commission finds that the diversion of trade will have a negligible detrimental economic impact on other venue operators. Having regard to these factors, the Commission assigns no to marginal weight to this impact.

Diversion of trade from non-gaming businesses

103. Mr Anderson noted that a potential disbenefit as a result of granting the Application might be less expenditure on trade from retail facilities, or other businesses. This was also indicated by the Council.
104. The Commission, while being careful not to double count this impact with the impact of gaming

⁴³ Final PVS Report, paragraph 41.

⁴⁴ Final PVS Report, Appendix One, Table 4.



expenditure associated with problem gambling, acknowledges that Mr Anderson considered that any transfer of trade from other non-gaming businesses would be low.

105. In the Council Report, Mr Brown submitted that increased gaming expenditure is matched by a fall in expenditure on other goods or services.
106. The Commission recognises that the impact that could be felt by local non-gaming businesses is the value of the new expenditure from this Application, being approximately \$742,381 in the first year of operation. However, the Commission notes that it is difficult to determine whether that expenditure would necessarily have been spent elsewhere in the LGA, and acknowledges that there was no direct evidence presented regarding the diversion of trade from retail facilities or other businesses in Greater Dandenong as a result of this Application. Consequently, the Commission considers it appropriate to attribute no weight on this impact.

Conclusion on economic impacts

107. After considering the economic benefits of the Application and balanced against the disbenefits, the Commission considers that, on balance, the Application is likely to have a marginally negative economic impact if granted.

Social Impacts

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

Closure of one gaming venue and decreased EGM density

109. As discussed in paragraph 32 above, this Application would result in the closure of the Jim Dandy Hotel and the overall reduction of operational EGMs within Greater Dandenong by five. The Applicant submitted that these outcomes were clear benefits to the community of Greater Dandenong, in light of the current levels of EGM density, gaming expenditure and socio-economic disadvantage experienced in the community. In particular, the Applicant noted the more prominent location of the Jim Dandy Hotel within the strip-shopping on Lonsdale Street of the Dandenong CBD. At the Hearing, Mr Anderson confirmed that he had placed significant weight on this impact, and stated that he would not be able to support the Application without these benefits.
110. In response, the Council submit that the closure of the Jim Dandy Hotel and the reduction of 5 EGMs from Greater Dandenong should be balanced against the consequences of transferring 25 EGMs from the Jim Dandy Hotel to the Premises. On the basis of current and projected NMR at the venues and the expenditure evidence of Mr Clyne, the Council submit that this transfer from



an under-performing venue (Jim Dandy Hotel) to a higher-performing venue (the Premises) will ultimately result in a disbenefit to the community in the form of an increase of gaming expenditure within Greater Dandenong. The Council also note that the Jim Dandy Hotel is currently open until 3am, while the Applicant intends to operate the transferred EGMs at the Premises until 4am (taking into account the proposed reduction of opening hours as part of this Application from 5am to 4am).

111. The Commission agrees with the Council's position that it should consider all intended consequences of the Application, being the closure of the Jim Dandy Hotel and the removal of 5 EGMs operating within Greater Dandenong, together with the transfer of 25 EGMs to the Premises. While it accepts that the closure of a gaming venue and the reduction in operational EGMs within Greater Dandenong would constitute a benefit to the community within the Catchment Area and more broadly within Greater Dandenong, the Commission also accepts that the Application will result in new gaming expenditure occurring within Greater Dandenong following the transfer of EGMs to the Premises due to the higher-performing nature of the Premises and the increased venue attractiveness of the Premises. The impact of this new gaming expenditure, borne by the significantly disadvantaged community within the Catchment Area, must be balanced against the benefit in reducing accessibility through the closure of the Jim Dandy Hotel and removal of 5 EGMs from Greater Dandenong.
112. Having regard to the findings outlined above, the Commission considers that the impact of the Application in this regard is equally positive and negative, and therefore assigns no weight to this impact.

Increased gaming opportunities for those who enjoy gaming

113. Increased gaming opportunities 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 responsibly.
114. The Applicant submitted that, despite the other consequences of the Application, the proposed addition of 25 EGMs at the Premises will assist in providing an increased range of choice and variety of machine to patrons choosing to gamble responsibly at the venue. It submits that the increase of EGMs at the Premises will also support the Applicant's desire to be more competitive with other gaming venues within Greater Dandenong. The Applicant also referred to the patron counts of the Premises, which indicate that the Premises' gaming room approaches full utilisation on numerous occasions each week and therefore there are periods of high usage to indicate a need for additional EGMs.

115. The Council Report addressed this impact in a minor way by stating that the benefit would be minimised by the fact that some patrons would experience gambling-related harm.
116. In this matter, the Commission accepts that granting approval of the Application would likely better serve the needs of gaming patrons through the improved EGM offering and access at the Premises, even with the closure of the Jim Dandy Hotel. However, the Commission notes that given there are currently 322 EGMs over six venues (including the existing 25 accessible at the Premises and the 30 at the Jim Dandy Hotel) within the trade area of the Premises and that Greater Dandenong is ranked 2nd of 31 metropolitan LGAs in terms of EGM density per 1000 adults, the Commission considers it appropriate to attribute no to marginal weight to this social benefit.

Improved facilities enabling greater range of services

117. Separate from the economic benefit that may be associated with expenditure involved in capital works at the Premises, there are also potential social benefits to the community that may arise having regard to the nature of the renovations that are intended to take place.
118. As noted at paragraph 56 above, the Works at the Premises include introduction of a café/bistro dining area, relocation and refurbishment of the gaming room, refurbishment of the TAB and sports bar, and new exterior signage and paintwork. Accordingly, the Applicant submits that the proposed renovations to the Premises are not solely associated with gaming.
119. Mr Anderson gave a moderate-positive weight to the proposed renovations to the Premises (a combined economic and social impact).⁴⁵ He stated that the proposed renovations would also ensure the ongoing viability of the Premises in the competitive Greater Dandenong market.
120. In contrast, Mr Brown, while accepting that the proposed renovations at the Premises were a social benefit, was of the opinion this was a “neutral benefit” given that the proposed renovations may attract further gaming patrons to the Premises who may experience gambling-related harm.
121. The Commission considers that the community's access to, and use of, the proposed improved facilities at the Premises will provide a social benefit to the community of Greater Dandenong, noting that the addition of the bistro is the most significant change to the existing facilities offered at the Premises arising from the Application. However, the Commission recognises that the Works predominantly only improve existing facilities at the Premises, and that the addition of the bistro should be balanced in light of the existing food offering in close proximity to the Premises.

⁴⁵ NBA Report, Table 10.1.

Therefore, the Commission considers it is appropriate to attribute no to marginal weight to this factor.

Community contributions

122. In determining the net economic and social impact of applications of this nature, both the Commission⁴⁶ and VCAT⁴⁷ have regularly treated community contributions proposed by an Applicant as a positive benefit. However, for such contributions to be regarded as a benefit associated with the Application, it is necessary that they are properly regarded as community contributions and that they will result as a consequence of the Application being granted.
123. The Commission has taken into account both the economic (financial benefit enjoyed by recipients) and social (improvement to the social fabric of the community) benefits associated with the proposed community contributions forming part of the Application in this section, and given appropriate weight to that impact in its cumulative form.
124. The Applicant's proposed conditions, if the Application is granted, include a condition to make cash contributions in the amount of \$20,300 per annum "to organisations providing services and facilities to residents in the City of Greater Dandenong".⁴⁸ In his statements and at the Hearing, Mr Giustiniano stated that this would include committing to an annual \$15,000 donation to the Jesuran Welfare Services to support it to provide social services to the community of Greater Dandenong.⁴⁹
125. Mr Anderson considered that the proposed community contributions to the Jesuran Welfare Services would provide a benefit to the community of Greater Dandenong and gave it low to moderate weight.⁵⁰
126. Further to this donation, Mr Giustiniano gave evidence that the contributions would include an annual donation of \$5,300 to the Dandelion Wishes Foundation, an organisation that predominantly supports the Monash Children's Hospital.⁵¹
127. In relation to the Dandelion donation, the Council submitted that the services of this organisation are centred at the Monash Children's Hospital, located outside Greater Dandenong in the City of Monash. The Council submitted that the effect or benefit of the contributions to the Dandelion

⁴⁶ See e.g., *Application by Richmond Football Club* [2015] VCGLR (24 July 2015) (Commissioners Cohen and Owen).

⁴⁷ See e.g., *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.

⁴⁸ Proposed Conditions.

⁴⁹ Statement of Mr Giustiniano, paragraph 28; Addendum Statement of Mr Giustiniano, paragraph 2.

⁵⁰ NBA Report, Table 10.1.

⁵¹ Addendum Statement of Mr Giustiniano, paragraph 3.



organisation would be felt, in whole or in part, outside the community of Greater Dandenong. The Council also queried the position of the Applicant that this contribution, that had been made in the past year, could not ordinarily continue regardless of the outcome of the Application.⁵²

128. Overall, the Commission considers that, by way of the wording of the Proposed Conditions, the Applicant is committing to community contributions totalling \$20,300 to organisations providing services or facilities to residents of Greater Dandenong. The Commission acknowledges the Council's position in relation to the extent that the Dandelion Wishes Foundation provides such services to Greater Dandenong residents. However, the Commission finds that, in the event that the Application was granted and the Proposed Conditions imposed, the Applicant would be required to ensure that it complies with the Proposed Conditions (including being satisfied whether the donation to the Dandelion Wishes Foundation could form part of this commitment), and therefore has assessed the impact of community contributions in the amount of \$20,300 per annum as part of the Application.
129. Accordingly, the Commission considers that the Applicant's commitment to community contributions in the amount of \$20,300 to organisations providing services and facilities to residents in Greater Dandenong would be a positive economic and social benefit, and considers it appropriate to attribute marginal to low weight to this impact.

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

130. Wherever accessibility to EGMs is increased, there is a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, family breakdowns and other social costs. Accordingly, the Commission accepts that there is potential for a negative social impact through possible increased problem gambling expenditure.
131. The Commission refers to and relies upon the evidence set out in paragraphs 83 to 98 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 considers that there is potential for increased risk in gambling related harms as a result of this Application. This gives rise to a negative social impact. The Commission accepts (as outlined in paragraph 83 above) that harms associated with gambling are wide-ranging and attributable to all categories of gamblers ('low-risk', 'moderate-risk' and 'problem gamblers') and across the community more broadly.

⁵² Council Closing Submissions, paragraph 60.



132. Mr Anderson gave evidence that the risk of adverse social impacts associated with problem gambling would be mitigated by the RSG measures implemented by the Applicant and the Castello Group generally, the improved location and layout of the gaming room at the Premises following the Works, and the closure of the Jim Dandy Hotel. In light of these mitigating circumstances, Mr Anderson assigned a low weighting to this impact.⁵³
133. In the Council Report, the Council set out a number of adverse physical and mental health and wellbeing issues (including family violence and financial hardship) within Greater Dandenong, and submitted that the anticipated increase in gaming revenue resulting from the Application would have a high probability to aggravate such issues among the residents of Greater Dandenong.⁵⁴
134. Having regard to all of the evidence and circumstances, for the reasons discussed in relation to the economic impact of problem gambling at paragraphs 83 to 98 above, particularly given both the location of the Premises within Greater Dandenong and the socio-economic disadvantage of residents within the Catchment Area of the Premises, the Commission considers it appropriate to attribute moderate weight to this negative social impact.

Community attitude

135. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*,⁵⁵ 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 the particular social impact within, and as part of, the 'no net detriment' test.
136. The evidence before the Commission indicates that the community attitude towards this Application is somewhat negative. As detailed in paragraphs 23 to 24 above, the Commission received correspondence from both community groups (that offer services to needy individuals and families within Greater Dandenong) and individuals in opposition to the Application. In summary, these submissions against the granting of the Application were directed towards the impact of gambling in the community at large and the concern that this Application might increase the risk of problem gambling and a range of gambling related harms.

⁵³ NBA Report, Table 10.1.

⁵⁴ Council Report, pages 22-3.

⁵⁵ The *Romsey* case (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.



137. In response, the Applicant submitted that the community opposition to the Application was at the lower end when compared to the range and intensity of community opposition observed in other gaming cases.⁵⁶
138. Overall, the Commission is satisfied that the submissions referred to in paragraphs 23 to 24 above suggest that there is some limited negative attitude within Greater Dandenong to this Application.
139. In determining this impact, the Commission also recognises that the Council, as the representative body of the relevant community is charged with statutory duties under various pieces of legislation, has objected to the Application, and provided evidence in support of its objection.⁵⁷ To the extent that the Applicant relies on Section 173 Agreement to indicate Council support for the Application, the Commission does not agree with this position. The Commission does not consider that the entering into the Section 173 Agreement with the Applicant equates to evidence of Council's overall support of the Application.
140. In all of these circumstances, and taking into account the Council's position and evidence in relation to the Application, the Commission considers it appropriate to attribute marginal weight to this negative social impact.

Conclusion on social impacts

141. After considering the social benefits of the Application and balanced against the disbenefits, the Commission considers that, on balance, there is likely to be a negative social impact if the Application were granted.

Net economic and social impact

142. The '*no net detriment*' test in section 3.4.20(c) of the GR Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. This test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impact of approval on the well-being of a relevant community will be either neutral or positive.⁵⁸
143. 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 1 of these Reasons for Decision), the Commission is not satisfied that the social and economic impact to the well-being

⁵⁶ Applicant's Closing Submission, paragraphs 50 to 59.

⁵⁷ See *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT at 2606 at [42]; *Romsey No. 2* [2009] VCAT 2275 at [249] and [288]-[321].

⁵⁸ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101 at [52] per Dwyer DP.



of the community of the municipal district in which the Premises are located will not be detrimental to the well-being of the community of Greater Dandenong. Accordingly, the pre-condition set out in section 3.4.20(1) of the GR Act is not satisfied and, the Commission must not amend the venue operator's licence.

D. Independence from other gaming venues

144. Section 3.4.20(1)(d) of the GR Act required the Commission to be satisfied that, if the Premises are proposed to be added to the Applicant's licence as an approved venue and the Applicant (or an associate of the Applicant) operated an approved venue within 100 metres of the Premises, that the management and operation of the Premise and other approved venues are genuinely independent of each other.
145. The Commission finds that the Application is not proposing to add the Premises 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 Premises.
146. 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.

CONCLUSION

147. On the material that has been put before it, the Commission has determined that the '*no net detriment*' test has not been satisfied and, pursuant to section 3.4.20(1) of the GR Act, the Commission must not grant the Application.
148. The Application is therefore refused.

The preceding 148 paragraphs and the following Appendix are a true copy of the Reasons for Decision of Ms Helen Versey, Deputy Chair, and Dr Dina McMillan, Commissioner.



Appendix One

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	55 to 60	<p>The Applicant proposes to undertake renovations at the Premises at an estimated cost of \$750,000. The Commission accepts that, given the modest nature of the proposed renovations, local contractors would likely be sourced within Greater Dandenong. The Commission is mindful not to double count the benefits associated with the renovation expenditure in relation to the social impact that may result from the improved facilities at the Premises.</p> <p>Positive impact, marginal to low weight.</p>
	Additional employment	61 to 64	<p>While the Commission considers that the majority of additional gaming employment at the Premises will be filled through the redeployment of staff from the Jim Dandy Hotel, the employment of an additional 4 EFT positions at the Premises is a positive impact. The scale of this impact on the municipality has been considered in light of the high unemployment rate within Greater Dandenong.</p> <p>Positive impact, marginal weight.</p>



	Impact	Paragraph numbers	Comment relevant to weight
Disbenefits	Increased gaming competition in Greater Dandenong	65 to 73	<p>The installation of 25 additional EGMs at the Premises will improve its attractiveness in a competitive market. The impact on competition resulting from the closure of the Jim Dandy Hotel would be minimal in light of the relative underperformance of the Jim Dandy Hotel and the fact that it and the Premises are both operated by the Castello Group. Even with the removal of 5 EGMs from Greater Dandenong, the EGM density in the LGA will remain almost 50% higher than the metropolitan level.</p> <p>Positive impact, no to marginal weight.</p>
	Gaming expenditure not associated with problem gambling	74 to 82	<p>The portion of new expenditure not attributable to problem gambling is an economic benefit. While Mr Clyne's analysis in relation to the estimate of gross gaming revenue is accepted, the anticipated rate of transferred expenditure is more likely to be closer to the rate generated by the Geotech model (82%) than Mr Clyne's adjusted estimate. In light of the highly disadvantaged profile of the catchment area, a substantial portion of new expenditure at these Premises would likely be associated with problem gambling.</p> <p>Positive impact, no to marginal weight.</p>
	Gambling expenditure associated with problem gambling	83 to 99	<p>The additional 25 EGMs would generate new expenditure of up to \$742,381 in the first 12 months of operation. The majority of the Premises' gaming room patrons have a significant level of socio-economic disadvantage and financial vulnerability that would make them more susceptible to gambling-related harms. Many of the proposed RSG measures to mitigate this harm are existing RSG measures that would remain extant regardless of the Application. The proposed additional floorwalker is more likely to maintain, rather than improve, the existing level of supervision within the Premises' gaming room. While there would be some benefit associated with the relocation of the gaming room from the front to the rear of the Premises, this factor must be balanced with the consequential impacts of the proposed new gaming room (e.g. the increased density of EGMs, more restrictive surveillance opportunities, and the requirement for patrons to walk through the gaming room to access toilet facilities at times when the bistro is closed).</p> <p>Negative impact, low to moderate weight.</p>



	Impact	Paragraph numbers	Comment relevant to weight
	Diversion of trade from gaming businesses	100 to 102	<p>At least 82% of anticipated increased expenditure would be derived from other venues located within Greater Dandenong and neighbouring LGAs. A transfer rate of this size is not insignificant, however the diversion of trade will have a negligible detrimental economic impact on other venue operators in light of the competitive market and relative stability of the affected venues.</p> <p>Negative impact, no to marginal weight.</p>
	Diversion of trade from non-gaming businesses	103 to 106	<p>The impact that could be felt by local non-gaming businesses is the value of the new expenditure from this Application, being approximately \$742,381 in the first year of operation. It is difficult to determine whether that expenditure would necessarily have been spent elsewhere in the LGA, and there was no direct evidence presented regarding the diversion of trade from retail facilities or other businesses in Greater Dandenong as a result of this Application.</p> <p>No weight.</p>



Social impacts

	Impact	Paragraph numbers	Comment relevant to weight
Benefits	Closure of one gaming venue and decreased EGM density	109 to 112	<p>The closure of the Jim Dandy Hotel and the removal of 5 EGMs operating within Greater Dandenong, together with the transfer of 25 EGMs to the Premises, are considered as an impact of the Application. While the closure of a gaming venue and the reduction in operational EGMs within Greater Dandenong would constitute a benefit to the community within the Catchment Area and more broadly within Greater Dandenong, the Application will result in new gaming expenditure occurring within Greater Dandenong following the transfer of EGMs to the Premises due to the higher-performing nature of the Premises and the increased venue attractiveness of the Premises. The impact of this new gaming expenditure, borne by the significantly disadvantaged community within the Catchment Area, must be balanced against the benefit in reducing accessibility through the closure of the Jim Dandy Hotel and removal of 5 EGMs from Greater Dandenong.</p> <p>Neutral impact, no weight.</p>
	Increased gaming opportunities for those who enjoy gaming	113 to 116	<p>Granting approval of the Application would likely better serve the needs of gaming patrons through the improved EGM offering and access at the Premises, even with the closure of the Jim Dandy Hotel. However, there are currently 322 EGMs over six venues (including the existing 25 accessible at the Premises and the 30 at the Jim Dandy Hotel) within the trade area of the Premises and Greater Dandenong is ranked 2nd of 31 metropolitan LGAs in terms of EGM density per 1000 adults.</p> <p>Positive impact, no to marginal weight.</p>
	Improved facilities enabling greater range of services	117 to 121	<p>The community's access to, and use of, the proposed improved facilities at the Premises will provide a social benefit to the community of Greater Dandenong, noting that the addition of the bistro is the most significant change to the existing facilities offered at the Premises arising from the Application. The Works predominantly only improve existing facilities at the Premises, and that the addition of the bistro should be balanced in light of the existing food offering in close proximity to the Premises.</p> <p>Positive impact, no to marginal weight.</p>



	Impact	Paragraph numbers	Comment relevant to weight
	Increased community contributions	122 to 129	<p>The Commission has taken into account both the economic (financial benefit enjoyed by recipients) and social (improvement to the social fabric of the community) benefits associated with the proposed community contributions forming part of the Application.</p> <p>The Applicant is committing to community contributions totaling \$20,300 to organisations providing services or facilities to residents of Greater Dandenong.</p> <p>Positive impact, marginal to low weight.</p>
Disbenefits	Possibility of an increased incidence and potential impact of problem gambling on the community	130 to 134	<p>The Commission refers to and relies on its findings in relation to the economic impact of gambling expenditure associated with problem gambling.</p> <p>There is potential for increased risk in gambling related harms as a result of this Application. The majority of the Premises' gaming room patrons are more susceptible to gambling-related harms, particularly given both the location of the Premises within Greater Dandenong and the socio-economic disadvantage of residents within the Catchment Area of the Premises.</p> <p>Negative impact, moderate weight.</p>
	Community attitude	135 to 140	<p>The submissions received from community groups and individuals indicate that there is some limited negative attitude within Greater Dandenong to this Application.</p> <p>The Council, as the representative body of the relevant community, has objected to the Application, and provided evidence in support of its objection. Entering into the Section 173 Agreement with the Applicant is not indicative of Council's overall support of the Application.</p> <p>Negative impact, marginal weight.</p>