



DECISION AND REASONS FOR DECISION

In the matter of an application by Castello Daisey's Hotel Pty Ltd under section 3.3.4(1) of the *Gambling Regulation Act 2003* for approval of the premises, Castello's Clyde North Hotel, proposed to be located at 1-59 Matterhorn Drive, Clyde North, as suitable for gaming with one hundred (100) electronic gaming machines.

Commission:

Ms Helen Versey, Deputy Chair
Mr Des Powell AM, Commissioner

Appearances:

Ms Louise Hicks of Counsel for the Applicant (instructed by Williams Winter Solicitors)

Mr John Rantino for the Council (instructed by Maddocks)

Ms Lilli Owens-Walton as Counsel Assisting the Commission

Date of Hearing:

3, 4, 5 March 2020

Date of Decision:

6 April 2020

Date of Reasons:

6 April 2020

Decision:

The Application is refused.

Signed:

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

Helen Versey
Deputy Chair

REASONS FOR DECISION

INTRODUCTION

1. This is an application by Castello Daisey's Hotel Pty Ltd (**the Applicant**) to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) for approval of Castello's Clyde North Hotel to be located at 1-59 Matterhorn Drive, Clyde North (**Premises**), as suitable for gaming with one hundred (100) electronic gaming machines (**EGMs**) (**the Application**).
2. The relevant municipal authority is the City of Casey (**the Council**). On 6 February 2020, the Council provided the Commission and the Applicant with a written submission in opposition to the Application.
3. The Commission considered the Application by way of a public inquiry¹. A public hearing was conducted on 3, 4 and 5 March 2020 (**the Hearing**). The Applicant was represented by Ms Louise Hicks of Counsel, instructed by Williams Winter Solicitors. The Council was represented by Mr John Rantino of Maddocks.

PRELIMINARY MATTER

4. The Commission has considered this matter on all the available evidence before it. The Commission is aware that the COVID-19 pandemic, and associated restrictions implemented by government, are likely to have an impact on the social and economic conditions of Victoria, including the community of the City of Casey. The nature and extent of this impact on the municipality is not yet known. On 1 April 2020, the Commission requested both parties make submissions as to whether the Commission is able to determine the Application in light of the COVID-19 pandemic, with specific reference to the matters to be considered and mandatory criteria for approval set out in section 3.3.7(1) of the *Gambling Regulation Act 2003* (**the Act**).
5. In summary, the Applicant submitted that the Commission is able to determine the Application against the criteria for approval in section 3.3.7(1) of the Act, noting that construction of the Premises would likely be delayed by six months, but that the social and economic impacts of COVID-19 would be short lived and will not impact the community of the municipality by the time construction is completed. The Applicant further noted that, as the COVID-19 pandemic is affecting each and every municipality in Victoria, any change will be relative.

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).



6. The Council submitted that the Commission is not able to determine the Application against the criteria in section 3.3.7(1) of the Act in consideration of the COVID-19 pandemic. In summary, Council said that the social and economic analysis of the impact of approval of the Application would be materially different now than it was at the Hearing and there will be changes to the profile of the present and future community that would render the Commission unable to determine the impact of the Application on that community for the purpose of the *no net detriment* test in section 3.3.7(1) of the Act.
7. In this instance, and given that the Act expressly requires that “*the Commission must use its reasonable endeavours to determine an application within the required period*” (see section 3.3.8(1A) of the Act), the Commission has accordingly used its reasonable endeavours to determine this matter on the basis of the information and evidence before and available to it within the required period, noting that there is no information or evidence before the Commission that could confirm or reliably predict the impact of the COVID-19 pandemic on the social and economic conditions in the municipality. The Commission also notes that the parties to this Application have a right of review to the Victorian Civil and Administrative Tribunal (**VCAT**) should they wish for the Commission’s decision to be reviewed under section 3.3.14 of the Act.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

8. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the Act. The Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities. For this reason, the Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some, and a potentially harmful activity for others.
9. The objectives of the Act are set out in section 1.1(2), which provides, inter alia:
 - ...
 - (2) *The main objectives of this Act are—*
 - (a) *to foster responsible gambling in order to-*
 - (i) *minimise harm caused by problem gambling; and*
 - (ii) *accommodate those who gamble without harming themselves or others;*
 - (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;*



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- (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.*

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

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

11. 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.

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

- (a) section 3.3.7 provides:



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- (1) *The Commission must not grant an application for approval of premises as suitable for gaming unless satisfied that—*
 - (a) *the applicant has authority to make the application in respect of the premises; and*
 - (b) *the premises are or, on the completion of building works will be, suitable for the management and operation of gaming machines; and*
 - (c) *the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located.*
- (2) *In particular, the Commission must consider whether the size, layout and facilities of the premises are or will be suitable.*
- (3) *The Commission must also consider any submission made by the relevant responsible authority under section 3.3.6².*
- ...
- (5) *The Commission cannot approve an area as a gaming machine area unless that area is wholly indoors.*

(b) section 3.3.8 provides, inter alia:

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

13. Section 3.3.7(1)(c) provides for what is now commonly described as the ‘*no net detriment*’ test. It requires the Commission to be satisfied that there is no net detriment arising from the approval through positively and objectively establishing that the net economic and social impact will not be detrimental to the well-being of the community³.

14. The Act does not specify the matters which the Commission must consider in deciding whether this ‘*no net detriment*’ test is satisfied. However, the statutory signposts are provided by the test itself. The Commission must consider:

² Section 3.3.6 of the Act allows the Council to make a submission addressing the economic and social impact of the proposal for approval on the well-being of the community of the municipal district in which the premises are located; and taking into account the impact of the proposal on surrounding municipal districts.

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



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- the likely economic impacts of approval;
- the likely social impacts of approval; and
- the net effect of those impacts on the well-being of the relevant community⁴.

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 community⁵. 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.
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 consequences, and vice versa⁶. On review, decisions in 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 test⁷.
17. The Commission also accepts the position expressed by Morris J in *Branbeau Pty Ltd v Victorian Commission for Gaming Regulation* [2005] VCAT 2606 at [51] that:

Although the [no net detriment] test requires consideration of the impact of approval on the well-being of the community of the municipal district in which the premises are located, logic and common sense require this to be considered in the context of the spatial impact of the gaming machines to be installed in the venue concerned⁸.

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

A table of likely economic and social benefits and disbenefits, and with some comments relevant to the relative weight to be given to particular factors ... is a useful way of transparently dealing with the ‘no net detriment’ test, and might perhaps be considered for wider application⁹.

This approach has been adopted in a number of VCAT decisions¹⁰. To facilitate greater consistency between the Commission and VCAT, the Commission has adopted the same approach in this matter.

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

⁵ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [332], [348] per Bell J (**‘Romsey #2’**) cited in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [58] per Dwyer DP.

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

⁷ See *Romsey #2* [2009] VCAT 2275, [352] per Bell J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [58] per Dwyer DP.

⁸ See also *Romsey #2* [2009] VCAT 2275, [274] per Bell J.

⁹ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [60] per Dwyer DP.



19. If the Commission is not satisfied that the ‘*no net detriment*’ test is met, that is clearly fatal to the application given the opening words of section 3.3.7(1) of the Act. The test is a mandatory precondition to approval. However, although section 3.3.7(1) sets out certain mandatory considerations for the Commission, the provision is not cast in exhaustive terms. If the Commission is satisfied that the ‘*no net detriment*’ test is met, it still has an ultimate discretion as to whether or not to grant the approval¹¹. The Commission must decide whether to grant the approval, even where an applicant has satisfied the minimum threshold of the ‘*no net detriment*’ test¹².
20. In considering the exercise of this discretion:
- (a) it must be exercised having regard to the purposes of the Act and, in particular, the specific purposes of Chapter 3 of the Act dealing with the regulation, supervision and control of gaming machines¹³; and
 - (b) it may also be influenced by other factors such as broad policy considerations drawn from the content and objectives of the Act as a whole¹⁴.
21. The Commission agrees with the comments of Deputy President Dwyer in *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*¹⁵ that, if all of the mandatory considerations under the Act favour the grant of an approval, one would expect that the ultimate discretion will commonly favour approval – other than in relatively rare or exceptional circumstances arising in a particular case. In such a case, any such circumstances should be separately and transparently identified.
22. Finally, it is noted that pursuant to section 9(4) of the VCGLR Act, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation.

¹⁰ See, for example: *Darebin CC v Victorian Commission for Gambling and Liquor Regulation & Anor* [2013] VCAT 1389; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Monash CC v L'Unico Pty Ltd* [2013] VCAT 1545; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

¹¹ See *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [97] and following per Dwyer DP; see also *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] and following per Morris J; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M.

¹² *Gambling Regulation Act 2003*, section 3.3.8(1).

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

¹⁴ *Ocean Grove Bowling Club v Victorian Commission for Gaming Regulation* [2006] VCAT 1921, [32] per Morris J; *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors*. [2013] VCAT 101, [99] per Dwyer DP; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [126] per Code PM and Nelthorpe M. As to policy principles identified for consideration, see *Romsey* (2008) 19 VR 422, [7] per Warren CJ, Maxwell P and Osborn AJA.

¹⁵ [2013] VCAT 101, [98].



23. On 16 October 2013, Ministerial decision-making guidelines were published in the Victorian Government Gazette pursuant to section 5 of the VCGLR Act concerning applications for approvals of venues for EGMs (**Children's Play Area Ministerial Guidelines**). The Children's Play Area Ministerial Guidelines concern the assessment of a premises as suitable for gaming which contain, or will contain, a children's play area, to ensure that the venue operator provides a responsible gambling environment. The Children's Play Area Ministerial Guidelines provide the following matters to be considered by the Commission when assessing the suitability of premises for gaming that contain a children's play area:

It is the policy of the Government that, when the Victorian Commission for Gambling and Liquor Regulation is assessing the suitability of premises for gaming that contain, or will contain, a children's play area, the Commission should, in the course of making its decision on the suitability of the premises, have regard to the objectives of ensuring, as far as practicable, that the children's play area is designed such that it:

- (1) is located as far away as practicable from the gaming machine area;*
- (2) does not have a line of sight from the play area into the gaming machine area or from the gaming machine area into the play area;*
- (3) does not permit sounds from gaming machines to be heard in the children's play area;*
- (4) is not directly accessible from the gaming machine area; and*
- (5) is conducive to being monitored by venue staff to help ensure that minors are not left unattended.*

The Victorian Commission for Gambling and Liquor Regulation should have regard to any other aspect of the design and location of a children's play area that it deems relevant to ensuring that the approved premises for gaming will provide a responsible gambling environment.

For the purposes of these decision-making guidelines:

- 'children's play area' means any area or facility designed specifically for children or that could reasonably be expected to be used by children; and*
- 'venue' or 'premises' means the gaming venue and any other facility provided by the venue operator for use by patrons, including car parks.*

24. The Children's Play Area Ministerial Guidelines also state that the Commission should have regard to any other aspect relevant to ensuring that the approved premises for gaming will provide a responsible gambling environment.
25. On 14 February 2017, Ministerial decision-making guidelines were published in the Government Gazette (**Permanent Residential Accommodation Ministerial Guidelines**). The Permanent Residential Accommodation Ministerial Guidelines note that when considering applications for the approval of premises as suitable for gaming, the Commission must have regard to the Government's position that any building that is planned to include permanent residential accommodation should not be approved as premises suitable for gaming.

MATERIAL BEFORE THE COMMISSION

26. The Applicant provided the Commission with the following material in support of its Application:



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- (a) application for approval of premises for gaming application form, dated 7 October 2019 (received by the Commission on 10 December 2017) (**the Application Form**);
- (b) evidence from the registered proprietor of the land on which the Premises are to be located showing the proprietor's approval for the Applicant to make the application, dated 23 March 2020;
- (c) evidence of lodgement of a planning permit application for the Premises, dated 22 November 2019, lodgement number LOD0001306;
- (d) reports prepared by Managing Director, NBA Group (**NBA**), Mr Nick Anderson:
 - (i) Social & Economic Impact Assessment, dated November 2019 (**the NBA Report**); and
 - (ii) Social & Economic Impact Assessment – Addendum Report, dated 25 February 2020 (**the NBA Addendum Report**).

The NBA Report and NBA Addendum Report were tendered with minor updates. Mr Anderson attended the Hearing and gave evidence;

- (e) report and supplementary material prepared by Mr Michael Clyne, contracted by Progressive Venue Service (**PVS**):
 - (i) Expenditure Report, dated November 2019 (**PVS Report**); and
 - (ii) supplementary material including the “PVS Gravity Model Prediction Request” and “Geotech Gravity Model – Scenario 736 dated 19 August 2019 (**Supplementary PVS material**)”. Both reports were tendered through Mr Clyne in his evidence at the Hearing;
- (f) statement of Mr Giuseppe Paul Giustiniano (known as Joe Giustiniano), Chief Executive Officer of the Castello Group, which incorporates the Applicant, dated 21 November 2019. Mr Giustiniano's statement was tendered with minor corrections, and Mr Giustiniano also attended the Hearing and gave evidence;
- (g) material prepared by Mr Luke Ponti, registered architect who prepared plans for the development of the proposed Premises:
 - (i) witness statement and resume, dated 25 November 2019; and
 - (ii) PowerPoint presentation with 3D representations of the plans for development of the proposed Premises;



Mr Ponti's statement was tendered with no corrections, and Mr Ponti attended the Hearing and gave evidence;

- (h) witness statement of Ms Patricia MacLennan, Castello Group Hotel Operations Manager, dated 25 November 2019 and attachments:
 - (i) Responsible Gambling Code of Conduct, dated 2012;
 - (ii) Australian Hotels Association (**AHA**) (Vic) Self Exclusion Program, dated 20 March 2009; and
 - (iii) letter from Mr Andrew Jeynes of PVS to the Applicant's lawyer regarding the Castello Group's responsible service of gambling (**RSG**) practices and proposed location of the gaming room at the Premises, dated 8 October 2019;
- (i) information regarding the number of YourPlay cards issued and activated at gaming venues within the Castello Group since the introduction of YourPlay at each of the venues, received 3 March 2020; and
- (j) petition signed by 25 individuals in support of the Application.

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

- (a) economic and social impact submission, dated 6 February 2020;
- (b) report titled '*Clyde North – Proposed EGM Venue: Social and Economic Impact Assessment*' prepared by SGS Economics & Planning dated February 2020 (**the SGS Report**);
- (c) expert witness statement of Mr James Atkinson, Senior Consultant SGS Consulting, dated 24 February 2020. Mr Atkinson attended the Hearing and gave evidence, and made some corrections to the SGS Report and Amended SGS Report;
- (d) attachment to Mr Atkinson's witness statement: report titled '*Amended SEI Assessment (Clyde North – Proposed EGM Venue: Social and Economic Impact Assessment)*' prepared by SGS Economics & Planning, dated 24 February 2020 incorporating public submissions received prior to 24 February 2020 (**Amended SGS Report**); and
- (e) witness statement of Ms Leanne Petrides, Executive Officer Cranbourne Information & Support Service Inc (**CISS**), dated 24 February 2020. Ms Petrides attended the Hearing and gave evidence.



28. The following material, prepared by Commission officers, was provided to the Applicant and the Council and was considered by the Commission:
- (a) a report titled *Economic and Social Impact Report*, originally dated January 2020 and provided to the parties on 8 January 2020, which was revised on one occasion (revision dated February 2020) and provided to the parties on 25 February 2020 (**VCGLR Report**);
 - (b) compliance history reports for gaming venues within the Castello Group, dated 28 February 2020:
 - (i) Castello's Cardinia Hotel;
 - (ii) Daisey's Club Hotel;
 - (iii) Castello's Foresters Arms Hotel;
 - (iv) the Victorian Tavern Hotel Gisborne;
 - (v) Castello's Pakenham Hotel;
 - (vi) Players Hotel; and
 - (vii) Powell Hotel;
 - (c) a report titled *Size, Layout and Facilities Report – Castello's Clyde North Hotel*, dated 5 March 2020.
29. In addition, the Commission received correspondence in opposition to the Application from five individuals¹⁶ and seven community organisations and associations operating in the City of Casey (including by providing services to the LGA), including:
- (a) joint submission from South East Community Links and Southern Migrant and Refugee Centre, received 26 February 2020;
 - (b) Enliven Victoria, dated 24 February 2020;
 - (c) Uniting (Victoria and Tasmania), dated 21 February 2020;
 - (d) Casey Residents and Ratepayers Association Inc, dated February 2020;
 - (e) Springvale Monash Legal Service, received 24 February 2020;
 - (f) CISS, received 31 January 2020; and
 - (g) South-East Community Links and Southern Migrant and Refugee Centre, received 26 February 2020.
30. During the Hearing, the Commission was provided with:



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- (a) the Thompson's Road Precinct Structure Plan dated October 2014 (**the PSP**);
 - (b) an Officers' Report regarding the Application including a report prepared by SGS titled *Clyde North – Proposed EGM Venue: Preliminary Social and Economic Assessment*, which were considered at the Council Meeting on 21 January 2020; and
 - (c) emails between Mr Clyne and representatives of Geotech Australia and PVS dated 6, 7 August 2019 and 3, 4 March 2020 regarding the prediction request and trade area map for Castello's Clyde North.
31. Prior to the Hearing, a member of the public who had provided submissions in opposition to the Application, Mr Tom Cummings, requested an opportunity to make oral submissions at the Hearing. The Commission granted the request and Mr Cummings made oral submissions at the Hearing.
32. Prior to the Hearing, Commissioner Powell visited the site of the proposed Premises.
33. After the Hearing, the Commission received and considered:
- (a) written submission by Ms Hicks of Counsel on behalf of the Applicant, dated 12 March 2020 including a document containing proposed conditions of approval of premises (**Proposed Conditions**). The Proposed Conditions varied the proposal in the Application with respect to trading hours and proposed to reduce trading hours by two hours a day (14 hours per week) so that the Premises would close no later than 2 am Monday – Sunday;
 - (b) written submission by Mr Rantino on behalf of the Council, dated 12 March 2020 including:
 - (i) memo from Council summarising the Council's public notification process for the Application; and
 - (ii) a map and table of competing venue distances;
 - (c) written submission from the Applicant regarding the COVID-19 pandemic and the Commission's power under section 3.3.7(1) of the Act, received 2 April 2020; and
 - (d) written submission from the Council regarding the COVID-19 pandemic and the Commission's power under section 3.3.7(1) of the Act, received 2 April 2020.

¹⁶ This included a submission from an individual who gave their name as "No Pokies for Clyde North".

DECISION AND REASONS FOR DECISION

Background

34. The City of Casey is a metropolitan municipality located approximately 70 kilometres south-east of Melbourne covering an area of 409 square kilometres. Major centres include Narre Warren, Cranbourne and Berwick. The estimated total adult population is 257,875, ranking the City of Casey as the most populous of the 31 metropolitan municipalities¹⁷. The City of Casey's estimated annual population growth of 3.5% in 2019 is projected by the Department of Environment, Land, Water and Planning (**DELWP**) to be higher than the Victorian average of 2.3%. The City of Casey's percentage of population over 50 of 25.3% in 2019 is projected by DELWP to be lower than the Victorian average of 31.3%.
35. The NBA Report notes that the population of Clyde North in the City of Casey, of 23,930 in 2019, is projected to increase by 267% to 87,845 in 2041¹⁸.

Current gaming in the City of Casey

36. Currently, there are 13 gaming venues operating within the City of Casey with approvals to operate 913 EGMs¹⁹ and with all 913 attached entitlements. The City of Casey contains an area subject to a regional cap of 867 entitlements, and a municipal limit of 458. The proposed Premises is located in an area within the City of Casey that is not subject to the regional cap²⁰, but that is subject to the municipal limit of 458. According to the PVS Report, there is one existing gaming venue operating in this area (Tooradin & District Sports Club) with 46 attached entitlements²¹. Approval of the Application will not cause the municipal limit to be exceeded.
37. The VCGLR Report notes that the City of Casey has an EGM density of 3.5 EGMs per 1000 adults, which is 26.5% lower than the metropolitan Local Government Area (**LGA**) average of 4.8 and 31.1% lower than the State average of 5.1, placing the City of Casey as the 25th of 31 metropolitan LGAs in terms of EGM density per 1000 adults. If the Application is approved, the impact would be an 11% increase to 3.93 gaming machines per 1000 adults.
38. As also stated in the VCGLR Report, in the 2018-19 financial year, the City of Casey had an average gaming expenditure of \$522 per adult (based on the 2019 population estimate), which

¹⁷ Source: DELWP, 2018.

¹⁸ The NBA Report, p 27, paragraph 57 (Figure 8).

¹⁹ Attached entitlements are gaming machine entitlements attached to an approved venue by the venue operator owning the entitlements, and indicates the number of gaming machines actually operating.

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

²¹ PVS Report, page 9.



is 3.6% lower than the metropolitan LGA average of \$542 and 1.1% lower than the State average of \$528. Applying the Applicant's estimate of the increased new gaming expenditure arising from the operation of 100 EGMs in the first year of operation would result in an increase in average gaming expenditure per adult of 1.7% in the LGA to \$531.

Location

39. The Premises are to be situated at 1-59 Matterhorn Drive, Clyde North, on the corner of Matterhorn Drive and Thompson Road. The proposed site is currently a greenfield site which was previously used for farming and contains no building developments or vegetation. Aerial maps included in the NBA Report show considerable development has occurred in the immediate area surrounding the proposed site between May 2014 and June 2019²².
40. According to the NBA Report, the suburb of Clyde North is in a growth corridor and the subject land is in an Urban Growth Zone. The proposed Premises are situated in the Thompsons Road PSP area with abutting land uses to include housing developments to the south and uses consistent with the PSP elsewhere.

Details of the proposed Premises

41. The Premises comprises two buildings (the hotel – 4890 square meters, the motel – 662 square meters) that are proposed to include the following uses:
 - (a) a bistro for 160-180 patrons with adjoining al-fresco terrace accommodating a further 100 patrons proposed to trade from 11 am to 9.30 pm;
 - (b) kids' play area approximately 137 square meters in size positioned next to the bistro proposed to trade from 8 am to 10 pm;
 - (c) bowling alley approximately 1000 square meters in size with 10 lanes, with LCD screens and which is available for event hire proposed to trade from 10 am to 1 am the following day;
 - (d) virtual reality entertainment zone comprising 11 virtual reality booths, virtual gold and video game area, proposed to trade from 10 am to 1 am the following day;
 - (e) family sports bar, proposed to trade from 8 am to 1 am the following day²³;
 - (f) café with outdoor terrace with seating and tables for 55 patrons, proposed to trade from

²² NBA Report, page 15, figures 1 and 2.

8 am to 2 am the following day²⁴;

- (g) gaming room with 100 EGMs, proposed to trade from 8 am to 2 am the following day. These proposed trading hours were reduced from 8 am to 4 am the following day in a submission to the Commission received after the Hearing;
 - (h) three business/community meeting rooms approximately 30 square meters in size and large enough to hold a meeting of 10 people but with movable walls to allow expansion to 95 square meters in size, proposed to trade from 8 am to 10 pm;
 - (i) three function rooms to cater for birthday parties, weddings and events with movable walls to allow expansion in size up to a maximum capacity of 100 patrons and 207 square meters in size and each with their own outdoor terrace area, proposed to trade from 6 am to 1 am the following day (when booked);
 - (j) open-air beer garden approximately 153 square meters in size where food will be available with live music and entertainment on Friday nights and weekends during summer, proposed to trade from 10 am to midnight; and
 - (k) kitchen, staff rooms and back of house facilities.
42. A motel is proposed to be constructed at a later stage in the development works. The proposed motel will be a four-storey complex with 36 rooms²⁵ that will be situated in a separate building nearest to the business foyer area of the hotel part of the Premises. The hotel and motel will be connected by a covered walkway. Because the construction of the motel is proposed to occur at a later stage, Mr Anderson did not place any weight on the impacts associated with the motel. Similarly, the Commission did not include the motel in its assessment of the social and economic impact associated with the Application.
43. The Premises will include a total of 393 car spaces of which 11 are disabled car spaces.

Catchment area of the Premises

44. 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

²³ At the Hearing, the Applicant amended its Application to reduce the trading hours of the Sports Bar from 8 am – 4 am the following day, to 8 am to 1 am the following day.

²⁴ At the Hearing, the Applicant amended its Application to reduce the trading hours of the café from 8 am – 1 am the following day, to 8 am to 4 am the following day. Through the Proposed Conditions, the Applicant later amended the trading hours of the café through the Reduce Trading Hours.

²⁵ The number of motel rooms was revised from 42 to 36 following consultation with Council and the expert reports were amended at the Hearing.



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'²⁶. The determination of the likely catchment area in this instance is important in the Commission's consideration of the identity of those residents who will be most affected by the Application in terms of gambling-related benefits and harms.

45. The VCGLR Report classifies the municipality of the City of Casey as a metropolitan municipality in accordance with its classification as a city council under the *Local Government Act 1989* (Vic). According to the VCGLR Report, the immediate surrounding area for a city/metropolitan municipality is a 2.5 kilometre radius around the Premises. The VCGLR Report states that the immediate surrounding area does not aim to define the origins of patrons likely to visit the venue, it enables a statistical profile of the area immediately surrounding the venue²⁷.
46. Mr Anderson analysed the primary catchment as being a 2.5 kilometres radius around the Premises, with an extended catchment area of 5 kilometres around the Premises²⁸. The NBA Report says that towns within the primary catchment include Clyde North, Cranbourne North, Cranbourne East, Berwick and Narre Warren South²⁹. Mr Anderson noted that people generally travel 2.5 kilometres to play EGMs in a suburban setting and up to 5 kilometres in developing metropolitan growth areas³⁰. However, for his overall assessment of the impact of the Application on the community, as opposed to just the gaming patrons, Mr Anderson made his conclusions in consideration of the primary catchment only, on the basis that the VCGLR Report says that it is a suburb now and therefore the 2.5 kilometre radius needs to be the immediate site impact area.
47. The PVS Report contains Geotech model predictions regarding the surrounding area from which the patrons to the new Premises are likely to be drawn. The Geotech model "Trade Area" is the statistical areas in which the majority of the venue's customers are domiciled. Gaming venues within the Trade Area which are expected to experience a reduction in trade if the Premises are approved include venues approximately up to 12 kilometres away from the Premises.
48. For Council, Mr Atkinson identified the core catchment area as being a radius of 5 kilometres around the Premises³¹. Mr Atkinson said that the catchment area was the Statistical Area 2

²⁶ See for example, *Romsey #2* [2009] VCAT 2275; *Whittlesea CC v George Adams Pty Ltd* [2011] VCAT 534 (7 April 2011).

²⁷ VCGLR Report, page 5.

²⁸ The NBA Report, page 7, para 9(i) and 17 – 18, para 37.

²⁹ *Ibid*, page 18, para 38.

³⁰ The NBA Report, page 7, para 9(i) and 17 – 18, para 37.

³¹ Amended SGS Report, page 15, para 87.



(SA2s)³² of Berwick – South, Cranbourne East, Cranbourne North and Narre Warren South. He noted that the radial distance varied somewhat due to the shape of the SA2 boundaries reflecting natural boundaries and catchments such as bodies of water and major highways.

49. At the Hearing, the objector Mr Cummings submitted that in outer suburbs (such as Clyde North), people are happy to drive 15 to 20 minutes to get to anything and that this is a factor of life living out there. For this reason, while noting that there are going to be some big residential developments around the place, he submitted that the proposed Premises will be attractive to and draw patrons from a very large catchment.
50. Having regard to the above material, the Commission finds that there is uncertainty about the boundary of the primary catchment who will be affected by the Application as indicated by the three different views posited by the experts. The Commission finds that, currently, the region is a peri-urban³³ because it is evolving from farmland that is yet to reach the urban density associated with a typical metropolitan municipality. The Commission accepts the evidence submitted by both Mr Anderson and Mr Atkinson at the Hearing that the proposed Premises is in a growth area and for this reason the Commission finds that the appropriate catchment area of the Premises is broader than 2.5 kilometres.
51. In considering the evidence before it, the Commission prefers the evidence of Mr Atkinson and Mr Cummings regarding an outer-suburban community's amenability to driving further for entertainment, as well as Mr Clyne's evidence that the location of EGM expenditure to be transferred from neighbouring venues exceeds 2.5 kilometres. For the purpose of identifying those residents most likely to be impacted by the Application if it is approved, the Commission therefore considers that the appropriate catchment area is approximately 5 kilometres around the Premises (**Catchment Area**).

Relevance of Council Policy and Thompsons Road Precinct Structure Plan

52. Both the Applicant and the Council went into some detail as to matters that would usually be classified planning considerations, such as the alignment of the Application with the Thompsons Road PSP.
53. In the NBA Report, Mr Anderson said that there is no policy for gaming within the City of Casey³⁴ because the City of Casey Electronic Gaming Machine Strategy 2015-2020 has not been adopted into the planning scheme. He submitted that, therefore, the only applicable clause

³² Statistical Area Level 2. The SA2s are the second smallest unit of the 2011 and 2016 Census data, are based on gazette State suburbs and localities, and usually have a population from 3,000 to 25,000, with an average of 10,000.

³³ Peri-urban is defined in the Macquarie Dictionary as...



to consider is the state policy of clause 52.28, which is to consider the social and economic impact of the location³⁵. Notwithstanding the above, he also considered the Application against the intent of the strategy and concluded that it does not contravene any of the strategy's objectives in relation to the local economy, community wellbeing and the planning assessment.

54. While noting that a planning permit is yet to be granted by Council for use of the land for the Applicant's purposes³⁶, the Applicant's submission was that Council officers were consulted in detail throughout each step of the land purchase, venue design and formal town planning processes and consequently the subject site is settled and deemed suitable for EGMs. Mr Anderson submitted that the Application was consistent with the Thompsons Road PSP because the subject site is within a mixed use zoned area of the PSP and mixed use is defined to include *'places of assembly and restaurants / cafes / hotels and bars'*³⁷.
55. At the Hearing, Council said that the planning permit application was yet to be decided and that no representations had been made regarding the likelihood of the planning permit being granted.
56. Different legislative frameworks apply under planning and gaming approval processes³⁸. Approval under one framework does not mean approval under the other will follow. Here, the Commission is obliged to make its own assessment of the issues including the social and economic impacts of the approval of the Premises containing 100 EGMs and to make its own findings of fact based on the material³⁹.
57. In assessing this Application, the Commission therefore takes notice of the PSP as it is relevant to what the catchment area and the LGA might look like in the future. However, the particular question for the Commission is whether, under the Act, there will be a net detriment to the relevant municipality if the Premises are approved for gaming in this particular location. The Commission did not approach this question on the basis that the location of the Premises was settled under complementary planning law.

³⁴ The NBA Report, page 51, para 140.

³⁵ The NBA Report, page 51, para 140.

³⁶ The Application included evidence of lodgement of a planning permit which specified the following proposal for use of the land under the permit sought: *Use and development of land for a hotel including a late night (general) liquor licence, building and works, installation and use of 100 EGMs, development and use of motel accommodation, access to a road zone category 1 and car parking reduction.*

³⁷ The NBA Report, page 48, para 134.

³⁸ See e.g., *ALH Group Property Holdings Pty Ltd v Whittlesea CC* [2017] VCAT 2164, [10]-[14] (*'Commercial Hotel'*).

³⁹ See e.g., *Moreland City Council v Glenroy RSL* [2018] VSC 126, [73] (Ginnane J).

Reasons for Decision

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

AUTHORITY TO MAKE APPLICATION

59. The first element in relation to which the Commission is required to be satisfied is that the Applicant has authority to make the Application in respect of the Premises.

60. In the Application Form, the Applicant noted that it was not the owner of the Premises. However, on 23 March 2020, the Applicant provided to the Commission evidence of the Premises owner's authority for the Applicant to make the Application.

61. Based on this evidence, the Commission is satisfied that this first element has been met.

SUITABILITY OF PREMISES FOR THE MANAGEMENT AND OPERATION OF GAMING MACHINES

62. The second element in relation to which the Commission is required to be satisfied, is that the Premises are, or on the completion of building works will be, suitable for the management and operation of gaming machines. In particular, the Commission must consider whether the size, layout and facilities of the Premises are, or will be, suitable⁴⁰.

63. The Commission was provided with a Size, Layout and Facilities report prepared by staff at the Commission. This report was prepared based on plans provided by the Applicant in the NBA Report depicting the Premises and the gaming machine area (**GMA**). According to the Size, Layout and Facilities report, new venues are assessed by Commission Licence Management and Audit Inspectors against standards and guidelines in relation to the size, location and layout of the GMA, type and height of perimeter barriers, floor numbering and layout of gaming machines, windows, proximity of the GMA to other facilities within the venue (e.g. children's play areas) and any liquor or statutory authority conditions imposed. Based on the plans submitted, and subject to any planning issues, the report concluded that the size, layout and facilities of the Premises would be suitable for gaming.

64. During the Hearing, the Commission also heard evidence from Mr Ponti regarding the location of the GMA within the Premises. Mr Ponti submitted that the location was determined in consideration of the Children's Play Area Ministerial Guidelines and feedback from Council regarding its preferences for 'activated edges' in those parts of the Premises along Thompsons



Road and Matterhorn Drive. He said that an activated edge to the street means that there are people visible and there is activity in those spaces. Mr Ponti noted that there is no line of sight from the areas known as the “kid’s play area” and the “family fun zone” into the GMA, which is as far as it possibly could be from those areas, considering Council’s preferences for active edges in those aforementioned parts of the Premises.

65. In relation to the suitability of the Premises for the management and operation of EGMs, Ms MacLennan’s witness statement said that the hotel had been designed with advice from Mr Jeynes of PVS to achieve best practice RSG design. This includes designated entrances for each area of the hotel, which she thinks will primarily assist staff with monitoring the venue (among other things). The Commission also heard evidence as to the design and suitability of the Premises from a gaming perspective from Mr Anderson and Mr Giustiniano.

Consistency with Ministerial Guidelines

66. As set out in paragraphs 22 to 25, the Commission must have regard to Ministerial guidelines issued under section 5 of the VCGLR Act when performing functions under gambling legislation. The Children’s Play Area Ministerial Guidelines and the Permanent Residential Accommodation Ministerial Guidelines are ministerial decision-making guidelines that are relevant to the Commission’s determination of an application for approval of premises as suitable for gaming, particularly in relation to the second element of whether the premises are, or on completion of building works will be, suitable for the management and operation of gaming machines⁴¹.
67. Even though the impact of the motel has not been assessed for the *no net detriment test*, given the Applicant’s submission that it will occur, it would be remiss not to consider this with respect to the Permanent Residential Accommodation Ministerial Guidelines. These guidelines relate to buildings that contain permanent residential accommodation. The Commission finds that there is no permanent residential accommodation proposed at the motel or the Premises more broadly and therefore the Permanent Residential Accommodation Ministerial Guidelines are not relevant.
68. With respect to the Children’s Play Area Ministerial Guidelines, as noted in paragraph 64, on behalf of the Applicant, Mr Ponti submitted that those guidelines were considered in the development of the plans for the Premises. In particular, he said that when determining the layout of the Premises, the Children’s Play Area Ministerial Guidelines were considered when determining the location of the kid’s play area and the family fun zone.

⁴⁰ Section 3.3.7(2) of the Act.

⁴¹ Section 3.3.7(2)(b) of the Act.



69. The family fun zone is an area within the Premises that is situated in closer proximity to the GMA than the kid's play area. According to Mr Ponti's witness statement, the family fun zone comprises the family sports bar, the virtual reality entertainment zone, a prizes counter and the ten-pin bowling reception area. At the Hearing, he clarified that the family sports bar was not part of the family fun zone and Mr Giustiniano also discussed the family sports bar as a separate area, while noting that both the family fun zone and family sports bars will be in the proposed red line area. At the Hearing, Mr Ponti said that the location of this area is consistent with the Children's Play Area Ministerial Guidelines and is located in that position having regard to:
- (a) Council's request for 'activated edges' on Thompsons Road and Matterhorn Drive, which meant that an internalised space such as the family fun zone could not be located in those areas;
 - (b) adults sitting in the sports bar can undertake active surveillance of minors in the family fun zone from the sports bar (which is adjacent to the entry of the GMA);
 - (c) the function room and the business centre, two areas within the Premises that are further away from the GMA than the family zone, needing to be adjacent to the kitchen;
 - (d) the requirement for the loading dock to be located near the carpark; and
 - (e) that there is no line of sight from the family fun zone into the GMA.

At the Hearing, Mr Ponti also said that a wayfinding expert had been engaged to ensure that there is signage across the site so patrons know how to access the different zones.

70. In response to questions at the Hearing from Mr Rantino for Council, Mr Ponti agreed that the bowling alley is another facility within the Premises that would reasonably be expected to be used by children and therefore be caught by the Children's Play Area Ministerial Guidelines. However, Mr Ponti noted that, because the bowling alley is within the red-line area, minors could not be in that area without a responsible adult. The Commission notes that Mr Ponti's witness statement included the bowling alley within the family fun zone and, therefore, does not find there to be any dispute about whether the bowling alley is or is not within the family fun zone.
71. In response to questions at the Hearing from Deputy Chair Versey, Mr Ponti confirmed that the entrance to the GMA from "entry 1" to the Premises requires a patron to pass through two walls and screens but that there is no solid door there. On this basis, while stating that there would be

certain acoustic attenuation measures deployed, he agreed that there could be sound leakage and if you were close to the entry of the GMA itself there would potentially be muffled or music sounds from there.

72. At the Hearing, Mr Giustiniano gave evidence about the expected clientele in the family fun zone. While noting that this area would fall within a licensed area and would be targeted at an age group of between 18 – 25, Mr Giustiniano submitted that it was designed to be attractive to teenage patrons to fill a gap in the market for family entertainment. At the Hearing, he said that all persons who look underage would be asked for identification and that groups of children wishing to use the area without an adult present would be refused entry, as is the practice at other Castello Group venues. In response to a question from Deputy Chair Versey, he stated that there was always going to be interaction with staff in this area with multiple managers walking around, especially in this area.
73. The Commission notes the definition of ‘children’s play area’ in the Children’s Play Area Ministerial Guidelines, extracted above in paragraph 23. On the material before it, for the purpose of that definition, the Commission finds that:
- (a) the kid’s play area is an area or facility *‘designed specifically for children’*; and
 - (b) the family fun zone is an area or facility *‘that could reasonably be expected to be used by children’*.
74. The Commission has had regard to the Children’s Play Area Ministerial Guidelines which seek, among other things to *‘ensure that appropriate safeguards are in place for children who attend venues with a responsible adult’*⁴² with respect to both the kids play area and the family fun zone. The Commission has considered the design of the kid’s play area and the family fun zone against the Children’s Play Area Ministerial Guidelines design objectives set out in paragraph 25 above. On the evidence before it, the Commission finds that the kid’s play area is consistent with the objectives at the top of page two of the Children’s Play Area Ministerial Guidelines.
75. On the material before it, the Commission finds that the family fun zone is consistent with the design objectives of the Children’s Play Area Ministerial Guidelines. The Commission finds that Council’s preference for “activated edges” and the need for the function rooms and business centre to be located near the kitchen are important considerations when determining the location of the family fun zone and that its location is therefore as far as practicable from the GMA.

⁴² Children’s Play Area Ministerial Guidelines, page 1, para 4.



76. The Commission is satisfied that the policy described by Mr Giustiniano at the Hearing about checking identification for patrons who appear under 30 and the fact that the family fun zone is in a licensed area (therefore minors are required to be in the presence of a responsible adult under the *Liquor Control Reform Act 1998*), combined with the evidence of Mr Ponti about the wayfinding expert and general policies regarding RSG that will be adopted at the Premises, will mitigate the risk that minors will be exposed to gambling at the Premises by virtue of the location of the family fun zone and the GMA.
77. For the reasons set out in paragraph 75 and 76 the above, the Commission is satisfied as to matters raised in Children's Play Area Ministerial Guidelines with respect to the location of the family fun zone. However, the Commission does have some concerns about the Premises' attractiveness to children and teenagers when considering the objectives of the Guidelines.
78. Based on the evidence above, the Commission is satisfied that the second element of the test in section 3.3.7(2) is met.

'NO NET DETRIMENT' TEST

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

Economic Impacts

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

Gaming expenditure not associated with problem gambling

81. As the economic category of gaming expenditure not associated with problem gambling includes consumption, then to the extent that such expenditure is not associated with problem gambling, it has been recognised (by, for example, the Productivity Commission in its 1999 report) that it can be treated as an economic positive⁴³. As Bell J further notes, this approach

⁴³ See *Romsey #2* [2009] VCAT 2275 at [351] per Bell J.

also brings to account the benefit obtained from pure consumption by the lone gambler who does not use machines for social reasons⁴⁴.

Expenditure estimates

82. For the Applicant, Mr Clyne gave evidence in the PVS Report that, using the Geotech model, he anticipates that 100 EGMs at the Premises will result in expenditure of \$16,393,473 in the first 12 months of operation.
83. The Commission notes that the Geotech model is a retail gravity model, based on the theory that a patron's choice of gaming venue will be based on two fundamental considerations: travel time and venue attractiveness. The determinants for venue attractiveness in order of priority are: EGM numbers; whether the venue is a hotel or a club; trading hours; and facility score. The facility score is based on a number of factors, including features such as whether it is a 'new' premises.
84. Mr Clyne's prediction of \$16,393,473 in the first 12 months of operation post-2023⁴⁵ is his upper bound prediction based on a confidence level of 75%⁴⁶. His evidence is that an upper bound confidence level of 75% is appropriate for a new venue where there are no existing gaming figures available. Based on the upper bound prediction of total expenditure per year, the average expenditure per EGM would be \$163,935,473 per year.
85. At the Hearing, Mr Clyne gave evidence that the Geotech estimate does not allow for what he terms the "ramp up" effect, which is the effect of venue not achieving its full potential in its first year of trading. Therefore, the expenditure prediction for the first year of trade is an overestimation, because it is based on predicted expenditure at the venue once it achieves a stable position (normally after a year or two). Mr Clyne nevertheless considers the expenditure prediction to be appropriate in consideration of the "ramp up" effect that is likely to occur.
86. Mr Clyne conducted two peer reviews of the Geotech model expenditure prediction for the Application against the 2018-19 expenditure at established metropolitan gaming venues with:
 - (a) similar numbers of EGMs, and
 - (b) in similar developing residential catchments.

⁴⁴ See *Romsey #2* [2009] VCAT 2275 at [351]. Bell J notes further at [352] that the other approach is to say, as did Morris J in *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [79] that gaming extends 'substantial economic and social benefits' to gaming machine users, which treats consumption as a benefit without saying whether it is economic or social. While Bell J states both approaches are correct, for the purposes of this Application this benefit is treated as an economic benefit.

⁴⁵ At the Hearing, Mr Clyne said that the Geotech model had been run on the basis that the Premises will commence trading in January 2023 including the EGMs.

⁴⁶ An upper bound confidence level of 75% means in statistical terms that there is a 75% chance that the actual expenditure will be equal or below the figure and therefore only a 25% chance that the actual expenditure would be greater than the level predicted: PVS Report page 11, para 34.

The peer reviews showed that the predicted expenditure at the Premises per EGM per year of \$163,935 varied little from the average per EGM per year expenditure at venues with similar EGM numbers, and was marginally below the average for similar growth area venues. Mr Clyne noted that the accuracy of the peer reviews is limited by the difficulty of identifying a metropolitan hotel venue with similar numbers of EGMs located in a residential growth area.

87. On the basis of the peer reviews and the impact of the ramp up effect, Mr Clyne concludes that the upper bound expenditure prediction provides a reasonable estimate of gaming expenditure at the Premises once it reaches a stable trading position⁴⁷.
88. In relation to transferred expenditure, the Geotech model estimates how much expenditure the venue may take from each competitor venue within the surrounding areas⁴⁸, of which there are 13 venues in this case. The estimate of transferred expenditure provided by the Geotech model for this Premises is 75%⁴⁹ of the \$16,393,473 per year in total expenditure. Therefore, the level of “new” expenditure is anticipated to be 25%, which is \$4,177,057 per year, or \$80,328 per week. Analysing the 13 venues from which the Premises might draw expenditure, the Geotech model outputs in the PVS Report show that the strongest impact would be on the Berwick Springs Hotel which is predicted to account for 24.89% of the total transferred expenditure⁵⁰.
89. At the Hearing, Mr Clyne said that 75% is not a high transfer rate. On the basis that there are 13 venues identified from which that transferred expenditure would be drawn, he considers there is a reasonable number of venues to generate that level of transferred expenditure.
90. In the NBA Report, Mr Anderson said that a percentage of new expenditure of 40% would be attributable to problem gambling. Therefore, in summary and as detailed in paragraphs 151 to 152, only 60% of the figure associated with new expenditure could be considered a benefit associated with the Application⁵¹.
91. For the Council, Mr Atkinson did not take issue with the use of the Geotech model insofar as estimating expenditure in the Premises’ first 12 months. However, he said that in an area such as Clyde North that is set to undergo a fundamental transformation from agricultural land to a residential and employment centre, assessing expenditure in the first year of operation was inadequate when seeking to assess the impacts of a venue over time⁵². He also considered that the transfer of EGM expenditure to the Premises from venues with capacity constraints

⁴⁷ PVS Report, page 13, para 48.

⁴⁸ The surrounding areas from which patrons are drawn and which competing venues are located is comprised of three statistical areas: the Trade Area (where the majority of the venue’s customers are domiciled), the Local Network which comprises the area that overlaps the Trade Area of other venues and the Local Government Area which includes venues outside of the LGA who will experience expenditure reduction on account of the Premises: PVS Report, pages 6-7.

⁴⁹ PVS Report, page 13, para 50.

⁵⁰ PVS Report, page 16, table 4.

⁵¹ NBA Report, page 44, para 115.



including the Settlement at Cranbourne, the Hampton Park Tavern and the Berwick Springs Hotel would lead to the creation of new gaming capacity at those venues and further 'new' expenditure⁵³. However, according to the Amended SGS Report, Mr Atkinson chose not to evaluate the impact of this new expenditure.

92. The Amended SGS Report also argues that the PVS expenditure prediction only considers new expenditure from existing catchment residents and that transferred from surrounding venues, but fails to consider a third category of expenditure linked to new catchment residents. The Amended SGS Report assesses the impact of including additional expenditure linked to new catchment residents on the basis that per EGM expenditure at the Premises grows in line with the population and that it is capped at \$200,000 per year⁵⁴. While agreeing with the PVS Report that the first year of operation⁵⁵ is likely to generate more than \$16 million with 25% of this considered 'new', SGS go on to estimate that population growth will drive increases in expenditure at the venue to approximately \$20 million by 2031⁵⁶.
93. The Amended SGS Report also contains a quantitative analysis of impacts associated with the Application. The impact corresponding to the expenditure estimate is the 'consumer surplus associated with EGM expenditure not associated with problem gambling'⁵⁷. Mr Atkinson ultimately concludes that the total consumer surplus associated with expenditure on EGMs by non-problem gamblers in the first year of trade is approximately \$1.84 million rising to \$2.24 million by 2026 and remaining at that level thereafter. According to the Amended SGS Report, the net present value (**NPV**) associated with expenditure on EGMs by non-problem gamblers is \$27.33 million over 20 years⁵⁸.

The Commission's view

94. The PVS Report shows that some expenditure would be transferred from the neighbouring Shire of Cardinia, reducing expenditure in three gaming venues⁵⁹. For the purposes of the '*no net detriment*' test, the Commission has considered the impact on the community of the municipal district in which the Premises are located, and notes that the entirety of Mr Clyne's

⁵² Amended SGS Report, page 13, para 78–79.

⁵³ Amended SGS Report, page 13, para 82–83.

⁵⁴ Based on an analysis of historical EGM expenditure data, large outer-metropolitan venues tend to draw the largest 'per EGM' expenditure and this does not tend to exceed \$220,000. Therefore, given the lack of competition immediately surrounding the venue and the venue's regional significance, \$200,000 represents a reasonable capacity figure: Amended SGS Report, page 28, para 159(b).

⁵⁵ The SGS Reports assume the first year of operation will be 2021, whereas the PVS Report assumes the first year of operation will be 2023.

⁵⁶ Amended SGS Report, page 59, para 163.

⁵⁷ Amended SGS Report, page 38, paras 203 – 213.

⁵⁸ Amended SGS Report, page 33, table 9. The Amended SGS Report page 39, para 213, says that the NPV for these benefits is \$15.4 million however this appears to be an error as \$15.4 million is not 60.3% of the total project benefits of \$45.35 million as concluded in table 9 on page 33.

⁵⁹ PVS Report, page 17, table 6.

estimated primary trade area is located in the City of Casey, with only a small portion of the estimated secondary and tertiary trade area sitting in the Shire of Cardinia. The Commission therefore considers that the vast majority of the estimated new expenditure will come from the City of Casey, which accords with the Commission's view of the Catchment Area.

95. The Commission finds that Mr Clyne's evidence at the Hearing regarding the expenditure estimate raises some concerns about the accuracy of this prediction. In particular,
- (a) the importance of the location of surrounding venues and the 'distance travelled' being one of the factors that influences the venue attractiveness score in the expenditure prediction was not adequately explained by Mr Clyne. While noting that further material submitted by Mr Clyne during the Hearing, and by the Applicant after the Hearing, shows that the purpose of the distances listed in the Geotech model outputs document is to establish an order for listing the premises only and does not influence the accuracy of the prediction, the Commission finds that the method of measuring the distance between the centre point of different venue SA1s in the Premises Trade Area for the expenditure prediction creates doubt as to the accuracy of the prediction;
 - (b) the assumption that the venue would be in the "top 10%" of gaming venues, despite many of the venue's features and facilities (such as the bowling alley) being excluded from consideration by the model and Mr Clyne's acknowledgement in response to questions by Mr Rantino that an adjustment to facilities would lower the venue attractiveness score; and
 - (c) the fact that the accuracy of the expenditure estimates of the Geotech model venue have not been audited and verified since 2007.
96. However, the Commission notes that there is agreement between Mr Clyne and Mr Atkinson as to the Geotech model's expenditure estimate for the first 12 months of trade in EGMs at the Premises. In the absence of any evidence to the contrary, the Commission therefore accepts Mr Clyne's upper bound estimate for anticipated expenditure in the first year of operation at the Premises, subject to its findings in paragraph 98.
97. The Commission also notes that, at the time the expenditure estimate for the Premises was prepared on 19 August 2019, the Applicant was proposing to trade for 140 hours per week. As indicated in paragraph 83, trading hours are one of the four variables that influences the venue attractiveness score for a venue under the Geotech model. After the Hearing, the Applicant submitted the reduced trading hours which effectively reduced this number to 128 hours (a reduction of 2 hours per day, seven days a week). However, the Applicant did not submit a revised expenditure estimate for the Premises as if it were trading for 128 hours per week.

98. The reduced trading hours create further uncertainty about the accuracy of the expenditure prediction. The Commission notes that a key input into the Geotech model is the trading hours of a premises and therefore with fewer trading hours, it is anticipated that the expenditure prediction will be lower. In a currently operating venue, it may be possible to assess the impact of two less hours in a day, but it is not possible to do this in the case of a new venue because there are no figures as to expenditure in the gaming room at certain times.
99. In light of the volume of evidence presented at the Hearing and in the material regarding the likely population growth in the area, the Commission's finds it appropriate in this Application to look beyond the first 12 months of expenditure that the 100 EGMs would be expected to generate post September 2023. The Commission agrees with Mr Atkinson's view that, as this is an Application for a new venue in a growing area where demand is expected to increase significantly over time proportionate to the population growth, the likely expenditure at the Premises beyond the first year of operation should also be considered. Here, the Commission relies on Mr Atkinson's view that the Premises has the potential to generate significant expenditure in the years following the first year or operation within 10 years of the first year of operation⁶⁰.
100. While noting the concerns regarding the accuracy of the Geotech prediction for the reasons set out above, in the absence of contrary evidence, the Commission accepts Mr Clyne's submission that 75% of expenditure will be transferred. The Commission also finds that, in consideration of the new patrons who are likely to be associated with the anticipated high population growth, the transfer rate in subsequent years is likely to be lower as expenditure will be generated by new residents. In making this finding, the Commission relies on Mr Atkinson's evidence regarding the likely expenditure drawn from new residents in the Catchment Area as set out in paragraph 92.
101. In conclusion, while noting that there is uncertainty as to the exact figures due to the impact of the reduced trading hours on the expenditure prediction and other factors, the Commission finds that:
- (a) the Premises in the first year of its operation post January 2023 may earn expenditure in the amount of Mr Clyne's upper bound prediction of \$16,393,473;
 - (b) expenditure at the Premises may approach approximately \$20 million within 10 years of operation of EGMs at the Premises;

⁶⁰ Noting that the Amended SGS Report assumed the first year of trade was 2021 and therefore the tenth year of trade was 2031: page 59, para 163.



- (c) transferred expenditure may be 75% in the first year of operation of the Premises, but will be lower in subsequent years as a consequence of the new residents in the Catchment Area contributing to the total expenditure; and
- (d) the level of new expenditure for the first year of trade is anticipated to be approximately 25%, which is \$4,177,057 per year based on Mr Clyne's upper bound prediction.

102. The Commission has considered the level of estimated expenditure and transferred expenditure in its assessment of both social and economic benefits and disbenefits of this Application. In assessing the extent of the benefit of gaming expenditure not associated with problem gambling, the Commission has had regard to the evidence outlined in paragraphs 147 to 186 below with respect to the incidence of problem gambling. The Commission finds that the portion of new expenditure not attributable to problem gambling is an economic benefit. Various factors suggest that the extent of problem gambling at the Premises is likely to be low to moderate, including that the venue is a larger one, with a high number of EGMs and late trading hours. Generally, and noting the caution expressed below at paragraph 178 in relation to current SEIFA indices, it is located in an area of lower relative socio-economic disadvantage (albeit with some vulnerability), and one that is anticipated to experience ongoing population growth.

103. The Commission finds that the extent of the new expenditure at the Premises that is not associated with problem gambling, based on approximate figures, is anticipated to be significant. As such, the Commission gives the benefit of gaming expenditure not associated with problem gambling low weight.

Expenditure on capital works

104. A potential key economic benefit associated with this Application arises from the expenditure on the proposed development of the Premises.

105. For the Applicant, Mr Anderson noted that it was expected the development would cost \$17 million with fit-out of approximately \$5 million on the basis of construction costings provided by the Applicant. He also noted that the acquisition of the land was \$10 million and the (future) development of the motel would be \$4 million. Mr Anderson described this outlay as a "total investment in the site of \$34 million"⁶¹ but only \$22 million was assessed as an impact associated with the Application. The cost of the acquisition of the land and the motel development was not included. Mr Anderson weighed this as a significant benefit on the basis that the Castello Group makes every effort to employ locally when sourcing contactors for works

⁶¹ NBA Report, page 29, para 68.



on their projects and that a tender process will be offered to local contractors⁶². However, at the Hearing, he acknowledged that there is no certainty that the successful tenderer for this development would be a locally based business or that its employees would live within the LGA.

106. Mr Atkinson submitted that the benefit of \$22 million (costings for the development and the fit-out) to be assessed was the value-add accruing to the community associated with locally based businesses engaged to carry out the works. The value-add component is the difference between the value of construction and the sum of labour and capital inputs⁶³. Due to the make up of the community in the City of Casey, he considers that a large number of contractors will be drawn from outside the City of Casey and therefore the associated benefits would accrue elsewhere. Consequently, Mr Atkinson considered this impact to be a marginal benefit to the community of the City of Casey⁶⁴. In his quantitative assessment of impacts, Mr Atkinson considered expenditure on capital works to have a NPV of \$1.06 million over 20 years⁶⁵. He reached this conclusion having applied a rate of 35% to the costings (being the value-add of a \$22 million development) and then assuming that 25% of that amount would be through works carried out by local contractors which is \$1.9 million in the first year of trade.
107. SGS submitted that it is inappropriate to compare costs and benefits against a 'zero base' which assumes that there would be no change in current conditions⁶⁶. Mr Atkinson considered an appropriate base case with which to compare the Application would be one that assumes on-going investment in retail and entertainment activity in the region⁶⁷.
108. At the Hearing, Mr Giustiniano gave evidence that the Castello Group tries to engage local contractors where possible and would do so again for construction works associated with this Application. However, he, similar to Mr Anderson as stated at paragraph 105, said the works would be put out to tender and that there was no guarantee that a contractor from the local area would be engaged to complete the works.
109. Mr Giustiniano gave evidence at the Hearing that the proposed development was dependent on the success of this Application. The Commission notes that after the Hearing, the Application was amended to reduce the proposed trading hours by two hours per day. In the absence of any explanation, it is evident that the reduced trading hours did not impact the underlying requirement for the Application to be successful in order for the development to proceed.

⁶² NBA Report, page 66, table 11.

⁶³ Amended SGS Report, page 40, para 224.

⁶⁴ Amended SGS Report, page 53, para 308 – 311.

⁶⁵ Amended SGS Report, page 33, table 9.

⁶⁶ Amended SGS Report, page 36, paras 195 – 201.

⁶⁷ Amended SGS Report, page 37, para 200.

The Commission's view

110. The Commission notes Mr Giustiniano's evidence that the development would not occur without the approval of this Application. Further, the Commission is mindful of VCAT's decision in *Monash CC v L'Unico Pty Ltd*⁶⁸ where it held (albeit in relation to an EGM increase application) that it is not appropriate under the relevant statutory framework to either engage in a 'project feasibility' or 'existing financial capacity' assessment, but rather (with two provisos⁶⁹) that it is appropriate to simply take the proposal for what it is and then assess its likely social and economic impacts as per the '*no net detriment*' test. Here, the Commission considers that neither of those two provisos are enlivened, and finds that the development of the Premises would not proceed if this Application (as amended by the Proposed Conditions) were not to be successful.
111. In relation to the Council's argument that the Commission should analyse the impact of the capital works against a base case where future development in retail and entertainment activity will occur at the site regardless of the success of the Application, the Commission notes that its role in the '*no net detriment*' test is assessing an application before it. The Commission agrees that it is highly likely the site will be developed in the future. However, while the Commission agrees that if this Application is not granted, it is highly likely the site will nevertheless be developed in future, the Commission has had regard to the benefits and disbenefits said to arise from this Application when assessing the '*no net detriment*' test without consideration or comparison with a hypothetical development that may occur if the Application is refused.
112. The Commission regards the expenditure on capital works to be a benefit. Here, the Commission accepts the evidence in the NBA Report that the construction of the Premises will cost approximately \$17 million plus an additional \$5 million in fit-out costs. In weighing the benefit associated with this expenditure, while acknowledging that \$22 million is significant expenditure to be associated with the construction and fit-out, the Commission notes the evidence of Mr Giustiniano that there is no guarantee the tenderer or its workers will be based in the City of Casey. Therefore, the Commission finds no certainty that the construction costs will benefit the community of the City of Casey. As such, the Commission considers it appropriate to assign this benefit a marginal weight.

⁶⁸ [2013] VCAT 1545.

⁶⁹ The first proviso was that common sense suggests that there needs to be a reasonable degree of corroborating information, to at least provide comfort that the "estimated project value" of the proposed works is more than just an ambit or "back of the envelope" calculation. As such, less weight should be given to purported proposed works where there is a concern about the bona fides of the "project value" figure being relied upon. The second proviso was that it seemed appropriate to recognise that the proposed works may in practice be easier to achieve financially if the Application were approved.

113. In making this assessment, the Commission notes it is important that the benefits associated with the development are not double counted, having regard to the social impact that may result from the proposed facilities and services at the Premises. This aspect has been considered separately, and is detailed below at paragraphs 200 to 203.

Employment creation

114. The economic benefit of employment creation arising from this Application can be described as both short term and longer term:

- (a) short term employment benefits that arise during the development of the Premises (related to but separate from the economic benefit associated with the expenditure on capital works); and
- (b) longer term employment benefits arising from the introduction of EGMs and patronage of facilities at the Premises.

115. In relation to short term employment benefits, the extent of the works are described generally in paragraphs 104 to 113 above. As noted above, it is not clear to what extent this work will be undertaken by individuals who live in the City of Casey because the Applicant intends to put the work out to tender.

116. Based on the evidence presented, the Commission concludes that it should not place any weight on this economic benefit. To the extent that it arises in relation to this Application, the Commission considers that the value of this benefit has been captured in the benefit associated with the expenditure on capital works considered in paragraphs 104 to 113 above.

117. Separate from the short term economic benefits associated with the capital works is the potential benefit associated with longer term employment arising from the Application.

118. In relation to this benefit, Mr Anderson gave evidence that 60 full-time equivalent employee (FTE) positions would be created (across 90 positions). Mr Anderson noted that, with the exception of the experienced venue manager Ms MacLennan, all of the positions will be new to the Castello Group⁷⁰. He said that the positions would be filled locally pending skills and experience and, based on the hiring practices of other Castello Group venues, there is an expectation that a significant percentage of employees would come from the City of Casey. While noting that unemployment in the City of Casey is comparatively low, Mr Anderson found that any local employment is considered beneficial in that it permits locals to live and work

⁷⁰ NBA Report, page 34, para 74.

closer to regional hubs and the combined salary for 90 new staff is significant for a growth area such as Clyde North. He ultimately found the impact of the employment in the local community to be of significant weight⁷¹.

119. Mr Giustiniano gave detailed submissions about employment requirements at the Premises. He said that 12.3 FTE positions for RSG qualified staff would be required for the gaming room. A proposed roster was annexed to his witness statement which outlined the expected staffing requirements at the Premises. The salary costs attached to that roster were \$3,735,862 per year, based on costings for staff salaries at other premises within the Castello Group⁷². Mr Giustiniano gave evidence that, at the hotels within the Castello Group, staff predominantly reside in the local area. In support of this, he annexed a spreadsheet showing employee postcodes to his witness statement which shows that, at present, on average across the three venues analysed, 59.82% of staff reside in the local LGA of that venue⁷³.
120. For Council, in his qualitative assessment, Mr Atkinson expressed the view that the effect of the employment generated by the Application was a marginal benefit. Mr Atkinson did not accept that the creation of 60 new FTEs at the Premises would be an addition of 60 new FTEs in the municipality because there is a net loss in employment when employees transfer from what he described as “labour-intensive sectors” such as hospitality and retail into capital-intensive sectors such as gaming⁷⁴. Secondly, he noted that it was important to assess this impact against a base case (as discussed above) where, in the event the Application is not approved, an alternative retail and entertainment offering is developed at the site. Mr Atkinson argued that the Applicant had overestimated the likely wage bill at the Premises, as referred to in paragraph 119 above, noting that the base rate for a café worker in Australia ranges from \$19.49 to \$24.77 per hour and that this is significantly lower than the \$30.70 per hour figure provided by the Applicant⁷⁵. At the Hearing, Mr Giustiniano explained that the hourly wage rates include super and penalty rates.
121. In his quantitative assessment, Mr Atkinson assessed the NPV of the labour surplus, that is, the benefit accruing to labour as a result of a net increase in employment associated with the proposal, as being \$7.08 million over the 20 year evaluation period⁷⁶, of which 80% would be attributed to the City of Casey community where he assumes workers will reside⁷⁷.

⁷¹ NBA Report, page 68.

⁷² Witness Statement of Mr Giustiniano, page 11, para 33 – 35.

⁷³ Witness Statement of Mr Giustiniano, page 12, para 37.

⁷⁴ Amended SGS Report, page 54, paras 318 – 319.

⁷⁵ Amended SGS Report, page 11, para 68.

⁷⁶ Amended SGS Report, page 33, table 9.

⁷⁷ Amended SGS Report, page 41, para 232.



122. The Commission is of the view that if the Application were to be granted, this will generate employment related to the operation of the Premises, and this is a positive benefit of the Application. The Commission accepts the evidence given on behalf of the Applicant that if the Application is granted, this will result in the creation of the equivalent of 60 FTE positions at the Premises, which include 12.3 FTE positions in respect of its gambling operations. The Commission also accepts Mr Anderson's view that, based on trends in hiring practices at other Castello Group venues, many employees will be sourced from the municipality. While the Commission agrees that, due to the projected population growth in the area, the new roles are likely to be filled by new residents, the Commission considers that some employment will likely be transferred from within the municipality (i.e. from competitive gaming and hospitality venues) particularly for the RSG qualified positions, given the skilled nature of RSG employees.
123. Overall, the Commission considers the additional employment arising from the Application as positive impact, taking in account the anticipated numbers of employees, the anticipated population growth in the Catchment Area, the potential for employees to be sourced from outside the LGA, and the potential for some transfer of local employment. As such, the Commission gives this benefit low weight.

Complementary expenditure

124. Complementary expenditure is the increased economic activity in the LGA (aside from gaming expenditure) that may arise if the Application is granted. However, the extent of this benefit depends upon a range of factors including the extent to which the expenditure is a consequence of new spending, for example, as a result of additional people coming to the municipal district as tourists or for business as compared to transferred complementary expenditure from other venues within the municipality, and the extent to which that complementary expenditure results in additional spending on local goods and services.
125. For the Applicant, Mr Anderson and Mr Giustiniano noted that the estimate for complementary expenditure in the first year of operation at the Premises was \$9,765,000 to be generated by the Premises' facilities. This included food and beverage expenditure in the bistro, café, sports bar and virtual reality entertainment area, the gaming room, bowling alley, motel and function rooms, as well as revenue from the bowling, motel and function room facilities. A break-down of estimated expenditure in each of the facilities was annexed to Mr Giustiniano's witness statement. At the Hearing, Mr Giustiniano said that expenditure estimates were based on the average revenue in growth corridor venues within the Castello Group.

126. In the NBA Report, Mr Anderson submitted that the expected construction time of 24 months would result in a significant increase in expenditure in local cafes, service stations and supermarkets from tradespeople working in the municipality 5-6 days a week for that period⁷⁸.
127. Mr Anderson said that the facilities to be offered at the Premises are unlike any other hospitality and entertainment venue in Melbourne other than Crown Casino and, accordingly, it is reasonable to conclude that a reasonable percentage of the non-gaming expenditure will occur from individuals entering the City of Casey from other municipalities⁷⁹. He considered the impact associated with this benefit to be significant.
128. During his evidence at the Hearing, Mr Giustiniano said that the Premises are located in an area that is distinctly lacking in places for people to spend money and that the Premises would therefore be attractive to residents of the immediate area and beyond.
129. For the Council, Mr Atkinson submitted that complementary expenditure is a benefit where associated with expenditure that would have otherwise have occurred outside the LGA, in terms of attracting visitors from outside the region or capturing more local expenditure. He argued that complementary expenditure was of no benefit where patrons are making purchases they would have otherwise made at other gaming venues in the City of Casey (therefore the expenditure is simply being transferred within the municipality), or by patrons whose primary purpose for attending the venue is for non-gaming purposes⁸⁰.
130. The Commission accepts that, in light of the wide variety of non-gaming facilities proposed at the Premises, there will be substantial complementary expenditure generated and this is a positive economic impact. The Commission finds that part of the expenditure drawn from visitors to the municipality who are attracted to the Premises' unique and extensive entertainment and hospitality offerings, of which there are currently not many otherwise in the area, and from new residents in the municipality associated with the considerable population growth in the Catchment Area and Clyde North generally, is complementary expenditure to which it should have regard.
131. However, the Commission agrees that part of the expenditure included as complementary expenditure by the Applicant will be non-gaming expenditure that is transferred from other gaming and retail venues in the City of Casey. The Commission finds that this expenditure should not properly be included as 'complementary expenditure' for the purpose of an

⁷⁸ NBA Report, page 34, para 78.

⁷⁹ NBA Report, page 67.

⁸⁰ Amended SGS Report, page 55, paras 335 – 339.

assessment of this impact. Therefore, the Commission does not accept that genuine complementary expenditure at the Premises would be as high as \$9.765 million.

132. For these reasons, the Commission gives the complementary expenditure associated with the Application marginal to low weight and is careful not to double count this impact in relation to the ‘*no net detriment*’ test where it is considered in relation to the impact associated with supply contracts in paragraphs 133 to 137.

Supply contracts

133. The Applicant considers that the approval of the Application will result in supply contracts for the maintenance and operation of the Premises, all of which are separate to the anticipated gaming revenue to be generated through operation of EGMs.
134. Mr Anderson submitted that the Castello Group endeavours to use local suppliers to service its venues where possible. On this basis, he expects that if and when the Premises are developed, the Applicant will enter into supply contracts with local suppliers for the provision of food and beverage, cleaning and maintenance of the hotel, EGM servicing and other goods and services⁸¹. He gave this a low weighting in his assessment of impacts.
135. Mr Giustiniano’s witness statement did not contain any evidence regarding supply contracts. At the Hearing, he said that the Applicant would endeavour to source food and beverages for the Premises locally, however the Castello Group already has food and beverage suppliers engaged (not based in the City of Casey), and therefore much of the food and beverage would likely be supplied by those suppliers.
136. In his qualitative assessment, Mr Atkinson for the Council submitted that the new Premises is likely to generate supply contracts for cleaning, EGM servicing and maintenance with a marginal benefit to the municipality. However, in the absence of an explicit policy around sourcing supplies from local businesses, the suppliers of those services may not be locally sourced. He considered that it can be assumed that the decision around the procurement of suppliers will be based on cost rather than the geographical proximity of the supplier⁸².
137. The Commission accepts the evidence of Mr Anderson and Mr Atkinson that there will be supply contracts associated with the Application. However, given the lack of evidence from Mr Giustiniano that these will be sourced locally from within the City of Casey, the Commission

⁸¹ NBA Report, page 34, para 77.

⁸² Amended SGS Report, page 55, para 329.



cannot be satisfied that there will be an economic benefit within the municipality and gives it a nil to marginal weight.

Community contributions

138. In determining the net economic and social impact of applications of this nature, both the Commission⁸³ and VCAT⁸⁴ have regularly treated community contributions as a positive benefit. However, for the proposed contributions of \$80,000 to be regarded as a benefit associated with the Application, it is necessary that they are properly regarded as community contributions and that they will result as a consequence of the Application. In assessing the weight to be placed on such an economic benefit, it is important that the Commission does not conflate this benefit with the social benefit associated with such contributions.
139. The Application did not originally contain the proposed cash contribution of \$80,000 per year as long as EGMs are in operation at the Premises, however the NBA Report said that the Applicant engaged with the City of Casey's "Active Communities Team", which is a panel that will assist to determine community organisations suitable for funding. At the Hearing, the Applicant sought leave to amend its Application to include the proposed cash contribution. According to the NBA Addendum Report, in determining to include the proposed cash contribution, the Castello Group took on board feedback provided by Council. It is intended that the funds will be distributed by venue management, in consultation with Council, to local community groups, junior sporting teams and local community focussed programs based on the specific needs of the community each year⁸⁵.
140. The Amended SGS Report was prepared prior to the Applicant's offer of a proposed cash community contribution of \$80,000. However, Mr Atkinson undertook his assessment of economic impact assuming a cash contribution of \$150,000 per year. In his quantitative analysis of impacts, Mr Atkinson placed an NPV of \$1.89 million over 20 years on the benefit accruing to the local community as a result of the assumed \$150,000 cash contribution, as well as in-kind and voucher donations⁸⁶.
141. Having regard to the evidence and submissions made with respect to the community contributions that are set out in paragraphs 210 to 215 below, such contributions can also have a positive economic impact. The Commission considers the community contributions will be distributed to local community organisations as determined by the Applicant and Council if the

⁸³ See, for example, *Richmond Football Club Ltd at Wantirna Club premises* [2015] VCGLR 31 (24 July 2015).

⁸⁴ See, for example, *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130; *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

⁸⁵ Addendum NBA Report, page 10, para 8.

Application is approved, and their impact on local community organisations in the City of Casey to be an economic benefit which is given marginal weight.

Increased gaming competition in the City of Casey

142. Increasing competition in gaming in the City of Casey is a factor that can be a benefit of an application, in light of the statutory purposes of Chapter 3 of the Act⁸⁷ and the consumer benefits that derive from competition.
143. Mr Anderson gave evidence that, if approved, the Premises would be the first venue operating in Clyde North and one of only two venues within the uncapped area of the City of Casey. Mr Anderson gave evidence that the closest gaming venue to the proposed Premises is the Berwick Springs Hotel, which is 4.5 kilometres away and that demand currently outstrips supply in this area. For these reasons, and based on the substantial population growth anticipated in Clyde North, Mr Anderson said that a positive impact of the Application is that the Premises would provide additional opportunities and choice to gaming patrons who choose to play EGMs recreationally without harm⁸⁸.
144. The Commission also notes the evidence of Mr Clyne and Mr Atkinson and the Commissions view in relation to anticipated transferred expenditure at paragraphs 88 to 100 above, an outcome of increased competition between venues for gaming expenditure.
145. On the basis of an estimated adult population in the City of Casey of 257,875 for 2019, the Commission considers that this Application would (if approved):
- (a) increase the number of approved venues within the municipality by one;
 - (b) increase the overall number of EGMs within the municipality by 100 from 913 to 1,013; and
 - (c) increase the EGM density of the municipality in which the Premises are situated from 3.54 EGMs per 1,000 people to 3.93 EGMs per 1,000 people, compared with the metropolitan average of 4.8 EGMs per 1,000 people and State average of 5.1 EGMs per 1,000 people.
146. Consequently, the Commission finds that granting approval of the Application will increase gaming competition in the City of Casey by providing an additional venue at which patrons may choose to play EGMs. The Commission accepts the evidence that the proposed Premises is in

⁸⁶ Amended SGS Report, page 33, table 9.

⁸⁷ The Act, section 3.1.1(2).



an uncapped area of the municipality with only one other gaming venue. Having regard to the number of EGMs intended to operate at the Premises, the current number of EGMs and the number and location of other gaming venues in the City of Casey (and more particularly in the Catchment Area), the Commission considers the impact of increased competition to be an economic benefit to which it gives marginal weight.

Gambling expenditure associated with problem gambling

147. To the extent that a portion of new expenditure is attributable to problem gambling, this represents an economic disbenefit⁸⁹. In assessing the extent of this disbenefit, the Commission recognises that it does not include transferred expenditure because such expenditure cannot exacerbate problem gambling⁹⁰.
148. Also in assessing this impact (and other impacts involving problem gambling), the Commission recognises that harms associated with problem gambling may be experienced directly and indirectly as a consequence of gambling undertaken by those who may be defined as ‘problem gamblers’, as well as those who may be otherwise regarded as ‘low-risk’ or ‘moderate-risk’ category gamblers on the problem gambling severity index (**PGSI**). The Commission accepts that harms associated with the incidence of problem gambling are wide-ranging and attributable to all PGSI categories of gamblers and across the community more broadly.
149. In assessing the extent of the economic disbenefit of gambling expenditure associated with problem gambling, the Commission has had regard to the expenditure evidence set out in paragraphs 82 to 102 above and its views on the anticipated expenditure and transferred expenditure, summarised at paragraph 101 above.
150. Expert witnesses for the Applicant and the Council submitted views regarding the appropriate level of expenditure that should be attributed to problem gambling when considering the impact of the Application on the community of the municipality in which the Premises are located.
151. For the Applicant, at the Hearing and in the NBA Report, Mr Anderson noted that the PVS Report estimate for new expenditure at the Premises if the Application is approved is

⁸⁸ NBA Report, page 42, para 106.

⁸⁹ The Commission recognises that on review, the key likely disbenefit of ‘problem gambling’ has for convenience been treated under the heading of ‘social impacts’ in various instances: see *Mount Dandenong Tourist Hotel Pty Ltd v Greater Shepparton CC* [2012] VCAT 1899, [121] and following; *Melbourne CC v Kingfish Victoria Pty Ltd & Anor* [2013] VCAT 1130, [47] per Martin PM and Naylor M. However, this is not an approach that has been uniformly adopted: see, for example: *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [178] and following per Dwyer DP. For completeness the Commission considers both the economic and social impacts of problem gambling in its assessment of this Application.

⁹⁰ See *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192, [113] per Code PM and Nelthorpe M; *Kilsyth and Mountain District Basketball Association Inc v Victorian Commission for Gambling Regulation* [2007] VCAT 2, [40] per Morris J.



\$4.17 million in the first year of operation. Accepting recently relied upon studies, he said that up to 40% of that new expenditure could be related in some way to problem gambling⁹¹.

152. In reaching this conclusion, Mr Anderson relied on studies including:

- (a) Howe P., Vargas-Sa'enz, A., Hulbert, CA., Boldero, JM (2019) *Predictors of gambling and problem gambling in Victoria, Australia*; and
- (b) *Review of Gambling Related Issues by Hayden Brown* (September 2017).

At the Hearing, he said that he also relied on studies previously adopted by the Commission that indicate between 40 and 45 per cent of the new revenue could be attributed to people that experience some form of gambling harm⁹².

153. For the Council, Mr Atkinson in the Amended SGS Report presented a quantitative and a qualitative assessment of the economic impact of EGM expenditure associated with problem gambling. In summary, in his quantitative assessment, Mr Atkinson noted the 2010 Productivity Commission finding that approximately 40% of gambling expenditure is attributable to problem gambling. He said it is likely that the proportion of problem gambling expenditure at a venue could be linked to both catchment and venue specific factors including:

- (a) venue specific factors: whether the venue is a destination or convenience venue, opening hours, the size of the venue and number of EGMs, the venue design and internal layout and staff training and RSG procedures; and
- (b) catchment specific factors: socio economic status of the surrounding population, labour force characteristics and financial stress of surrounding population.

He assessed the Application against these factors and ultimately concluded that 42.5% of additional expenditure resulting from the Premises will be attributable to problem gambling⁹³, which is a figure of \$1.78 million in the first year of the operation⁹⁴.

154. At the Hearing, Mr Atkinson gave evidence that he performed sensitivity testing on conclusions in his quantitative assessment relating to the estimated expenditure attributable to problem

⁹¹ NBA Report, page 44, para 115. Note, the NBA Report says 50% of new expenditure could be attributable to problem gambling, however at the Hearing he corrected this figure and relied on 40%.

⁹² Previous Commission decisions have considered the findings of the Productivity Commission in its 2010 inquiry into gambling in Australia where it was estimated that 40% of total EGM gambling expenditure was attributable to problem gambling: Productivity Commission, *Gambling – Productivity Commission Inquiry Report*, Volume 1, No. 50, 26 February 2010.

⁹³ Amended SGS Report, page 34, paras 187-194.

⁹⁴ Amended SGS Report, page 42, para 248.

gambling assuming levels of 35%, 40% and 45% and that a detriment to the area was predicted regardless of which percentage was adopted.

155. In his qualitative assessment, Mr Atkinson concluded that new EGM expenditure associated with the Application would be of “high detriment” to the community surrounding the Premises. In making this conclusion he had regard to the factors he considered detrimental including, in summary: the significant amount of new expenditure projected; the projected population growth from whom that expenditure will be drawn being relatively disadvantaged; the size of the venue with 100 EGMs making it more susceptible to problem gambling behaviours; the location of the venue being in a relatively prominent location on Thompsons Road and the venue being open for 20 hours per day being likely to contribute to higher rates of problem gambling⁹⁵.

The vulnerability of the City of Casey and the Catchment Area

156. The extent to which it can be considered that new expenditure will be associated with problem gambling, and hence may be regarded as a disbenefit associated with this Application, will be influenced by the socio-economic status and vulnerability of the community in the area surrounding the Premises. This is because communities characterised by socio-economic disadvantage are regarded as more vulnerable to problem gambling and the negative impacts of gambling. As summarised in paragraph 51 above, the Commission has accepted a radius of 5 kilometres as the appropriate Catchment Area for this Application.
157. In the NBA Report and in his evidence at the Hearing, Mr Anderson concludes that the 2.5 kilometre primary catchment is a comparatively advantaged area of the City of Casey. He notes the following socio-economic characteristics of, what he terms, the primary and extended catchment areas and the LGA include that:
- (a) the City of Casey sits in the 7th decile on the 2016 SEIFA⁹⁶ Index of Relative Socio-economic Disadvantage (**IRSD**), which indicates lower than average socio-economic disadvantage when compared to other LGAs in Victoria⁹⁷.
 - (b) Clyde North (the suburb in which the proposed Premises are to be located) sits in the 8th decile, having improved in its position from 2011 when it was known as “Clyde”. The SA1s

⁹⁵ Amended SGS Report, page 56, paras 341 – 348. The Amended SGS Report was prepared prior to the Applicant’s proposal to reduce the hours for gaming by two hours per day.

⁹⁶ Socio-Economic Indexes for Areas (**SEIFA**) is a product developed by the ABS that ranks areas in Australia according to relative socio-economic advantage and disadvantage. It consists of four different indexes, including the Index of Relative Socio-economic Disadvantage (**IRSD**).

⁹⁷ The first decile indicates the highest level of disadvantage and the 10th decile indicates the lowest disadvantage.



within the primary catchment have SEIFA rankings between 5th to 10th deciles, averaging in the 8th decile⁹⁸, with 90% ranked in the 7th decile⁹⁹.

- (c) within in the extended catchment area (5 kilometre radius), approximately 85% of SA2s rank in the 7th decile and above, including Cranbourne East which has improved its position from 2011¹⁰⁰. However, at the Hearing, Mr Anderson said that Cranbourne East sits in the 6th decile.
- (d) the suburb of Clyde North has been identified as an area within the City of Casey that will face a considerable population increase over the next 30 – 50 years, with a growth projection of 267% by 2041¹⁰¹, which suggests that the Premises is centrally located to service the existing population and forecast growth in the area.
- (e) based on 2016 census data, the demographic profile of the suburb of Clyde North indicates that neither the area immediately around the venue, nor the City of Casey has a high risk profile for problem gambling in terms of socio-economic indicators including:
 - (i) the average age is 30 in Clyde North and 34 in the City of Casey, which are both lower than the average age in Greater Melbourne of 36. This can be indicative of an area that is undergoing a population surge of young families;
 - (ii) the average personal household income is \$818 in Clyde North, which is 28% higher than the average of \$640 in the City of Casey and 21% higher than the average personal income of \$673 in Greater Melbourne. Average household income is \$1,886 in Clyde North which is 21% higher than the average of \$1,554 in the City of Casey and 22% higher than the average household income in Greater Melbourne of \$1,542;
 - (iii) the rate of unemployment in Clyde North of 5.7% is 19% lower than the Greater Melbourne average of 6.8%;
 - (iv) while the rate of mortgage stress is 17.6% in Clyde North which is higher than the rate in Greater Melbourne which is 8.1%, rental stress is 6.9% in Clyde North when compared to 11% in Greater Melbourne; and

⁹⁸ NBA Report, page 8, para 9(i).

⁹⁹ NBA Report, page 20, table 3. Footnote to page 26, para 52 notes that the 2.5 kilometre catchment is a combination of 31 SA1s in the Clyde North district according to ABS information.

¹⁰⁰ NBA Report, page 20, table 3.

¹⁰¹ NBA Report, pages 26 – 27, paras 55 – 57.



- (v) education levels are higher in Clyde North when compared with the City of Casey and Greater Melbourne¹⁰².

158. In addition, Mr Anderson noted the EGM density of 3.66 per 1,000, which is lower than the metropolitan Melbourne average of 4.91 per 1,000, and the projected population increase which will see the EGM density reduce further over time, further indicating that the area around the Premises does not present as a high risk in terms of problem gambling.

159. At the Hearing, Mr Anderson submitted that the Brown Property Group, the developer of the Meridian Estate in which the Premises and surrounding residential neighbourhoods are to be located, intends to develop an affluent community in this area. This is evidenced by the size and value of the blocks.

160. Mr Atkinson gave evidence for the Council in relation to the vulnerability of the catchment areas (in his evidence, primary catchment is a 5 kilometre radius and secondary catchment is a 7.5 kilometre radius skewed to the west) and the City of Casey having regard to the demographic profile of the area. In the Amended SGS Report and in his oral evidence at the Hearing, Mr Atkinson noted that:

- (a) the population of the catchment areas is expected to grow rapidly. Compared with Greater Melbourne and Victoria with projected population growth rates of 1.8% and 1.9% per year between 2016 and 2031, the City of Casey is projected to grow at 3.1% while the primary and secondary catchments are expected to grow at 5.9 and 3.9% respectively. Mr Atkinson submitted that it is reasonable to expect that a proportion of the EGM expenditure derived from the new population will be linked to problem gambling¹⁰³;
- (b) the catchment areas have a relatively young age profile with above average shares of their population in the 0 – 14 and 25 – 54 age groups, similar shares in the 15 – 24 group and lower shares of their population above the age of 55 when compared with Greater Melbourne and Victoria. This is consistent with the understanding that many young families tend to live in urban growth areas and is a profile that is expected to endure as the region continues to grow with more residential development¹⁰⁴;
- (c) the catchment areas have a higher proportion of “family” household types and a lower proportion of lone-person household types when compared with Greater Melbourne and Victoria. The latter is considered to be a protective factor against problem gambling

¹⁰² For paragraph 157(e), see NBA Report, pages 27 – 28, paras 59 – 60.

¹⁰³ Amended SGS Report, page 15, paras 92 – 95.

¹⁰⁴ Amended SGS Report, page 17, paras 96 – 99.



related to this Application given the correlation between feelings of loneliness and social isolation and vulnerability to harm from problem gambling¹⁰⁵;

- (d) the catchment areas have a relatively high proportion of mortgaged dwellings with 60% in the primary catchment and 50% in the secondary catchment compared to 37.2% of households across Greater Melbourne and 36.4% across Victoria, and notably lower percentages of houses owned outright. These patterns indicate a high level of debt and therefore vulnerability to housing stress, which would make those residents vulnerable to harm from problem gambling¹⁰⁶;
- (e) the primary catchment has a large proportion of middle-income households (53.5%) when compared with Greater Melbourne (42.8%) and Victoria (42.7%) and the secondary catchment follows a similar trend although there is a higher proportion of low and middle-income households¹⁰⁷;
- (f) educational attainment in the primary and secondary catchments varies across different levels of education, however both the catchment areas have lower shares of university educated residents compared to the City of Casey and Greater Melbourne. The rate of unemployment for the primary and secondary catchments is generally in line with the City of Casey, Greater Melbourne and Victoria, however there are lower rates of higher skill white collar occupations¹⁰⁸; and
- (g) the SEIFA index of Relative Socio-economic Index of Advantage and Disadvantage (**SEIFA IRSAD**)¹⁰⁹ scores for 2016 considered by Mr Atkinson indicate:
 - (i) most of the primary catchment around Clyde and Clyde North is within the 7th decile on the SEIFA IRSAD index indicating less disadvantage (the first decile is the most disadvantage); and
 - (ii) the western portion of the secondary catchment, around Casey Central and Cranbourne is significantly disadvantaged, being in the 2nd decile on the SEIFA IRSAD index for disadvantage¹¹⁰.

Main areas of disagreement between the experts

161. Whilst the experts were largely in agreement as to the fact that the SEIFA scores on both indices for the 2.5 and 5 kilometre radius around the Premises generally indicate a lack of

¹⁰⁵ Amended SGS Report, page 17, paras 100 – 104.

¹⁰⁶ Amended SGS Report, page 17, paras 105 – 108.

¹⁰⁷ Amended SGS Report, page 17, paras 109 – 111.

¹⁰⁸ Amended SGS Report, page 17, paras 112 – 117.

¹⁰⁹ This is a different ABS index to that relied upon by Mr Anderson in the NBA Report and included in the VCGLR Report.

¹¹⁰ Amended SGS Report, page 17, paras 118 – 122.

disadvantage, they disagreed as to the extent this population profile would remain as it currently is once the significant growth projections are realised.

162. Mr Atkinson submitted that the population profile of the primary catchment (correlating to the Catchment Area determined by the Commission) is typical of an urban growth area comprising of young families with mortgages and relatively low unemployment, in contrast to the secondary catchment which is more established and therefore suffers greater socio-economic disadvantage.
163. In his oral evidence at the Hearing he said that a range of factors unique to newly established urban communities combine to drive up SEIFA scores in those initial stages. He said that, over time, a growth area such as this will become more established and the demographic will be more mixed. He said that there is no reason to suggest that the socio-economic characteristics of the incoming population will reflect those of the population it replaces. He submitted that, as households mature, this first wave of residents will lose their jobs, families will break down and the more advantaged households will move up the property ladder and perhaps buy closer to Melbourne. This will reduce the level of relative advantage in that catchment area.
164. Mr Anderson did not agree with Mr Atkinson's position on the future economic profile of the Catchment Area. He considered there appeared 'no grounds' to support the view that the maturing of a newly urbanised area will result in any factors which will contribute to the gradual lowering of the region's SEIFA score¹¹¹. In the NBA Addendum Report, he provided examples of growth areas that were considered to be lacking in disadvantage in 2011 and remained as such in 2016 when the next census data were collected.

The convenience of the Premises

165. The experts broadly agreed that venues considered 'convenient' for people going about daily activities were more likely to attract problem gamblers than destination venues. The experts also agreed that the Premises would be passed by large number of members of the community, however they disagreed as to the convenience of the proposed Premises in terms of its effect on the impact of problem gambling.
166. Mr Anderson said the location of the Premises means it is a destination venue because it is on the periphery of the planned activity centre of Clyde North and not within the main shopping centre, which suggests that passers-by en route to their everyday tasks would not ordinarily pass the front of the Premises¹¹². At the Hearing, Mr Anderson noted that it is not possible to predict with any accuracy what the surrounding land uses will be, but based on the Thompsons

¹¹¹ NBA Addendum Report, page 16, para 27.

¹¹² NBA Report, age 60, para 174.

Road PSP, and the Premises' location in a mixed-use area on the northern periphery of the PSP surrounded by residential, commercial and industrial uses, he concludes that the Premises is not going to be on an "ant-trail"¹¹³.

167. Mr Atkinson did not specifically conclude that the Premises would be a 'destination venue' by definition, however he noted that it would be located on what he termed "employment land" that is likely to have relatively low worker densities and would be relatively isolated from activity centres¹¹⁴. Nevertheless, Mr Atkinson considered that the prominence of the Premises on Thompsons Road, which is set to become a major east-west connector in the outer eastern growth areas, meant it was highly visible and people passing by in their cars could be tempted to go in, rather than making a conscious decision to drive there for entertainment. He therefore considered that the location would have an impact on problem gambling. Mr Atkinson also considered that there would be people who would go for other attractions and then be tempted to enter the gaming room.
168. The objector Mr Cummings, who gave evidence at the Hearing, and the CRRA made submissions with respect to the location of the Premises being attractive to a problem gambler on account of its location. In summary:
- (a) the CRRA said that the Premises is close to residential estates and that Thompsons Road is a high traffic road which increases the risk of impulse or convenience gambling in residents and tradespeople who will frequently pass by the venue in their day to day activities¹¹⁵.
 - (b) Mr Cummings submitted that the land uses adjoining the proposed venue would increase the risk of convenience gambling because the Premises is adjacent to a number of residential areas, both existing and under development¹¹⁶. At the Hearing, he said that there is nothing out in Clyde North at the moment and therefore, the fact you have to drive to the Premises would not make it any less convenient or accessible.
169. The Commission notes that the Geotech model anticipates expenditure being transferred from venues as far as 12.5 kilometres away which could support the view that the location of the Premises being away from a major activity centre, particularly in a growth area such as Clyde North with limited retail and entertainment options, does not necessarily mean that it will not be attractive to problem gamblers, even if they may not be able to walk there.

¹¹³ An "ant-trail" is a characteristic often used in describing convenience venues.

¹¹⁴ Amended SGS Report, page 35, table 10.

¹¹⁵ Submission of Casey Residents and Ratepayers Association Inc., paras 20 – 21.

¹¹⁶ Submission of Mr Cummings, para 2.



170. The Commission is of the view that the Premises will be more of a destination venue, although it will be in walking distance for the residential area abutting the Premises. The Commission does however accept Mr Cumming's point that in a municipality which is largely car based, the likelihood of any gaming venue being considered convenient increases to some extent.

Proposed Responsible Service of Gambling measures

171. In considering the extent to which any new expenditure may give rise to problem gambling, the manner in which gaming is to be conducted at the Premises is also a relevant factor.

172. Mr Anderson noted that the potential for some increase in problem gambling behaviour, and therefore expenditure, was mitigated to some degree by the Applicant's approach to RSG including the following measures:

- (a) the involvement of Mr Jeynes from PVS Australia Pty Ltd (RSG compliance expert), in the design of the Premises and, in particular, the gaming room, which ensures that the Premises and the gaming room satisfy current best practice theory with respect to the management of RSG;
- (b) the involvement of the proposed venue manager, Ms Patricia MacLennan, who is highly experienced working in gaming venues and has a demonstrated record of RSG and sound management practices¹¹⁷;
- (c) the employment of a Castello Group operations manager dedicated to compliance with RSG and requirement for all staff to possess an RSG qualification prior to commencement of employment; and
- (d) the Premises' adoption of a strict code of conduct for RSG and display of signage at the entrance to the gaming room regarding the Premises' commitment to RSG¹¹⁸;

Mr Anderson also noted that the Applicant had attempted to establish a relationship with Gambler's Health Southern to install a staff member in an office in one of their gaming venues to give staff an opportunity to increase skills and knowledge with respect to RSG. At the Hearing, the Applicant confirmed that this arrangement would not go ahead.

173. In her written and oral evidence, Ms MacLennan set out the Applicant's approach to RSG. She is currently the Castello Group operations manager but, if the Application is approved, she will become the venue manager for the proposed Premises and responsible for ensuring that the Premises fosters a safe and friendly environment for patrons to play EGMs responsibly. Ms

¹¹⁷ Paras 172(a) - 172(b), NBA Report, page 60, para 174.

MacLennan said that the Castello Group has a fantastic compliance record with respect to RSG and provided the following examples of RSG measures at the venue under her management that would assist to achieve this safe environment:

- (a) design features of the Premises align with best practice for RSG and this would assist staff with monitoring the venue, including all 100 EGMs being visible from either the bar and cashier area or by camera surveillance;
- (b) policies and practices of staff at the Premises including:
 - (i) staff to declare their understanding of the venue's RSG Code of Conduct and RSG Responsible Gambling Policy upon commencement of employment;
 - (ii) new gaming room staff to be rostered with experienced gaming room staff for their first few shifts;
 - (iii) all staff being required to attend a minimum of two Gambler's Help training sessions annually to assist with learning new RSG initiatives and refreshing their knowledge;
 - (iv) staff will be required to maintain a working knowledge of persons who are on the Premises self-exclusion list, actively monitor the area and be vigilant for detection of breaches. At the start of every shift, gaming staff are required to review photographs of individuals on the venue's self-exclusion register and certify having done so;
- (c) maintenance of an RSG register, encouragement of breaks in play and the presence of three dedicated floor walkers at all times will further assist to ensure RSG is achieved; and
- (d) the ongoing involvement of Mr Jeynes through auditing, ensuring RSG compliance and providing advice to the venue as to best practice.

174. As discussed in paragraph 153, Mr Atkinson submitted that venue specific factors such as RSG compliance at the venue, venue design and staff training can reduce the level of gaming expenditure that might be attributable to problem gambling. He submitted that, with approximately 40% of expenditure being linked to problem gambling, more than \$1 billion in expenditure in Victoria could be attributed to problem gambling every year, despite the best efforts of venues following effective RSG procedures¹¹⁹. He also noted that, given the EGM

¹¹⁸ Paras 172(c) - 172(d), NBA Report, page 62, para 183.

¹¹⁹ Amended SGS Report, page 35, table 10.

entitlements will potentially outlast staff, management and venue owners, there is no reason to believe a highly effective RSG regime at present will remain the case into the future¹²⁰.

175. Mr Atkinson ultimately concluded that, when considered in the context of the accessible location of the venue, the late hours and the high number of machines, the expenditure associated with problem gambling was likely to account for 42.5% of new expenditure.

The Commission's view

176. The Commission finds that, if granted, this Application will result in a new venue being established with 100 EGMs, and that this will be associated with new expenditure of between approximately the amounts set out at paragraph 100 above. The Commission considers there is too much uncertainty regarding the exact percentage of expenditure that will be attributable to problem gambling, but accepts that it could be somewhere between the Productivity Commission's 40% range estimate (adopted by Mr Anderson) and Mr Atkinson's estimate of 42.5%.

177. Further, largely in line with the experts' views, the Commission notes:

- (a) the 2016 SEIFA indices for the Catchment Area are generally positive, indicating of lack of disadvantage;
- (b) there is a generally positive socio-economic profile in the Catchment Area in terms of both general indicators of social and economic status and specific indicators with a higher representation amongst problem gamblers; and
- (c) the Premises will not be in a major activity centre and therefore would not be regarded as a convenience venue.

178. The Commission must form a view as to the likely effect on the community of the municipal district of the City of Casey post January 2023 were the Application to be granted. While accepting that the Catchment Area from which patrons are likely to be primarily drawn is a 5 kilometre radius surrounding the Premises, the Commission accepts the evidence of Mr Atkinson regarding the impact of the Application on an extended catchment area in the circumstances. In particular, the Commission has regard to the fact that the area to the west of the Premises within Mr Atkinson's secondary catchment shows significant disadvantage. The Commission remains concerned that the Premises might present a potential risk of an increase in incidence and impact of problem gambling to residents from the more disadvantaged Cranbourne East area, which is in the extended catchment area.

¹²⁰ Amended SGS Report, page 35, table 10.

179. The Commission also accepts Mr Cummings' submission that residents in the City of Casey are prepared to drive 15 – 20 minutes to get to retail and entertainment facilities given a general lack of those facilities in the region, which further indicates that the broader City of Casey should be considered for the purpose of this assessment.
180. The Commission notes the dramatic increase in population projected for Clyde North and accepts the evidence of Mr Anderson that this could drive down the EGM density in the City of Casey. However, the Commission finds that the scale of the projected population growth leads to a great deal of uncertainty about the demographic profile of the population in the future, particularly when considering the effect on the community in 2023 and beyond which is the time by which the Premises is proposed to be established. To a certain extent, the Commission accepts the argument of Mr Atkinson that population growth could see changes to the demographic profile of the area that potentially increase the vulnerability of the Catchment Area to the effects of problem gambling.
181. In relation to the design and management of the Premises, the Commission is satisfied that responsible gambling and harm minimisation initiatives to be employed by the Applicant may contribute towards mitigating the potential harm caused by problem gambling. However, the Commission notes its earlier finding regarding the Premises consistency with the Children's Play Area Ministerial Guidelines and the Applicant's stated intention of attracting families with teenaged children to the Premises which is somewhat contradictory with the guidelines objectives of ensuring the wellbeing of minors and that they are not exposed to gambling and the minimisation of harm. This Commission also notes the Applicant's intention of attracting a younger demographic, a demographic which is considered to be a risk factor for problem gambling, through the virtual reality and bowling alley facilities. The Commission considers these factors could counteract the harm minimisation initiatives to be employed by the Applicant to a certain extent.
182. The Commission also notes that the Applicant's evidence primarily centred on policies and processes, with less evidence as to the successful implementation of RSG measures by the Applicant. The Commission notes that the compliance history of Castello Group venues shows some non-compliance at those venues since the parent company of the Applicant assumed control but not to the extent that it would necessarily raise compliance concerns.
183. The Commission also notes that the Applicant's original proposal was to trade until 4 am in the gaming room during which time the family sports bar would also be open¹²¹. The operation of

¹²¹ At the Hearing, the Applicant amended the proposal to replace the family sports bar with the café as the other use at the Premises that was open until 4 am with gaming room.

another entertainment use at the Premises whilst the gaming room is in operation was a mitigating factor for Mr Anderson regarding gaming at the Premises in the early hours of the morning, which is considered to be a high-risk time for problem gambling. At the Hearing, the Applicant amended the proposal to swap the family sports bar with the café as the second entertainment use at the Premises while the gaming room is open. The café would have screens showing sport and food available.

184. The Proposed Conditions reduced the trading hours in the gaming room to close at 2 am. The Commission finds that the reduced trading hours would also act to reduce the risk of harm arising from problem gambling to a certain extent.
185. However, the Commission remains concerned that, even with the reduced trading hours, the staff levels (including additional three floor walkers) and competency of management, the scale of the venue with 100 EGMs and the prominence of the Premises in an area without many other facilities for entertainment may make the Premises potentially more attractive to problem gamblers and those at risk of problem gambling behaviours.
186. Consequently, the Commission finds that there will be an economic disbenefit associated with problem gambling as a result of this Application, on which it places a low to moderate weight. Issues associated with the negative social impacts associated with problem gambling are considered further in paragraphs 218 to 220 below.

Potential diversion of trade from retail facilities

187. In the NBA Report, Mr Anderson referred to VCGLR guidelines which state that a proposal (for an EGM increase or new premises) could divert non-gaming expenditure within the community. He said that the Premises will be a destination venue and it will offer a broad range of facilities, some of which are not on offer anywhere else outside of Melbourne City Centre¹²². At the Hearing, he noted that there is not a lot of trade to divert from at the moment and very few cafes or bistros within the 2.5 kilometre catchment, but looking toward the projected population on completion of the Premises, there will be additional trade or commercial uses that will be impacted by the Application if approved.
188. At the Hearing, Mr Giustiniano gave evidence that the unique nature of the offering associated with the Premises will lead to a projected expenditure of \$9.75 million on non-gaming services and facilities at the Premises once it is established, however he did not put this in terms of the potential economic disbenefit to the municipality.

¹²² NBA Report, page 72 – 73, table 8.3.

189. In the qualitative assessment in the Amended SGS Report, Mr Atkinson expressed the view that the majority of EGM expenditure in Victoria displaces expenditure that would otherwise have occurred elsewhere, rather than being drawn from savings. He noted that expenditure diverted to EGMs will be diverted away from local retailers who will be competing for a smaller pool of local expenditure as a direct result of the Premises if the Application is approved¹²³.
190. The Commission notes evidence of Mr Giustiniano at the Hearing, and in the NBA Report, that he had received feedback from the Brown Property Group that the potential development of the Premises had attracted some other commercial operators to invest in the area as well. This indicates that the detriment to neighbouring retail uses from the development of the Premises could be offset somewhat by the fact that that new retail operators may have been inspired to establish in the community due to the Premises.
191. The Commission notes its earlier findings with regard to the significant complementary expenditure of \$9.75 million and new expenditure of approximately \$4.17 million in the first year of operation if the Application if approved. The Commission accepts the view of Mr Atkinson that expenditure on EGMs is likely to be diverted from other facilities and not necessarily from transferred EGM expenditure. The Commission therefore finds that the potential maximum impact could be high, but not as high as the combined expenditure associated with EGMs and complementary expenditure due to the population projections which will indicate that some of the new expenditure will be drawn from new residents to the area (see discussion above).
192. In terms of the impact on local retailers in the municipality, the Commission accepts that any diversion of trade is likely to be spread across a wide number of retail facilities and is unlikely to materially impact any single retail facility. However it notes that currently there are not many competing retailers in the Catchment Area from which to divert trade and that other trade may be established at a similar time to the Premises at a level which would be their baseline rather than at a reduced level caused by diversion of trade. As such, the Commission finds that there would be an economic disbenefit associated with the diversion of trade from retail facilities within the City of Casey as a result of this Application, on which it places marginal weight.

Potential diversion of trade from other gaming venues

193. The potential for diversion of trade from other gaming venues is acknowledged by the Commission to be a disbenefit associated with an application of this nature. Mr Clyne gave evidence that the Premises would cause a diversion of trade, in the form of transferred expenditure, from other gaming venues within the municipality, the Commission's view of which

¹²³ Amended SGS Report, page 57, paras 350 – 351.

is summarised above at paragraph 101. As stated in the PVS Report, the greatest impacts are predicted to be on the following venues within the Premises Trade Area:

- (a) Berwick Springs Hotel (-24.89%)
- (b) Motor Club Hotel (-11.40%)
- (c) Cranbourne RSL (-10.58%)¹²⁴.

194. Mr Anderson's view is that the introduction of a new gaming venue to a municipality that does not have a high concentration of EGMs is not envisaged to have a detrimental impact on existing gaming venues in the wider area. He considered the impact of the transferred expenditure on those venues within the catchment area is normal in a competitive marketplace¹²⁵.
195. In his qualitative assessment in the Amended SGS Report, Mr Atkinson notes that there is expected to be a significant reduction in expenditure in nearby gaming venues if the Application is approved. He considered that the diversion of trade for EGM venues in the City of Casey will lead to a significant loss of EGM revenues and potential reduction in complementary expenditure, supply contracts and labour surplus which, for these venues, will be a net detriment¹²⁶.
196. In relation to the detriment associated with the potential diversion of trade from other gaming venues, the Commission refers to, and relies on, its findings at paragraph 101(c) regarding the anticipated transferred expenditure from other gaming venues. The Commission accepted the Geotech model estimate of 75% transferred expenditure which equates to approximately \$12.216 million being lost from other gaming venues in the region (including from outside the municipality). This is a considerable figure that may have a detrimental economic impact on those competitor venues.
197. However, having also accepted the submission of Mr Atkinson regarding the likelihood that a diversion of trade from nearby gaming venues will create additional capacity to accommodate additional patrons, combined with the population growth projections leading to some confidence that new residents will come into the area to play EGMs at the existing venues, the Commission finds that the detriment associated with this impact is of marginal weight.

¹²⁴ PVS Report, page 16, table 4.

¹²⁵ NBA Report, page 72, para 8.3.

¹²⁶ Amended SGS Report, page 57, paras 353 – 356.

Conclusion on economic impacts

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

Social Impacts

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

Development of a new premises

200. Ancillary to the capital works expenditure that will occur if this Application is granted, the development will result in new facilities being available to the community. Access to such facilities is an outcome which the Commission¹²⁷ and VCAT¹²⁸ have regularly determined is a positive social impact associated with applications of this nature.

201. The nature of the new facilities associated with the Premises appears in detail in paragraphs 41 to 42 above. Mr Giustiniano gave evidence that the Applicant is seeking to create a quality Premises, unlike any other facility in Melbourne with the exception of Crown Casino, having particular regard to the virtual reality and bowling alley in the family fun zone. Mr Anderson agreed that the proposed Premises offers a broader than usual range of alternate uses within a single complex noting the many forms of leisure pursuits for the local community including entertainment zones for all ages, ten-pin bowling lanes and virtual gaming (golf, baseball), a bistro, function room and sports lounge¹²⁹. He attached significant weight to the entertainment outlet and range of services associated with the Premises.

202. In his qualitative assessment of impacts in the Amended SGS Report, Mr Atkinson considered the social impact of the new facilities. He said that these facilities will undoubtedly bring important benefits to the local community, with the benefits being most significant in the first years after operation commences¹³⁰. However, he also submitted that the impact should be assessed against a scenario where the proposal is not approved yet demand from new residents for hospitality and entertainment facilities will trigger the establishment of similar venues. He nevertheless considered that the proposal is likely to lead to a significant

¹²⁷ See, for example, *Glenroy RSL Sub-branch Inc at Glenroy RSL premises* [2015] VCGLR 40 (22 October 2015).

¹²⁸ See, for example, *Bakers Arms Hotel Pty Ltd v Victorian Commission for Gambling and Liquor Regulation* [2014] VCAT 1192.

¹²⁹ NBA Report, page 70, para 8.2.

¹³⁰ Amended SGS Report, page 50, para 269.



enhancement of entertainment options available in the region with both current and future residents benefitting. He assessed this impact as moderately beneficial¹³¹.

203. The Commission finds that the Premises will be an unmatched offer for a growing local community which is currently devoid of entertainment and hospitality options. The Commission finds the proposal is not that of a standard venue but is superior in terms of offerings the area needs and contains a variety of unique attractions. While the Commission agrees with Mr Atkinson's argument that, in the absence of approval of this Application, development of an alternative hospitality and recreation option will occur, the Commission has no certainty that it will be as varied in its entertainment offering as the proposed Premises.
204. The Commission refers to its findings in paragraph 110 above that the development of the Premises will only proceed if this Application is approved and it is therefore appropriate to consider the social benefits arising from the community's access to, and use of, the new facilities as benefits of this Application. As such, the Commission finds that approval for EGMs at the Premises will enable the Applicant to develop the other facilities at the Premises and enable a greater range of services to be offered to the community. The Commission regards access to such facilities and greater range of services as a positive social impact, upon which it places a moderate weight.

Increased gaming opportunities for those who enjoy gaming

205. It has been recognised by the Commission and VCAT that a benefit associated with an application of this nature, related to the economic benefit of increased competition, is the social benefit that arises from there being increased gaming opportunities for those who enjoy gaming.
206. In the NBA Report, Mr Anderson submitted that the Premises would be the first venue operating in Clyde North which is an area experiencing substantial population growth. There are currently no gaming venues in this part of the City of Casey, with the closest venue being 4.5 kilometres away in Berwick. He therefore considered that the Premises would provide additional opportunities and choice to gaming patrons in the catchment area and that currently, demand for gaming likely outstrips supply¹³².
207. In the Amended SGS Report, Mr Atkinson submitted that, for the proportion of EGM users who are non-problem gamblers, the EGMs at the Premises represents an expansion of the region's recreation and entertainment offer and these individuals use should be considered a social benefit. Specifically, considering the impact of the new expenditure associated with the

¹³¹ Amended SGS Report, page 50, paras 270 – 274.

Application, Mr Atkinson assessed the social benefit linked to non-problem gamblers using EGMs within that new expenditure to be moderate¹³³.

208. Having regard to the evidence and submissions made with respect to increased gaming competition in the City of Casey and in view of the evidence as to gaming expenditure set out in paragraphs 82 to 102 above, the Commission finds that granting approval of the Application will better serve the needs of gaming patrons through providing an additional venue at which they may choose to play EGMs in a growing community.
209. The Commission notes the relatively low density of EGMs in the City of Casey. An addition of 100 EGMs at the Premises, if approved, will be a social benefit for people who enjoy gaming without causing harm to themselves or others. The Commission further notes that there are 13 gaming venues within the municipality and a higher number of adults per venue than the metropolitan Melbourne and State average. The Commission finds that there are few venues within the Catchment Area, however it also notes the evidence that the Premises is proposed to be located in an area where people travel predominantly by car and therefore may attend the Premises from areas farther afield than the Catchment Area. The Commission is mindful not to double count the benefit of the new Premises considered above at paragraphs 200 to 203 above. Overall, the Commission considers the increased opportunity for gaming in the City of Casey associated with a new Premises with 100 EGMs to be a social benefit on which it places marginal weight.

Social benefit derived from community contributions

210. Related to the economic impact associated with community contributions detailed in paragraphs 138 to 141, such contributions can also have a positive social impact by improving the social fabric of the community in which they are made. In assessing the weight to be placed on such a benefit, it is important that the Commission does not conflate this benefit with the economic benefit associated with such contributions.
211. The Applicant gave evidence as to the community contributions that would result from this Application. Summarising the evidence of Mr Giustiniano and Mr Anderson, if the Application were approved, the Applicant would:
- (a) for as long as any of the 100 EGMs are in operation of the Premises, contribute \$80,000 per annum to local community groups, junior sporting teams and local community focussed programs based on the specific needs of the community each year;

¹³² NBA Report, page 42, paras 105 – 107.



- (b) provide meetings rooms for community organisations free of charge (as distinct from the function rooms which are available for hire); and
- (c) in-kind contributions equivalent to \$250,000 per year, as commonly made at all Castello Group venues. The in-kind contributions comprise free hire of function and board rooms, meal and drink discounts and gift vouchers for local community groups and schools.

The community cash contributions would be distributed by venue management in consultation with the Council. Specific recipients have not been identified at this stage.

212. Despite having not had the benefit of the value of the proposed annual cash contribution before him when he prepared the original NBA Report and social and economic impact assessment, at the Hearing, Mr Anderson said that he did not adjust the weighting of 'moderate' that he attributed to this impact after the Applicant committed to the figure of \$80,000 per year. However, Mr Anderson said that he noted it was an improvement.
213. At the Hearing, Mr Giustiniano responded to questions from Council regarding the potential for there to be a corollary benefit to the Applicant arising out of cash and in-kind contributions. Mr Giustiniano agreed that sponsorship or vouchers to a footy club, for example, would encourage people to come to the venue which helps the profile of the venue and is, in a sense, a marketing tool.
214. The Amended SGS Report was prepared prior to the Applicant's proposal to include a specific community cash contribution of \$80,000. Mr Atkinson nevertheless undertook his quantitative assessment of economic impacts assuming a cash contribution of \$150,000 would be payable. With respect to the social impact, Mr Atkinson acknowledged that the Applicant's pledge to provide cash contributions to community groups would be a benefit to the local community, however he was not able to attribute any weighting to the benefit¹³⁴.
215. The Commission notes the significance of any community contributions is assessed on the effect on the community. The Commission notes that in this matter, there is some uncertainty about such an effect, given the lack of evidence as to how such cash contributions would assist particular community organisations in the City of Casey. However, the Commission accepts the proposed community contributions will have a positive social impact. The Commission is further satisfied that the contributions will only occur if the Application is granted.

¹³³ Amended SGS Report, page 51, paras 279 – 279.

¹³⁴ Amended SGS Report, page 51, para 281.

216. With respect to the social benefit associated with the in-kind contributions, it is unclear whether the complementary meeting rooms for the community are included, or in addition to, the in-kind contributions, given Mr Giustiniano also said these would include free meeting room usage. Therefore, the Commission is not sure whether to assess the provision of free meeting rooms as a separate social impact to those in-kind contributions equivalent to \$250,000. While agreeing with Mr Giustiniano and Mr Anderson that in-kind contributions are a social benefit, the Commission also accepts the position of Council that they also serve a marketing benefit for the Applicant. This reduces the weight that the Commission places on the social benefit associated with the in-kind contributions to some extent.
217. Having regard to the community contributions that will occur (including both cash and in-kind contributions), and that these contributions will be made to community groups operating in the City of Casey, the Commission considers these contributions to be a positive benefit to which it attributes a marginal weight.

Possibility of increased incidence and impact of problem gambling on community

218. Wherever accessibility to EGMs is increased there is always a risk of an increase in problem gambling, which leads to other costs such as adverse health outcomes, relationship breakdowns, emotional harms and other social costs. Accordingly, the Commission accepts there is potential for negative social costs through possible increased problem gambling.
219. The Commission refers to and relies upon, the evidence set out in paragraphs 147 to 186 with respect to the economic impact of problem gambling on the community.
220. The Commission notes the evidence of Ms Petrides regarding the growth of Cranbourne and the population of highly disadvantaged people she works with. At the Hearing, Council called Ms Petrides to give evidence in relation to the impact of the Application from the perspective of CISS who provide information and crisis support services to the Casey South community.
221. Ms Petrides summarised her observations regarding the community's vulnerability to the harms associated with problem gambling that she has witnessed in her 21 years as executive officer of CISS with the existing gaming venues in the area. Ms Petrides acknowledged that the other facilities proposed at the Premises would be greatly welcomed by the community. However, she noted that there are 290 EGMs within 8.9 kilometres of the proposed Premises and said that the population CISS works with is highly disadvantaged with many relying on CISS for support for food, counselling and financial counselling, many in cases where gambling on EGMs is causing problems in their lives. Ms Petrides said that things are "getting worse" and provided examples to indicate the impact of problem gambling on the community is wide.

222. Ms Petrides and the Springvale Monash Legal Service (**SMLS**) also expressed concern about the potential for an increased incidence and impact of problem gambling on family violence in the City of Casey. The SMLS submitted that family violence is a serious issue in the City of Casey which has the highest actual numbers of family violence-related recorded incidents in Victoria, citing figures for 2019¹³⁵.
223. The Commission acknowledges that there is an emerging body of research regarding the links between problem gambling and family violence, and accepts that some research has established a correlation at the postcode level between gaming machine density and incidents of police-recorded domestic violence. The Commission notes that the EGM density in the Catchment Area and City of Casey is low, however the evidence from SMLS suggests family violence is a problem in the City of Casey. While it acknowledges the emerging research in the area regarding family violence, and supporting further work in this area, the Commission is not satisfied that the available evidence establishes a causal link between EGMs and family violence such as would support a finding that an impact of this Application would be an increase in existing levels of family violence.
224. Overall, the Commission finds that this Application will result in a new venue being established with 100 EGMs, and that this is estimated to be associated with new expenditure as summarised in paragraph 101(d) above. In the Commission's view, this is a considerable level of new expenditure and it could increase as the Premises' attracts new patrons, particularly associated with the projected population increase. The Commission accepts that approximately 40% of this new expenditure will be associated with problem gambling.
225. The Commission notes that the evidence prepared and considered by all parties to the Application at the Hearing, and Council's closing submissions were made in consideration of the gaming room being open until 4 am when only one other facility – the café – as opposed to the sports bar, would be also be open. The Commission finds the potential for an increased risk of incidence and impact of problem gambling is associated with gaming in the early hours of the morning and therefore the Applicant's proposal to reduce the gaming room hours to close at 2 am mitigates the risk associated with this Application to a certain extent.
226. However, as noted above, the Commission finds that while the Catchment Area surrounding the Premises is not particularly disadvantaged, there is level of vulnerability to problem gambling in the wider surrounding area including Cranbourne East which is a relevant concern in an outer urban area where residents rely on cars and there are few hospitality and entertainment options.

¹³⁵ Submission of Springvale Monash Legal Services, page 8.



Further, the Commission finds there is uncertainty surrounding the likely vulnerability of the demographic profile of the Catchment Area in future years noting the projected population growth and accepting Mr Atkinson's evidence that the existing population profile may not necessarily remain as it was in 2016 when the relevant SEIFA indices considered in this Application were prepared.

227. The Commission is therefore of the view that granting this Application has the potential to increase the incidence and impact of problem gambling in the City of Casey. As such, the Commission accepts that the disbenefit associated with the possibility of increased incidence of problem gambling is a negative social impact upon which it places moderate weight.

Community attitude

228. As was determined in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd and Anor*¹³⁶, the Commission recognises that while community apprehension is not an overriding factor (in the sense that the Application is not a referendum on gaming), it is certainly a relevant factor in the consideration of particular social impact as part of the 'no net detriment' test.

229. The evidence before the Commission indicates that there is a negative community attitude to the Application. In summary:

- (a) the Council, as the representative body of the relevant community and charged with statutory duties under various pieces of legislation, has made a submission in opposition to the Application and appeared at the Hearing. Council called Ms Petrides of CISS to give evidence at the Hearing¹³⁷;
- (b) five submissions were received by the Commission from local individuals concerned with the likely impacts of the Application such as the developing nature of the local community, the demographic consisting of young families with mortgages, inconsistency of the proposal with the Children's Play Area Ministerial Guidelines and the accessibility and attractiveness of the proposal to people beyond the immediate area;
- (c) seven submissions were received by the Commission from local community organisations and associations, described at paragraph 29 above, concerned about the likely impacts of the Application on gambling-related harms and an increase in demand for their services due to the vulnerability of the community due to mortgage stress, high rates of family

¹³⁶ *Romsey* (2008) 19 VR 422, [44] per Warren CJ, Maxwell P and Osborn AJA. See also *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101, [73] per Dwyer DP.

¹³⁷ See also *Branbeau Pty Ltd v Victorian Commission for Gambling Regulation* [2005] VCAT 2606 at [42]; *Romsey #2* [2009] VCAT 2275 at [249] and [288]-[321].

violence, high rates of residents speaking a language other than English at home, high rates of child protection applications and high rates of mental illness and drug dependence; and

- (d) as noted above at paragraph 31 above, one member of the public, Mr Cummings gave evidence before the Commission and was questioned by the Applicant, Council and the Commission; and
- (e) one petition was received in support of the Application signed by 25 individuals, 20 of whom reside in the local area. At the Hearing, the Applicant informed the Commission that the information about the Application that is contained on the petition had been drafted by the Applicant's lawyers and disseminated by an employee of the Applicant's lawyers who lives in the local area.

230. The Commission understands that Council conducted its own community consultation process and that 68 submissions were made in opposition to the Application, which Council submits was transparent, measured and objective, and provided details. While the Commission did not receive the submissions, an analysis of these submissions appears in the Amended SGS Report, and the Addendum NBA Report. Council submitted that the outcome of the community consultation process shows a substantial number of submitters have concerns regarding the Application.

231. At the time of writing the NBA Report, most of this community attitudinal evidence was not available to Mr Anderson. However, the NBA Addendum Report includes a response to the community submissions received by City of Casey in response to its advertising of the planning application associated with this Application. Mr Anderson notes that the submissions prove there is some community resistance to the proposal and that some people in the community are strongly opposed to EGMs. In his view, 68 objections from the overall City of Casey population adjoining municipalities and community service providers is not a high proportion of community opposition¹³⁸.

232. In his qualitative assessment of impacts, Mr Atkinson assessed the community attitude to the proposal as being a low to moderate detriment associated with the Application. He considered the community submissions made to the Commission and Council through the planning application consultation process. In summary, he noted that those who opposed the Application were concerned it would bring damaging effects to a vulnerable community and that the area is already scoring as second highest in Victoria for gambling losses. Community submissions in

support of the Application focussed on the business that it would bring to the local community but did not consider the overall impact¹³⁹. At the Hearing, Mr Atkinson said that he considered the petition in support of the Application to be the equivalent of one individual submission.

The Commission's view

233. In relation to the submissions received specifically by the Commission, the Commission finds that the submissions in opposition to the Application were not simply in opposition to EGMs in general but related to the specific Application in question. The Commission considers that the level of opposition to this Application reflects a strong concern that the community of Clyde North and neighbouring suburbs in the City of Casey are vulnerable to harms associated with problem gambling due to the many young families with mortgages and the high rates of family violence. The Commission did not place any weight on the petition in support of the Application given the circumstances in which it was obtained.

234. Overall, the Commission is of the view that the matters listed above at paragraph 229 represent a negative attitude by the community of the City of Casey to this Application. In the circumstances, the Commission considers it appropriate to attribute low weight to this impact.

Conclusion on social impacts

235. After considering the social benefits of the proposal and balanced against the detriments, the Commission considers that, on balance, there is likely to be a negative social impact associated with the Application.

NET ECONOMIC AND SOCIAL IMPACT

236. The '*no net detriment*' test in section 3.3.7(1)(c) of the Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive¹⁴⁰.

237. According to Mr Anderson, there will be a net social and economic benefit to the local community of the Clyde North growth area and surrounding areas of the City of Casey if the Application is approved. Mr Anderson accepted that a disbenefit of the Application is the potential for increased problem gambling and that expenditure associated with this is likely to be

¹³⁸ NBA Addendum Report, page 11, paras 14 – 16.

¹³⁹ Amended SGS Report, page 52, paras 296 – 301.

40% of the new expenditure projected in the Geotech model estimate. However, he is of the view that the likelihood of such increase is minimised due to the key protective factors of the location, the venue catchment patron profile, the venue design and proven commitment to RSG by the Castello Group, of which the Applicant is a part, over a sustained 30 year period as well as the intention to appoint Ms MacLennan as venue manager.

238. Mr Atkinson for Council did not agree with this conclusion. Relying on the quantitative and qualitative analyses he performed in relation to the Application, Mr Atkinson ultimately concluded that the proposed venue, if approved, is likely to result in a net detriment to the community. Mr Atkinson considered that the benefits associated with capital works would not necessarily vest in the City of Casey and that complementary expenditure is likely to be drawn from other retail and gaming uses which would counterbalance that benefit. While noting the creation of a new venue, expansion of gaming options and recreational pursuits in the region is a benefit, Mr Atkinson is not convinced that it would not occur if the Application was refused due to the population increase and likely demand for facilities such as these from the new residents. In relation to the harms associated with problem gambling, Mr Atkinson concluded that the social and economic cost to the community over the 20 year evaluation period he adopted is in the order of \$15.4 million.
239. After consideration of the material before it, including the evidence provided at the Hearing, and weighted as outlined above and summarised in tabular form at Appendix One of these Reasons for Decision, the Commission has concluded that there is likely to be a net negative social and economic impact to the well-being of the community in the municipal district in which the Premises are located if the Application is approved.

CONCLUSION

240. On the material that has been put before it, the Commission has determined that the ‘*no net detriment*’ test has not been satisfied and, pursuant to section 3.3.7(1), the Commission must not grant the Application. The Commission is therefore not required to exercise its discretion as to whether or not to grant the approval.
241. The Application is therefore refused.

The preceding 241 paragraphs are a true copy of the Reasons for Decision of Ms Helen Versey, Deputy Chair, and Mr Des Powell AM, Commissioner.

¹⁴⁰ *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation & Ors.* [2013] VCAT 101, [52] per Dwyer DP.

Appendix One

Summary of social and economic impacts

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

Economic impacts

	Impact	Paragraph Reference	Comments relevant to weight
Benefits	<i>Gaming expenditure not associated with problem gambling</i>	<i>81 to 103</i>	<i>The portion of new expenditure not attributable to problem gambling is an economic benefit. As a result of the anticipated transfer rate of 75%, the extent of new expenditure at the Premises is expected to be low to moderate. Low weight.</i>
	<i>Expenditure on capital works</i>	<i>104 to 113</i>	<i>The development of the Premises including the fit out is estimated to cost \$22 million. The extent of the expenditure on capital works is significant but there is no certainty as to the extent to which the expenditure will be retained in the City of Casey because it will be put out to tender. Marginal weight.</i>
	<i>Employment creation</i>	<i>114 to 123</i>	<i>The Applicant submitted that the Application will result in the creation of 60 FTE jobs (across 90 positions) at the Premises, including 23 FTE positions in the gaming room. Low weight.</i>



	<p><i>Complementary expenditure</i></p>	<p>124 to 132</p>	<p><i>The Applicant estimated that complementary expenditure would be in the realm of \$9.765 million once the venue is established, which will be after 2023.</i></p> <p><i>The Commission accepts there will be substantial complementary expenditure but there is a level of certainty as to what extent this would generate increased economic activity at the Premises and within the local area because of expenditure being transferred from other gaming and non-gaming venues in the City of Casey.</i></p> <p><i>Marginal to low weight.</i></p>
	<p><i>Supply contracts</i></p>	<p>133 to 137</p>	<p><i>No estimates were provided as to the likely cost of building and maintenance contracts.</i></p> <p><i>A level of uncertainty exists as to which supply contracts would be retained in the City of Casey or which.</i></p> <p><i>Nil to marginal weight.</i></p>
	<p><i>Community contributions of \$80,000 per year</i></p>	<p>138 to 141</p>	<p><i>The proposed community contributions are an increase of \$80,000 per annum as long as the EGMs are in operation at the Premises.</i></p> <p><i>While the exact recipients are at this stage unknown, these contributions will result in a positive economic impact on community groups operating in City of Casey.</i></p> <p><i>Marginal weight.</i></p>
	<p><i>Increased gaming competition in the City of Casey</i></p>	<p>142 to 146</p>	<p><i>The Application will increase gaming competition in the City of Casey by providing an additional venue at which patrons may choose to play EGMs and noting the low EGM and gaming venue density in the City of Casey.</i></p> <p><i>Marginal weight.</i></p>



Disbenefits	<i>Gambling expenditure associated with problem gambling.</i>	147 to 186	<p><i>The portion of new expenditure attributable to problem gambling is an economic disbenefit.</i></p> <p><i>The socio-economic profile of the Catchment Area of the Premises indicates a lack of disadvantage, although there is significant disadvantage in the wider catchment, particularly in Cranbourne East.</i></p> <p><i>Even with RSG practices and protective measures at the Premises, the Commission remains concerned that the Premises will attract problem gamblers and those at risk of problem gambling.</i></p> <p>Low - moderate weight.</p>
	<i>Potential diversion of trade from retail facilities.</i>	187 to 192	<p><i>Maximum impact of the potential diversion of trade from retail facilities in the municipality could be equal to predicted new expenditure arising from this Application and further new expenditure from new residents that has not been estimated.</i></p> <p><i>Any diversion of trade is likely to be spread across a wide number of retail facilities and unlikely to materially impact any single retail facility.</i></p> <p><i>Marginal weight.</i></p>
	<i>Diversion of trade from other gaming venues</i>	193 to 197	<p><i>The Commission concluded that while transferred expenditure could be as high as 75% in the first year of the Premises' operation, which impact on other gaming venues.</i></p> <p><i>Marginal weight.</i></p>



Social impacts

	Impact	Paragraph Reference	Comment relevant to weight
Benefits	<i>Development of a new venue in Clyde North</i>	<i>200 to 204</i>	<p><i>The Application includes a proposed development of the Premises to include many facilities unique to the area that will result in a social benefit to the community of City of Casey.</i></p> <p><i>EGMs at the Premises will enable the Applicant to develop the Premises and enable a greater range of services for a growing community.</i></p> <p><i>Moderate weight.</i></p>
	<i>Increased gaming opportunities for those who enjoy gaming</i>	<i>205 to 209</i>	<p><i>The Application will better serve the needs of gaming patrons through providing an additional venue at which they may choose to play EGMs in a growing community.</i></p> <p><i>Lower density of gaming venues and the EGM in the Catchment Area and the City of Casey when compared to metropolitan Melbourne and Victoria.</i></p> <p><i>Marginal weight.</i></p>
	<i>Social benefit derived from increased community contributions</i>	<i>210 to 217</i>	<p><i>The Applicant proposes community contributions, provision of function rooms to community groups free of charge and in-kind contributions similar to that provided at all Castello Group venues.</i></p> <p><i>Uncertainty as to how the cash contributions would assist particular community organisations in the LGA. The Commission is however satisfied that the contributions will be made to community groups operating in the LGA and will be a positive social benefit.</i></p> <p><i>Marginal weight.</i></p>



<p>Disbenefits</p>	<p><i>Possibility of increased incidence and impact of problem gambling on community</i></p>	<p>218 to 227</p>	<p><i>A proportion of total gaming expenditure at the Premises will be associated with problem gambling at the Premises.</i></p> <p><i>The socio-economic profile of the Catchment Area indicates a lack of disadvantage, although with significant disadvantage nearby in Cranbourne East and a mixed profile in terms of general indicators of social and economic states and indicators with a higher representation amongst problem gamblers.</i></p> <p><i>In this context, for a venue with 100 EGMs, even with RSG practices and protective measures at the Premises including the reduced trading hours, the Commission remains concerned that the Premises will attract problem gamblers and those at risk of problem gambling.</i></p> <p><i>Moderate weight.</i></p>
	<p><i>Community attitude</i></p>	<p>228 to 234</p>	<p><i>There were a number of individual submissions to the Commission in opposition to the Application from individuals, businesses, associations and community organisations, and a video made by members of the community. There was a petition signed by people in support of the application.</i></p> <p><i>Overall, the Commission is satisfied that there is a negative attitude by the community of the City of Casey with respect to the Application.</i></p> <p><i>Low weight.</i></p>