



## Victorian Commission for Gambling Regulation

<b>DECISION AND REASONS FOR DECISION</b>
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In the matter of the *Gambling Regulation Act*  
2003

- and -

In the matter of an application under section  
3.3.4 of the *Gambling Regulation Act* 2003 by  
Pakenham Lakeside Hotel Pty Ltd for  
approval of premises at the Lakeside Hotel,  
Lakeside Boulevard, Pakenham as suitable for  
gaming with sixty (60) gaming machines.

### **DECISION**

**Commission:** Mr I. Dunn, Chair  
Mr P. Cohen, Executive Commissioner  
Mr R. Smith, Sessional Commissioner

**Decision:** The application is refused.

(Sgd.) I. Dunn

## REASONS FOR DECISION

**Date: 26 June 2008**

**Mr I. Dunn, Chair**

**Mr P. Cohen, Executive Commissioner**

**Mr R. Smith, Sessional Commissioner**

1. On 3 July 2007 Pakenham Lakeside Pty Ltd applied to the Commission for approval of premises at the Lakeside Hotel, Lakeside Boulevard, Pakenham as suitable for gaming, with sixty (60) electronic gaming machines (“egms”).

### THE LEGISLATION

2. The legislative provisions governing this application are found in the *Gambling Regulation Act 2003* (the Act). Section 10.1.20 (1) of the Act provides that the Commission may hold inquiries for the purpose of the exercise of its functions under the Act. Section 10.1.22(1) provides that the Commission may hold such inquiries in public or private. Sub-section (2) requires that inquiries for the purpose of making a finding or a determination relating, *inter alia*, to an application for approval of premises for gaming must be conducted in public unless the Commission determines that there are special circumstances requiring that the inquiry or part of it shall be held in private.

3. The matters to be taken into consideration by the Commission in making its determination are set out in section 3.3.7, the relevant parts of which are as follows –

*“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.” And*

4. Upon making an application the applicant is required by section 3.3.5, to notify the relevant authority, such notification to be provided by serving a copy of the application upon the responsible local government authority, which in this case is the Shire of Cardinia.
5. Section 3.3.6 provides that the relevant authority may make a submission addressing the economic and social impact of the proposal for approval, on the well-being of the community, and also taking into account the impact of the proposal on surrounding municipal districts.

## **THE BACKGROUND TO THIS APPLICATION**

6. The land, the subject of the application, is situated in Lakeside Boulevard, Pakenham, a very short distance south of Princes Highway. It was previously owned by Cardinia Shire Council (the

- Council). In 2004 the Council entered into a contract for the sale of the land to Prizac Investments and others. That contract was followed by a transfer of land dated 19 January 2006, a copy of which was produced to the Commission.
7. Remarkably, the land was sold with a restrictive covenant which provided that it could not be used for any purpose other than as a hotel as defined in the covenant. The wording of the covenant clearly contemplated that the hotel to be built on the land might include gaming.
  8. After entering into the contract of sale, Prizac Investments engaged Mr Richard Kenneth Stafford, then of the architectural firm Stafford Architects (an Adelaide firm) to prepare plans for the proposed hotel. Mr Stafford gave evidence before the Commission. It appears that when an application was made for a planning permit in June 2005, the Council failed to grant a permit within the prescribed time. Prizac then sought review at VCAT but before the review could take place the Council determined to refuse the proposal. At that time the grounds for refusal appear to have been, essentially, that the proposal amounted to an overdevelopment of the site and that there would be inadequate parking. A further issue was the possible impact on the operation of the adjoining emergency services centre.
  9. The matter proceeded to its review at VCAT over a period of six days in April and June 2006. On 17 August 2006 VCAT upheld the decision of the Council to refuse to grant the permit. See Prizac

- Investments v Cardinia SC[2006] VCAT 1687. Many issues are canvassed in the reasons for decision. The conclusion was that the permit should be refused on the basis that the proposal did amount to an overdevelopment of the site with ramifications for patron capacity, car parking and other issues including the impact upon emergency services traffic movements in Lakeside Link.
10. By the time this proposal has reached this Commission, Mr Stafford had prepared alternative plans for the hotel about which he gave extensive evidence at the Inquiry. The Commission cannot be concerned about the matters arising in the planning jurisdiction but notes that again the Council has refused a planning permit and that this refusal is to be the subject of a further review by VCAT later this year.
  11. Before proceeding to other matters, mention should also be made of another development which has occurred prior to this application.
  12. On 1 March 2006 this Commission considered an application by Cardinia Hospitality Proprietary Limited for approval of premises at 825 Princes Highway, Pakenham, as suitable for gaming with 80 egms. That applicant (part of the Castello's group) proposed that an existing gaming venue at Castello's Pakenham Hotel at 226 Princes Highway, Pakenham (some distance further east and closer to the centre of Pakenham) should be closed. Its 32 egms would be relocated in the new venue to be known as Pakenham Gateway Hotel,

- with an additional 48 egms being available to make up the approved number of 80.
13. This application was enthusiastically supported by the Council. Indeed, the Commission commented that in its submission to the Commission, the Council was more supportive of the application than any other Council submission with which we had then dealt.
  14. In its reasons for decision when approving the application, on 1 March 2006 the Commission commented that by reason of that application alone, egm expenditure in Cardinia would rise from \$362 per adult to \$510 per adult per annum, whilst pointing out that this figure was well below state and metropolitan averages.
  15. What must be understood is that the proposed Pakenham Gateway Hotel is situated extremely close to the subject site in the present application. Because it is contemplated that the Gateway Hotel will be set back somewhat from the highway, the precise distance between the building and the proposed building on the subject site with which we are dealing, was stated by various witnesses to be a variety of distances, but none of them exceed 200 metres. In other words, what is proposed is that before the venue with which we are now dealing can be constructed, another very large venue with 80 egms will have been erected and opened very close to the subject venue. In making these comments we do not ignore the fact that the Princes Highway will act as a “buffer” between the two proposed venues. The Gateway Hotel is proposed for the north side of the highway, whereas the

- subject venue is on the south side of the highway, and slightly into Lakeside Boulevard which runs off the highway. We do not minimise the importance of that buffer.
16. At the time of the Gateway Hotel application which was determined no mention was made by the Council of the fact that the Council had already entered into a contract for sale of the land which is now under consideration in this application, notwithstanding the restrictive covenant to which we have previously referred. We find it curious and of concern that the responsible officers at the Council would not have realised that the Commission might well be troubled by the possibility of two significant gaming venues within such close proximity. It is not altogether surprising that the Council decided to support the Gateway Hotel application, as there were some important additional benefits associated with that proposal. What is proposed is a hotel and motel to include 99 four star motel rooms. Obviously such a facility would be a boon for this developing part of Pakenham.
  17. The overall position of the Council does seem somewhat extraordinary. Having sold land for a specific development it is now apparently opposing the development of that land for the very purpose which was proposed. After entering into the contract of sale for the sale of the subject land in 2004, it thereafter enthusiastically supported the proposal for another hotel with gaming within very close proximity. It might be thought that if this were an adversarial contest between the applicant and the Council, the applicant would be in a strong position, although, we also note with some surprise that the

applicant must also have been aware of the Gateway Hotel proposal and the hearing on 1 March 2006 yet, so far as we are aware, no representation was made to the Commission on behalf of the current applicant.

18. However, as is plain from a consideration of the legislation which we are obliged to consider, and as reinforced by the decision of the Victorian Court of Appeal in the matter of Macedon Ranges Shire Council v Romsey Hotel Proprietary Limited (the Romsey Hotel matter) [2008] VSCA 45, what we are conducting is not an adversarial hearing but rather an inquiry to determine whether we can be satisfied, in accordance with the Act, as to the net social or economic detriment of the current application. Accordingly, whilst we have considered it necessary to refer to these matters, ultimately they have not played a decisive role in the decision we have reached.

## **SOME GEOGRAPHIC ISSUES**

19. The particular location of the subject site was the subject of a considerable amount of discussion, particularly by the expert witnesses called on either side.
20. The subject venue is at the eastern end of a significant estate known as Lakeside Pakenham and which is described as the major residential development in Pakenham. It is an estate being developed by a well known developer Delfin Lendlease Proprietary Limited and evidence



- was lead that the amenity and general quality of the development was high, and with a focus on developing a strong sense of community.
21. The speed of the takeup of development was both the subject of controversy, and a complicating factor in the consideration of the matter. An issue raised by the Council was that the rate of growth being predicted and upon which the applicant relies as part of its case, was too high. In other words, that development thus far has not equalled the projections previously provided. Whilst we think that there is merit in this point, the fact is that the forward projections appear, in the Commission's view, to be unaltered.
  22. By the time of the 2006 census there were about 2700 people resident in the estate. Ultimately, the estate will provide around 2250 house lots and be home to more than 6000 people. The sales within the estate are of both undeveloped land, and house and land packages with prices up to \$450,000 to \$500,000. Delfin Lendlease Proprietary Limited estimate that only around 5 per cent of sales are to first home buyers – a very significant point in this case, although we have no information to substantiate this figure.
  23. The entire estate is effectively on the western fringe of the development area of Pakenham, although distances are not large – the subject hotel, we were informed, is only approximately 1.5 kilometres from the centre of Pakenham. The other gaming venues within Pakenham, and indeed Cardinia, are all to the east of the subject location. At present, an inspection of the scene reveals partial

development at every level. There are vacant lots in the shopping area adjacent to the subject hotel, just as there are many vacant lots in the estate. On the other hand, the portion of the estate nearest to the subject site is reasonably well developed with a number of large houses enjoying views of the lake. And the lake itself is by no means unattractive and will no doubt offer opportunities for various aquatic interests.

### **GAMBLING LEVELS WITHIN THE SHIRE OF CARDINIA**

24. This is an area in which neither gaming expenditure nor gaming machine density are currently at problematic levels. The average net egm expenditure per adult is \$353, which is almost 50 percent less than the average for metropolitan municipalities, and the density of egms, at 4.41 per 1,000 adults is almost 34 percent less than the metropolitan average.
  
25. These figures do not reflect Commission approvals for six additional egms to be installed at the Pakenham Football Social Club, the 80 egms at the Gateway Hotel (to be offset by 32 egms which will be relocated from Castello's existing venue at 226 Princes Highway) and 13 additional egms at Club Cardinia at the Pakenham Racecourse. Nor do the figures reflect projected population growth within Cardinia. We refer further to those matters in paragraph 31.

### **THE CASE ADVANCED BY THE APPLICANT**

26. Ms Brennan who appeared on behalf of the applicant presented detailed written submissions and called a number of witnesses.
27. In her submissions she suggested that the proposed hotel would provide a valuable, local entertainment venue for the growing residential population of the Lakeside estate and surrounding residential areas.
28. She emphasised the family friendly nature of the proposal and its emphasis on serving the surrounding residential area. She suggested that the hotel would quickly become the familiar corner hotel to the residents of the Lakeside estate.
29. She emphasised the strong growth in population in the estate and surrounding areas (the growth area) which is at a rate vastly in excess of the Melbourne average and she pointed out the fact that the Commission had specifically referred to that aspect in its decision in the Gateway Hotel matter referred to above and in a number of other decisions.
30. She pointed out that what was proposed was the only hotel venue in the municipality not owned or operated under the Castello's banner and that it would therefore offer an important point of difference and choice. The Commission notes that while this would be true, gaming is also offered at two clubs in the municipality – The Pakenham Football Social Club and the Cardinia Club at Pakenham Racecourse.

31. She referred to the gaming indicia which we have set out earlier in these reasons for decision. She claimed that assuming that the subject hotel commenced operation in 2010, the density of egms would still remain below metropolitan and state averages, even assuming that the Gateway Hotel venue was then operating. She noted that the Commission had recently approved two other applications in Cardinia. On the 26<sup>th</sup> September 2007 the Commission resolved to approve an amendment to the Venue Operator's Licence for the Pakenham Football Social Club, to include an additional 6 egms. Subsequently, on the 4<sup>th</sup> March 2008, the Commission also resolved to approve an application for a Venue Operator's Licence amendment to permit an additional 13 egms at the Cardinia Club, premises operated by the Pakenham Racing Club. The applicant's contention was that even taking all of these matters (including the Gateway Hotel approval) into consideration, within the municipality of Cardinia, the number of egms per thousand adults would still be lower than for the average metropolitan municipality. Ms Brennan also claimed that:

*“The Cardinia community enjoys below average levels of disadvantage by reference to the SEIFA index and the Pakenham community demonstrates no warning signs of vulnerability to high levels of problem gambling”.*

32. Indeed she asserted that the 2006 SEIFA data suggested that the municipality as a whole exhibits a reduced level of disadvantage and that this was particularly attributable to the performance of new residential subdivisions including the Lakeside area.

33. After referring to the various inconsistencies on the part of the Council to which we have referred above, Ms Brennan addressed another aspect of the Council's opposition to this proposal, notably the high concentration of egms within Pakenham. She suggested that the high concentration was hardly surprising given the role of Pakenham as the primary activity centre within the municipality. Employment, community infrastructure, retail floor space and entertainment activities all tend to be located in major population centres.
34. Another issue raised by the Council in its submission, and to which Ms Brennan referred, was the question of the proximity of the proposed venue to the neighbourhood activity centre in Lakeside Boulevard. Ms Brennan contended that this would be an issue to be debated and decided within the discretion to be exercised under the Planning and Environment Act and, by inference, would not be an appropriate matter for this Commission to consider. She also made two other points. First, she suggested that this applicant has a proven track record in managing hotel venues with egms and a demonstrated commitment to responsible gaming practices, and she also referred to the fact that there was no evidence of community opposition or hostility to the proposal. It is convenient for us to deal with this point at this stage and to say that we agree with this contention. As part of its "Gaming Position Statement" the Council includes the following:

*"To satisfy Council's understanding of local community support, the applicant will be requested to undertake a local*

*community attitudinal survey within parameters as determined by Council”.*

35. It appears that, due to inadvertence, the Council did not observe this part of its policy. However, the proposal has been well ventilated within the community partly because of the planning dispute referred to above. On the site there was a notice posted advertising the applicant’s intention to seek a planning permit and referring to the prospect of gaming machines. Having regard to the decision of the Court of Appeal in the Romsey Hotel<sup>1</sup> matter the Commission is mindful of the fact that community opinion is one matter which must be taken into consideration by the Commission in deciding applications such as these. We note that there does not appear to have been any opposition voiced in relation to this application and we regard this as significant having regard to the fact that other prospective applications for approvals within the Shire of Cardinia have already attracted considerable community interest.
36. Turning now to the witnesses who were called on behalf of the Applicant, we have referred already to the evidence of Mr Stafford, the architect who has been responsible for preparing the plans for the proposed venue. We see no need to elaborate in detail upon the evidence which he provided other than to say that the internal plans for the venue appeared entirely reasonable. We were impressed by the internal layout of the proposed venue and have no doubt that if this proposal proceeds, the venue will provide an appropriate level of

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<sup>1</sup> Macedon Ranges Shire Council v Romsey Hotel Pty Ltd [2002] VSCA 45

comfort for its patrons. Externally, the appearance is somewhat affected by the fact that it is now proposed that there will be parking for a very large number of cars on two upper floors. In other words the ground floor will house the various parts of the venue to which we refer below, but the two upper floors will house the car park. Mr Stafford commented that such a proposal is costly but that it does lead to a lot of comfort for patrons who alight from their car without the possibility of getting wet and it also leads to enhanced security. In addition to gaming, the venue is intended to provide a significant bistro, a sports bar, and importantly, a meeting room. Overall, the venue is intended to accommodate a maximum of 600 people. The Commission has no reason to doubt that if this proposal proceeds, the facilities provided within the venue will be attractive and will comfortably serve the purposes for which they are designed.

37. The applicant placed a good deal of emphasis on the notion that the venue was specifically designed to meet the needs of a local community and would be in some manner akin to a community centre. A relatively small space is provided which can be used as a separate meeting room for community groups. Other than this, it was not possible for Commissioners to discern anything distinctive about the plans which would make the project more or less attractive to the local community. Having said this, whether or not a particular venue becomes a community centre, probably depends more upon the manner in which the venue is operated. Mr Stafford's estimate was that if approvals for the project were speedily obtained, a starting date for construction of May 2010 would be reasonable.

38. The applicant then called Mr Mazen Tabet. Mr Tabet provided evidence as to the current equity ownership in the applicant. His family interests hold 40 per cent of the shareholding in the applicant company. Another 40 per cent of the shareholding is owned by what may be described as the J. Ashley interests. Both the Tabet and Ashley families have interests in numerous hotels. Mr Tabet informed the Commission that another shareholder with 10 per cent, Ms Kathleen Wing (who at the time of the inquiry had an interest in the Pakenham Inn Hotel) will be the manager of the Lakeside Hotel in the event of the application being successful. The other 10 per cent shareholding is owned by Ms Mary Louise Crowe, who also provided evidence during this inquiry. In one paragraph in his witness statement, Mr Tabet set out what he envisaged, and we think it may be conveniently included in these reasons:

*“It is my view that the proposed construction of the hotel is an exciting and unique concept targeting the surrounding community and seeking to employ those from the area and use local produce where possible. It will provide a modern hotel which will fit into the surrounding community. The hotel will be run in such a manner as to directly relate to the community with it being a significant part of the neighbourhood activity centre. The intention is that the hotel will be of a neighbourhood nature rather than a destination venue, and it is anticipated that its principal custom will come from within a kilometre radius. The hotel will be a relatively small*



*construction offering dining, bars and gaming facilities. It will be operated so as to become embedded in the community and because of the size of the hotel, it will not offer entertainment. Due to the modest scale it will be able to provide better service to its clients. The location of the hotel is ideal for its community purpose and the intention that the hotel shall foster long term informal relationships with the local groups in keeping with the concept of a local hotel”.*

39. Mr Tabet has an impressive *Curriculum Vitae* in hotel ownership and management and we have no doubt that if this proposal proceeds, the venue would be well managed. Mr Tabet made it plain that the applicant would not be the owner of the freehold which would continue to be owned by Prizac Limited.
40. There is another aspect of Mr Tabet’s evidence to which we should make reference because it is of such importance to the Commission’s, and indeed the community’s, understanding of new hotels on what are described as “greenfield” sites.
41. The Commission had noted evidence to be supplied later in the inquiry by Mr Ibrhaim of the firm Nugents. This showed that if the proposal proceeded, about 65 per cent of the overall revenue at the hotel would be derived from sources other than gaming. This lead to the obvious question – whether or not gaming should be regarded as an integral part of any proposed new hotel. Mr Tabet was adamant that it would not be possible to build and operate a new hotel without

gaming. He pointed out that even if 65 per cent of the gross revenue was supplied by activities other than gaming, the non gaming activities have much lower margins. Mr Tabet suggested that as a rule of thumb the net profit from any new venture would amount to about 65 per cent of the net gaming revenue. When it was put to him that there had been examples of other hotels which appeared to demonstrate that gaming was not essential to their successful operation, he provided convincing evidence that indeed they were not doing well.

42. He readily accepted that some larger, older hotels without gaming are successful. The difference lies in the need for the new hotel's operation to be profitable enough to service the debt incurred in construction. Of course, the matter to which we have referred earlier, notably the need for a huge amount of parking within the facility, is very relevant to this point (we note that it was also a huge factor in the costs of the proposed Bridge Inn Hotel at Mernda). The Commission believes that this is a complex but very serious issue. Governments, both state and local, must take into consideration that if modern planning policy demands that all those who attend entertainment venues such as hotels, and who travel to such venues by car, must be accommodated on-site, this will lead to serious consequences. The view has been expressed that new, smaller or more intimate hotels, can assist in the ambience and sense of community within the growth areas particularly surrounding Melbourne. The evidence of Mr Tabet that such hotels cannot be economically successful is consistent with

other evidence which has been provided to similar effect by witnesses at other inquiries.

43. Mr Tabet was followed by Ms Kathleen Wing. At the time that she had prepared her witness statement, she was the full time manager of the Pakenham Inn which is described as being similar in size and character to the proposed Lakeside Hotel. By the time she gave her evidence, that hotel had been sold. Ms Wing has had considerable and impressive experience in a number of hotels. After completing an Arts degree she commenced a long term involvement in the Forrester's Arms Hotel at Oakleigh where she was working with the Ashley family. That hotel had been sold in 2007.
  
44. Both in her witness statement and in her oral evidence, Ms Wing impressed as a person with a distinctive vision for the proposed venue. For example, as to meals she explained that she intended to offer a superior style of buffet on an "all you can eat" basis. The price to be charged would be \$15 to \$20 with a reduced price for children and a discount for seniors. Somewhat surprisingly, she gave evidence that this is a unique concept not available in any hotel or club between Dandenong and Pakenham. She explained that the concept is designed to attract families and groups, particularly as it caters for all ages and palates and is reasonably priced with a pre-determined cost. We gained the impression that the proposed community room in the venue had been suggested by Ms Wing because she commented that neither the Pakenham Inn nor the Forrester's Arms had such a facility, and she had seen a need for one.

45. We found Miss Wing's evidence as to the experience which she had at the Pakenham Inn to be highly relevant. For example, her evidence was that about 80 per cent of patrons at lunchtime were senior citizens, many from three retirement villages nearby. In the evenings younger, local families formed a large part of the patronage with many families and groups attending for occasions such as birthdays and anniversaries. The Inn had been successful, with Friday nights, Saturday nights and Sunday lunches all attracting full capacity attendance. Plainly she proposed to build on the experience from the Pakenham Inn at the subject venue.
46. Importantly, the witness also gave evidence as to the issue of problem gambling at the Pakenham Inn and at the Forrester's Arms. She stated that in all the time that she had been involved in these venues since 1993, she had only encountered one instance of a person seeking assistance. Whilst conceding that this did not, of itself, mean that there were not other people who could have been classified as problem gamblers, she said that:

*“At Pakenham Inn we interact with the customers, it is a smaller venue on a smaller scale, it would only take me 25 seconds to walk around the venue and say ‘how are you going’ and talk to the customers. So from a management point of view we put all the processes and measures in place, we have the training, we have a self-exclusion program, we update the staff on responsible gambling --- ”.*

47. Ms Wing made it plain that if gamblers were seated at machine for an extensive period of time she would follow the practice of speaking to them to break their concentration, have a conversation with them, offer them coffee, etc.
48. In summary, Ms Wing was a very good witness and has the experience to suggest that she would be a first rate manager.
49. Ms Wing was succeeded by Ms Mary Louise Crowe. Ms Crowe works for the Tabet Investment Group. She explained her present role as follows:

*“I provide assistance to Mazen through applications such as this and also I provided assistance to him in the application for Lynbrook and I have acted for Mazen in producing responsible gaming materials, research and responsible gaming practices and maintaining my level of knowledge with current legislative matters applying to Victoria. And then also looking at other models around the country as well as outside Australia.”*

50. The witness demonstrated a clear understanding of current developments in relation to problem gambling in venues, and the imminent release of a code of conduct. She discussed steps to be taken in consultation with Gamblers’ Help Southern and also the steps which she proposed in order to overcome any problems which were raised.

51. She also gave evidence of a community support program which is proposed by this applicant if the application is successful. What is proposed is that \$75,000 per annum will be provided with the decisions as to recipients of grants to be made by a Committee including representatives from the hotel, but with some input from the Council. Ms Crowe recognises that there is already a group called the Lakeside Community Development Forum and that forum would be consulted. She summarised it by saying:

*“But we’re looking to really put that money back into the very immediate area around the hotel”.*

52. In giving examples she talked about a local sporting group needing footballs or uniforms, but also individuals within the community such as a child with a life threatening illness who was needing support.
53. The witness also commented on the steps which she had taken thus far to enter into discussions with the Lakeside Community Development Forum. We are satisfied that genuine efforts have been made to engage in such discussions but that having regard to the tortured progress of the planning and other matters relating to this application, progress had been slow. The Forum had, incidentally, largely been created as the result of efforts by the developers, Delfin Lendlease Proprietary Limited. The Forum is already seeking to establish a relationship with the Bendigo Bank for residents in the subdivision.

54. Some attempt was made by Mr Crawford to establish, during cross-examination of Ms Crowe, that there were other groups within the local community with whom discussions could have taken place. Ultimately we do not think that much turns on this question. Similarly, whilst we note Ms Crowe's concession that she does have a financial interest in the success of the proposal, being a 10 per cent shareholder in the applicant, her track record convinces us that she would be an earnest advocate for the introduction of sound, responsible gambling policies at the subject hotel.
55. The next witness for the applicant was Mr Dallas Robert Ibrhaim to whom we have previously referred.
56. Mr Ibrhaim, who stated that he had provided accounting services for Mr Ashley on a number of occasions, had prepared budgets for the proposed venue for the period following its proposed opening and several years thereafter. Much of his evidence was uncontroversial and he was barely cross-examined by Mr Crawford.
57. His initial calculation was based upon a projected opening date of December 2009 (obviously now unrealistic). However, we would interpret his evidence as being equally applicable to the first year after commencement of operations, whatever date that may be. His evidence was that if there were 60 egms at the proposed venue, the total income would be approximately \$4.5 million (of which gaming would contribute approximately \$1.4 million). A gross profit of \$3.5 million would be produced, but operating expenses would reduce this

- figure to approximately \$600,000, and after allowing for amortisation, depreciation and interest, the total profit would be no higher than \$63,000.
58. In making his calculations Mr Ibrhaim had included the projection from Tatts, who are the operators proposing to supply the egms in this case, of \$1,841 per week per egm of which the venue's share would be 25 per cent.
59. The upshot of his evidence was that if the proposed venue were to operate with fewer than 60 egms, it would not make a profit at all.
60. Mr Ibrhaim was followed by Mr Richard Whitehouse, whose role is "Manager of Channel Strategy" at Tattersall's gaming.
61. Mr Whitehouse gave evidence as to two sets of figures which had been prepared in relation to the proposed venue. The early analysis had shown gaming expenditure estimated at \$1,841 per week, the latter analysis demonstrated a higher figure of \$2,100. Both were based upon a case study process which has been demonstrated previously to the Commission. The study includes a number of venues in respect of which the Commission has previously conducted inquiries, and it must be said that the case study demonstrates no apparent understatement of income by witnesses on behalf of Tattersall's when they have given evidence at Commission inquiries. At the higher estimate, the gross annual figure is \$6.5 million of expenditure at the venue with a 60 per cent allowance for transferred



- revenue. This would produce incremental increase in revenue within the LGA of \$2.2 million.
62. However, the position became more complicated once Tattersall's applied the Geotech analysis to a calculation of the figures. The Geotech model has been offered to the Commission in Tattersall's evidence on a number of occasions recently.
63. This analysis, and taking into consideration the proposed new Gateway Hotel venue in very close proximity to the subject venue, produces a much lower gross expenditure figure of \$5.5 million of which the percentage of transferred expenditure would be 71 per cent. This would, thus, lead to a much lower incremental increase of approximately \$1.6 million in egm expenditure within Cardinia.
64. The Commission is bound to say that it seems plain that the likely expenditure at this venue will be hugely affected by the existence of the new Castello's venue and we would be inclined to believe that the Geotech model produces the correct picture both as to gross and net expenditure.
65. The remaining witnesses called on behalf of the applicant provided expert evidence as to social and economic impacts created by this proposal. The principal witness was Mr Rhys Quick who is an Associate Director in the retail economics and property economics area of Urbis JHD. By the time of the inquiry, witness statements had been prepared by various witnesses on behalf of the Council and we

- shall refer to them in due course. In his addendum report Mr Quick was able to consider a number of the issues raised in the Council's submission (but not the witness statements of the expert witnesses). He was assisted by the evidence of Ms Sophie Jordan, a qualified town planner and an Associate Director of Urbis JHD who dealt specifically with some of the planning issues.
66. We first summarise some of the least contentious aspects of Mr Quick's evidence.
  67. In 2006 there were 58,550 residents within the Shire of Cardinia of which just under half live in Pakenham. Within Pakenham there had been a 9.6 per cent increase in population since 2001. In the other parts of Cardinia, notably Cardinia (S) North and Cardinia (S) South there had been much more modest population increases of a total of 1.7 per cent.
  68. Cardinia's residents are significantly younger than for Melbourne metropolitan municipalities. 26 per cent are under the age of 14 compared to the Melbourne average of 19 per cent, 62 per cent are under the age of 39 compared with the Melbourne average of 56 per cent.
  69. Cardinia residents have an average per capita income of \$23,302 which is about 14 per cent below the Melbourne average of \$27,105. The income figures for residents within Pakenham are almost identical to the figures for Cardinia as a whole.

70. Mr Quick contended that having regard to the nature of the resident population within Cardinia it was more appropriate to consider household incomes rather than per capita incomes. Cardinia has 2.9 persons per household on average compared with 2.6 for Melbourne. Whereas individual incomes were some 14 per cent below the Melbourne average, household incomes, at \$66,672, were only 6 per cent less than the Melbourne average.
71. Mr Quick provided evidence that incomes in the Pakenham SLA (which, it was agreed, was the area of most significance in this inquiry) had risen more rapidly in the past 5 years, which he attributed to new residents in the Pakenham area earning higher household incomes than the existing residents.
72. Approximately 82 per cent of the population of Cardinia reside in dwellings which are either owned or being purchased by residents. He commented that this was generally considered to be a positive indicator of socio economic status because it suggested that a higher proportion of households are able to afford to purchase their home.
73. The unemployment rate as a whole is slightly below the Melbourne average of 5 per cent. Within Pakenham SLA it is slightly higher at 5.4 per cent.
74. When considering the Lakeside area more specifically, it could be seen that the disparity between residents in Lakeside, compared with

- the average Melbourne resident, had narrowed. In Lakeside average per capita income was \$25,169, only 7 per cent below the Melbourne average. Average household incomes within Lakeside, at \$69,900 were only approximately 1.7 per cent below the Melbourne average, with average households in Lakeside comprising 2.8 residents as opposed to the Melbourne average of 2.6.
75. A feature of incomes within Lakeside is that some 72 per cent fall within the income bands from \$26,000 to \$130,000, as opposed to 66 per cent within Melbourne. There are fewer residents in Lakeside with incomes below \$26,000 than either for Cardinia as a whole, or the Melbourne average. On the other hand, Lakeside only has 6 per cent of residents earning \$130,000 or above, compared with a Melbourne average of 13.3 per cent.
76. A significant issue which arose in Mr Quick's evidence and in which there were differing views from the Council witnesses related to population forecasts. As we have indicated earlier, we consider that on this subject Mr Quick is correct, although growth up to date has not been as significant as was forecast.
77. We consider that Mr Quick is correct in his suggestion that population growth hereafter will be higher. It is important to recall that if this application is approved the venue will not be operational at least until the latter part of 2010. In any event, by that time, the Urbis forecast population of 69,530 does not differ significantly from the estimate provided by the Council of 68,765.

78. The next issue of controversy arose as to the issue of the density of egms relative to population. At this point the question of the relevant catchment for the venue became one of great importance.
79. When examining egm density it is important to recall that there have been three recent decisions of the Commission as a result of which there will be increases in the number of egms within Cardinia (all are within Pakenham). In addition to the application referred to earlier relating to the proposed Gateway Hotel, which will involve an additional 48 egms (making up a total of 80, in very close proximity to the proposed venue), approval has been given for an additional six egms at the Pakenham Football Social Club and 13 egms at the Cardinia Club at the Pakenham Racecourse. Mr Quick calculated that by 2010, the earliest date upon which the egms at the proposed venue could be operational, and taking into consideration the approvals referred to above, there would be 339 egms at six venues.
80. This would amount to 6.77 egms per thousand adults, accepting the Urbis population estimates. Because the Council's estimate of population growth is lower, the Council's estimate is that there would be a total of 6.98 egms per thousand adults. The average for Melbourne metropolitan LGAs is 6.81. The Commission agrees that these figures, if considered alone, do not give great cause for concern.

81. It is true that the Council has been, apparently, notified of applications for a further 165 egms at proposed venues in Officer. We do not take those applications into consideration at this point.
  
82. In considering density, the controversy arose not so much as to density within the Shire of Cardinia as a whole, but as to the density in what the various parties contended should be regarded as the appropriate area to be taken into consideration. Essentially, the Council has contended that in considering egm density, the Commission should give the greatest (if not the only) consideration to the Pakenham SLA which does take into consideration the areas of, Officer and Beaconsfield.
  
83. Mr Quick disagreed with this suggestion. He pointed out that facilities in Pakenham, including gaming venues, do not just serve Pakenham and its immediate surrounds. As the major town in the area, Pakenham provides most of the major facilities serving all of Cardinia. He gave evidence that 75 per cent of retail space in Cardinia was within Pakenham which also included medical centres, major sports facilities and all but one of the full line of supermarkets. Education, employment and other community uses are all concentrated in Pakenham.
  
84. He also pointed out that in a survey conducted by the Council (to which we shall refer further in due course) residents living within Cardinia but outside Pakenham did provide details as to their gaming. For example, from the rural areas included in the survey, 77 per cent

of these Cardinia residents who engage in gaming, indicated that they engaged in gaming in Pakenham. In the area known as the “Hills” area, particularly around Emerald, the figure was lower, but even in these areas some 50 per cent of residents indicated that they engage in gaming in Pakenham. Mr Quick commented that:

*“I think the local catchment area is the right area to consider the socio economic characteristics that are relevant here, but I think a larger area needs to be taken into account when you look at egm densities.”*

85. As to a different subject altogether, a considerable period of time was spent on the question of mortgage repayments and the issue of mortgage stress.
86. Mr Quick conceded that the residents of the Lakeside area are paying, on average, 27.9 per cent of household income towards their mortgage costs. (This compares with a Melbourne average of 25.3 per cent). Within the Pakenham SLA as a whole, the figure is 26.5 per cent. Mr Quick pointed out, however, that in considering household stress due allowance had to be made for the level of income available within any particular household. To use an obvious example, a household with an income of \$500,000, and spending 30 per cent of that income on mortgage costs, is still left with a good deal more disposable income than a household with an income of \$50,000 in which 30 per cent is expended on mortgage costs. Coincidentally, shortly after the Inquiry concluded, statements were made by the Governor of the Reserve

Bank in which it was again pointed out that the accepted definition of household stress involves a proportion of 30 per cent of income, but based upon average weekly earnings. The point which Mr Quick was seeking to make, is that incomes, particularly in the Lakeside area, are higher than average. A point which he stressed was the evidence (albeit of a somewhat anecdotal nature) that only five per cent of those purchasing properties in the Lakeside estate, were first home-buyers. It is certainly reasonable to accept that those purchasing their second or subsequent homes, have been able to make due allowance for mortgage payments. It is also important to note that whilst it is true that there have been a significant number of interest rate increases in the past three years, incomes during that period have not remained static. Most households faced with increased mortgage payments would have had higher levels of income coming in to the house, although they would, also, have been faced with higher fuel and food costs in particular. At one point in his evidence Mr Quick conceded that the interest rate increases were a concern.

*“Mortgage costs would be increasing for those people, I am not sure that the interest rate increases have got to a significant level where it’s going to tip numerous people over the edge or anything like that. I would say that’s still a long way off before we’re reaching the interest rate levels of previous periods, but, obviously, as interest rates increase, that risk does increase but I don’t see it as causing significant problems for what is really a middle class area. It’s not people who are already on the*



*lower income fringes who are, sort of, struggling to pay off their mortgage”.*

87. When questioned about the unemployment figure for Pakenham, Mr Quick informed the Commission that he thought that the younger population is concentrated in Pakenham and that unemployment statistics are recorded so that anyone over the age of 15 looking for work can be counted as unemployed. Teenagers moving into the 15 to 18 year old bracket leave school and start looking for work and they are the people who take longer to find work and this can result in a higher unemployment figure.
88. It was unfortunate that when Mr Quick prepared his second report, he did not have the witness statements prepared on behalf of the expert witnesses who were called by the Council. But his reports were the most important social and economic impact reports provided on behalf of the applicant. In accordance with the practice frequently adopted by witnesses giving evidence as to such matters, the final part of Mr Quick’s two reports amounted to what he considered to be a summary of the social and economic impacts, assuming that this proposal proceeds. At this point one might anticipate that any issues of concern regarding the proposal would be considered. In the present matter we found it curious that Mr Quick did not deal at all in his reports, with the question of the proximity between the proposed venue and the supermarket and other shops in close proximity to the proposed site. The Commission questioned Mr Quick about this and he acknowledged that he was aware that the research indicated:

*“The disadvantages of a proximity between a gaming venue and the High Street”.*

89. He agreed that these were the sorts of issues that have to be considered when weighing up all of the social and economic benefits or dis-benefits. He agreed that this is a situation in which there are shopping facilities nearby and that it is a possibility that people will use the venue in conjunction with a shopping trip. He did go on to say that based on retail studies which he had carried out, it was his view that people generally like to get their shopping over and done with, particularly if it's grocery shopping. In such circumstances they would want to get their produce home and into the refrigerator.
90. These issues, which were critical to some of the expert evidence provided on behalf of the Council and which are dealt with in evidence to which we shall refer subsequently, were regrettably not mentioned at any point in Mr Quick's two reports, although it must be said that they were referred to in the evidence of Ms Jordan. We should also add that we found it remarkable that a number of the issues raised by the Council's expert witnesses were not put to Mr Quick for his comment.
91. Mr Quick made a number of valuable points in re-examination by Ms Brennan. He pointed out the great distinction between the subject venue and that which is proposed at the Castello venue nearby, with its 99 hotel rooms and the fact that in his view it was obviously

- concentrating on a regional focus. He also pointed out that residents on the east side of Pakenham would be unlikely to use the supermarket situated across the road from the subject venue. The adjacent supermarket only has 4,000 square metres of retail space whereas in central Pakenham Mr Quick believes that there is approximately 26,000 square metres and with a wide variety of supermarkets and speciality shops. We think that this is a valuable point. Indeed, Mr Quick had carried out work in relation to the Lakeside supermarket and was involved in the defining of the catchment area for it. He stated that the catchment area had been largely restricted to the western side of Pakenham.
92. The final witness called on behalf of the applicant was Ms Sophie Jordan, also an associate director of Urbis JHD but with qualifications in urban planning. Both in her witness statement and oral evidence Ms Jordan presented as an entirely credible, impressive witness. Incidentally, the last sentence of the introduction to her witness statement made it plain that she was not commenting on or examining matters relating to the social and economic impact assessment.
93. The purpose of Ms Jordan's evidence was to explain to the Commission the different principles which would apply to a planning decision on the one hand, and a decision based upon the social and economic impact test on the other.
94. An important part of the Council's case relates to the location of the subject site, in close proximity to the shopping centre which would be

of most use to Lakeside residents, and virtually over the road from the supermarket presently operating. Incidentally, during her evidence Ms Jordan confirmed that there will be another, smaller Aldi supermarket on the eastern side of Lakeside Boulevard some distance south of the subject site.

95. The witness made the point that Cardinia, in concert with two other local government authorities, Benalla and Mansfield, had made a decision that its planning policies would not prohibit the location of a gaming venue in a strip shopping centre. That is not to say that planning policy suggests that a gaming venue will be permitted in such a centre, merely that the Council retains a discretion. (The Commission entirely accepts that there is nothing in the current Council planning policy which would preclude approval for this venue). And as Ms Jordan again agreed under cross-examination, there is nothing in the planning documents such as the Lakeside Pakenham local structure plan or the Pakenham west comprehensive development plan, which provides that this can be the only site for such a venue in the area to the west of Pakenham.
96. In a previous decision of the Commission regarding a proposed hotel at Point Cook<sup>2</sup> one of the reasons the Commission favoured the proposal was because the hotel was to be well removed from local shopping areas. However, following a subsequent hearing at VCAT, the Council's decision to grant a planning permit for that venue was overturned (after objection by a third party with interests a nearby

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<sup>2</sup> In the matter of Tiplane Pty Ltd (VCGR 16 May 2007)

- activity centre) on the basis that planning policy dictated that such a venue (hotel, reception facilities and gaming) should be located in an activity centre.
97. There was much evidence in this matter about the precise status of the site upon which this venue is proposed. We accept that it is in an activity centre. We are mindful that there does appear to be an inconsistency between the line of reasoning to which we refer in more detail subsequently, to the effect that gaming venues should not be located in or in close proximity to major retail centres, on the one hand, and the fact that if hotels with gaming are to be located in activity centres, many activity centres have as their principal focus minor or major retail facilities.
98. Ms Jordan had studied a number of the reports on the question of co-location of gaming venues and shopping centres. She commented that when, in December 1997 amendment S69 to the Victorian Planning Scheme sought to prohibit gaming machines within strip shopping centres and shopping complexes, the step was taken as a temporary measure pending further research. Nevertheless the witness agreed that both in the Productivity Commission Report and in other material published by various authors, there has been support for the proposition that gaming venues should not normally be located in places where people would be likely to encounter them whilst going about their ordinary shopping and other activities. We believe that this issue should have been addressed in Mr Quick's report.

99. It should be noted that Mr Quick gave further evidence during the inquiry in an endeavour to deal with points which arose from the evidence provided by Council witnesses. We shall refer to that evidence in due course.

### **THE CASE PRESENTED BY THE COUNCIL**

100. The Council's opposition to this application contained two separate features.
101. The Council first filed with the Commission a letter dated 5 October 2007 in which it set out its opposition to the proposal. The point was made that the Council had refused a planning application for the proposed venue and site and therefore (it was claimed) it could not support the gaming application. It suggested that the application didn't comply with the Cardinia Shire Council responsible gaming policy which was included as part of the submission. One aspect of the alleged non-compliance was 'the fact that the hotel site is not located within an activity centre as preferred by Council'. It seems remarkable that the Council can make this claim having regard to the circumstances in which it had sold the land some three years earlier.
102. In the written submission the Council foreshadowed a number of the major points about which evidence was subsequently given during the inquiry. The Council indicated its belief that, rather than comparing the number of venues, or egms, or even expenditure, having regard to the adult population within Cardinia, these indicators should be

compared with a much smaller number of adults being those residing in what they described as the “Cardinia growth area”. These are the suburbs of Pakenham, Officer and Beaconsfield. Using this calculation it was asserted that the number of egms per thousand adults would be over 16 per cent in 2007 (this was an obvious error, as neither the Castello’s venue nor the subject venue, would be operational in 2007). A similar comparison was made, considering the adult population within Pakenham township only but of course it produced a still higher percentage of egms per 1,000 adults (21.40). One paragraph which was highlighted by the Council contained the following:

*“Council is concerned that an oversupply already exists in an area which is prone to socio economic stress. Any additional egms in Cardinia Shire should therefore not be located in Pakenham or the growth area for the foreseeable future”.*

103. The submission then dealt with other matters. One of them, about which a considerable amount of evidence was given by various witnesses throughout the inquiry, related to the actual population and the predicted population within Cardinia and relevant dates. Essentially it was suggested that the applicant was inflating the population figures in order to achieve a more satisfactory ratio of egms to 1,000 adults. Whilst it is true that the population increase up to 2007 has not been as high as predicted, we repeat that in our view the projections for the future are little affected by the shortfall thus far. When it is borne in mind that the subject venue would not come into

- operation until at least 2010 (the Castello's venue is scheduled for completion in 2009) it becomes clear that it is the forward population estimate which is the most important. Ultimately the witnesses agreed that although there were differences in the various methods of calculating the likely population in 2010, variations in numbers were relatively small. We do not see the need to discuss this issue further.
104. Other points which were made within the written submission largely foreshadowed the matters about which evidence was given by the Council's witnesses. Council did rely upon the fact that within the relevant SLA notably Cardinia South the SEIFA index score of 984.31 was significantly lower than the metropolitan average. Of course the Council was relying upon the 2001 SEIFA and by the time of this inquiry the 2006 figures were available. They demonstrated that throughout Cardinia as a whole the SEIFA figure had improved, and particularly in Cardinia-South.
105. Information had been sought from the Department of Human Services as to problem gambling clients who had sought assistance either as to financial counselling, or as to their gambling addiction. The tables produced did show that there had been a significant increase in requests both for financial counselling and counselling as problem gambling up to 2004. For some reason, the figures could not be provided thereafter. However, in a letter contained within the submission, signed by Mr Chris Freethy, who is the Manager of Gambler's Health Southern, Mr Freethy mentioned that after the change over to a new database for Gambler's Help there had been 80



- new clients resident within the Shire of Cardinia for whom 46 had provided Pakenham addresses. Mr Freethy indicated that Gambler's Help could not support the application.
106. A further attachment to the Council's submission was a summary of a survey which had been conducted as part of the Council's attempt to formulate a responsible gambling policy. It is important to stress that the survey was conducted for that purpose, and not for the purpose of this inquiry.
107. The survey did contain some valuable information. The total number of respondents was 1,050 (an acceptable sample for an LGA of this size). Seventy-three per cent of respondents indicated that they had not played egms at all within the previous six months, indicating that within Cardinia there is a lower participation rate than elsewhere. (Research recently conducted for the Independent Gambling Authority in South Australia by Dr Paul Defabbrio revealed that within Australia participation in egm gambling has reduced from approximately 40 per cent in 1998, to 33 per cent in 2006). Not surprisingly, those who indicated that they had not played the egms at all in the past six months were more likely to be in the region within Cardinia known as the Hills area (80 per cent). Those who played more frequently, are from the growth area. But of considerable significance to our inquiry was the fact that those who had played egms within the past six months were then asked whether they had played egms within Cardinia Shire. As a lot turned on this issue we are reproducing table

31 from the survey, conducted on behalf of the Council by Newton Wayman Chong.

Table 30: Played an Electronic Gaming Machine

Base: Total Respondents (1050)	Total Cardinia %	Hills %	Growth	Rural
No have not played	73	80	68	69
Yes – once a week	2	1	3	2
Yes – once a fortnight	2	1	2	4
Yes – once a month	5	3	8	5
Yes – two or three times	9	7	9	14
Yes – just once	8	8	10	7

Table 31: Play Pokie machines within Cardinia Shire

Base: Z(Z288)	Total Cardinia %	Hills %	Growth	Rural
Yes	72	47	83	77
No	28	53	17	23

108. The survey also contained tables showing the responses of various respondents as to whether they supported or opposed egms within Cardinia. Overwhelmingly, respondents were opposed to further egms within Cardinia.
109. For the inquiry, the Council assembled an impressive team of expert witnesses.
110. Two of the witnesses, Dr Kate Kerkin and Mr Robert Milner are representatives of the Coomes Consulting Group. Dr Kerkin’s area of

- expertise includes socio-demographic analysis, policy analysis and social planning. Mr Robert Milner is the General Manager of Planning. Both Dr Kerkin and Mr Milner continue to be involved in the development of a policy framework for a number of metropolitan Councils.
111. The third expert was Mr John Henshall, principal of his own firm Essential Economics Proprietary Limited whose area of expertise is in urban economics and the assessment of economic impacts on local and regional economies associated with land use and development projects. Unlike Dr Kerkin and Mr Milner, Mr Henshall has not had significant involvement in the area of gambling prior to the work which he did for this inquiry. The three witnesses were impressive and their evidence was of great assistance to the Commission although, not surprisingly, the Commission was unable to agree with all of the conclusions which were presented.
112. Dr Kerkin presented a detailed witness statement and a shorter addendum report. It was these documents which she addressed throughout her evidence. She presented an initial “summary of evidence” which was quite lengthy, but as several points contained in it are highly relevant to our consideration of the matter, we present them below:
- There is a clear link between the location of gaming machines, their accessibility, and the level of expenditure

on gaming by members of the local community, including excessive expenditure or “problem gambling”

- The two catchment areas most relevant to an assessment of the likely social impacts of the Lakeside Hotel proposal are the Lakeside Estate Community, and the Pakenham-Officer community both within the Cardinia/Pakenham Statistical Local Area (Pakenham SLA)
- The Lakeside Estate and Pakenham SLA communities both show signs of vulnerability to the impact of gaming but in different ways

113. Further points were included which referred to signs of housing and financial stress both within the Lakeside Estate and Pakenham SLA, a suggestion that the Pakenham SLA is a relatively disadvantaged community (by reference to the SEIFA score) and an analysis of net community benefit. Dr Kerkin stated that there would be no such benefit bearing in mind (amongst other matters) that there were already adequate community facilities and opportunities for recreation and social interaction in the local area, and the fact that the community would have adequate access to gaming and hotel facilities at the relocated Castello’s hotel approximately 200 metres from the subject site.

114. The witness also concentrated heavily on numbers of egm’s per adult population in what she suggested was the relevant catchment area and the fact that if the current application were approved the additional 60

- egms would result in an even greater concentration of egm's within Pakenham.
115. Both in her witness statement and in her oral evidence the witness placed considerable reliance upon various reports. She referred to findings by both the Productivity Commission (1999) and the ANU "Tuggeranong Study (2004)" as demonstrating that there was a significant connection between greater accessibility to gaming machines, and the greater prevalence of problem gambling.
116. In her witness statement, the witness relied upon the 2001 SEIFA figures. In her oral evidence she conceded that the 2006 SEIFA figures showed an improvement in the position, although she resisted Ms Brennan's suggestion that there was a significant improvement. In her view the improvement in the SEIFA, in the relevant areas, was only marginal.
117. Whilst conceding that median weekly individual and household incomes in the Lakeside Estate are significantly higher than for metropolitan Melbourne (for Pakenham SLA as a whole the figures are very similar for metropolitan Melbourne) the witness said that there were other indicators of social disadvantage. She pointed out that the populations both at the Lakeside Estate, or within Pakenham SLA, or within the Shire as a whole all have lower levels of educational attainment compared with metropolitan and state averages.

118. A great deal of attention was given to the issue of financial and household stress.
119. Both in Dr Kerkin's evidence and in evidence from other witnesses, reference was made, somewhat loosely, to a definition of housing stress based solely upon the proportion of household spending devoted to housing costs, whether rental or buying. For example, Dr Kerkin used the following explanation:

*“Housing stress is here defined as the circumstances where a household spends more than 30 per cent of their gross income on housing costs (rental or buying). These households can find it difficult to meet other financial commitments when such a large proportion of their income goes to housing. Housing stress can place unacceptable pressure on individuals, families and communities”.*

120. Dr Kerkin attributed these words to a report from the Brotherhood of St Laurence, “Changing Pressures” Number 12, February 2003.
121. Mr Quick had earlier given evidence on this subject (see paragraph 88) and had stressed a point which Ms Brennan urged upon each of the Council witnesses. The original definition of household stress appeared to combine two features, notably the proportion of household income devoted to housing costs, when compared with the amount of such income. Housing stress would be identified when households with lower income were expending more than 30 per cent

of that income on housing costs. As Mr Quick pointed out (and as the Commission has commented in other matters) the mere reference to 30 per cent without the reference to the amount of income must surely present half the equation. Indeed, Mr Henshall agreed in his evidence that residents within Stonnington frequently expend more than 30 per cent of their income on housing costs but it would be fallacious to suggest that that demonstrates that they are in financial difficulty.

122. The evidence in this matter appears to establish that in one of the significant catchment areas, notably the Lakeside Estate, incomes (whether individual, household or family), are well above average. Whilst Mr Quick conceded that such residents were expending close to 30 per cent of their income on housing costs, we think that he is correct in his suggestion that this does not demonstrate a matter of grave concern. However the position may be less satisfactory for the other significant catchment area which is, effectively the rest of Pakenham SLA.
123. Again, it would be difficult for the Commission to be dogmatic about this point. The 2006 estimate of the amount of household income being expended on housing costs is likely to be lower than the present figure, having regard to recent interest rate increases. What must be acknowledged however is that most of those persons meeting mortgage payments, will also have received an increase in income, although whether wage or salary increases have matched increases in mortgage payments for many home owners is problematic.

124. A point which Dr Kerkin made was that persons living on the outer suburban fringe, whilst perhaps being attracted by the lower overall cost of housing, do suffer other disadvantages. A higher proportion of Pakenham residents are obliged to travel outside the Shire to work every day. The witness suggested that a large proportion would be driving to Melbourne and suburbs and would have considerably higher fuel expenses than residents of inner suburban LGA's. We think that this is a reasonable point. If, on the other hand, Pakenham residents who do work in the city, choose to travel by public transport, the cost is around \$10 per day by train with infrequent services.
125. As to egm expenditure, the witness conceded that the average annual expenditure per adult in the Shire of Cardinia is presently significantly lower than the Victorian average. But it was again her contention the Commission should be examining the situation within Pakenham SLA where expenditure was significantly higher than the state average - \$866 per adult per annum compared with \$654 in Victoria, or \$417 of expenditure per adult within the Cardinia Shire (the VCGR, in fact, records Victorian expenditure per adult at \$639 per annum as at 30 June 2007). Again, on her calculation of the relevant catchment area to be examined, the witness calculated a number of egms at a figure of between 10 and 12 egms per thousand adults, very significantly higher than the metropolitan or state averages. Of course, the vital question is whether the witness is correct in her definition of the relevant catchment area, a subject to which we shall return in due course.



126. The witness gave consideration to the proposed community contribution of \$75,000 and an acknowledgment that the community support fund does receive a contribution of 8.33 per cent of the expenditure at the venue if this application is approved. But she was quite unable to concede that these sums matched what she regarded as the net loss of approximately \$2 million in expenditure to the community (this figure is the original Tattersall's estimate-final estimate was lower, 1.5 million). The witness also made what we regard as a valid point regarding the suggestion that the proposed new venue would afford many advantages to the rapidly growing community in which it is located. In a number of matters the Commission has been influenced by the absence of any form of community facilities in outlying areas which are likely to be the subject of rapid future growth. For example in the 2006 inquiry into the application in respect of the Lynbrook Tavern<sup>3</sup> and in the two 2007 inquiries as to proposed venues within the City of Wyndham, involving the Point Cook Hotel<sup>4</sup> and the Point Cook Community Sports Club<sup>5</sup> the Commission was influenced by its belief that the proposed new venues would have a significant impact upon the life of the community.

127. By contrast, Dr Kerkin pointed out that the local area in the vicinity of this venue provides many opportunities for social interaction and participation in recreational and cultural activities, whilst bearing in mind that those wishing to engage in gaming will have the availability

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<sup>3</sup> In the matter of an application by Lynbrook Tavern Pty Ltd (VCGR 8 February 2007)

<sup>4</sup> In the matter of an application by Tiplane Pty Ltd (VCGR 16 May 2007)

<sup>5</sup> In the matter of an application by Geelong Football Club Limited (VCGR 2 October 2007)

of the Gateway Hotel in such close proximity. Very close to the proposed venue there is the Cardinia Cultural Centre, there is a restaurant and a café in the immediate vicinity and of course there is the supermarket together with the other shops. There are a number of facilities offering space for community groups, various community activities, halls available for hire etc, although in cross-examination the witness did agree that some of these facilities would only be available upon payment of a fee.

128. The witness also referred to what she regarded as the evidence of strong community opposition to the proposal. We don't accept that this is a correct analysis of the Newton Wayman Chong Survey for the reasons which we have set out earlier in that it was carried out for different purposes. If respondents had been informed of the benefits which might be derived from the proposed new venue it is a matter of speculation as to their likely response. However, we observe that in the matters in which the community has been surveyed, and in which the support for a proposed gaming venue has been greater, this has appeared to be due to the offer of new facilities not otherwise available in the relevant area. For the reasons set out in the preceding paragraph, local residents, if surveyed as to this particular proposal, may not have been convinced that the proposed new venue offers much in the way of facilities which they do not already enjoy.

129. Although Mr Henshall was the next witness called by Mr Crawford we think it preferable to deal next with the evidence of Mr Milner. His evidence was directed to issues surrounding the location of the

venue and the appropriateness of such a location for egm gaming. Helpfully, he provided a summary of his evidence which was as follows:

- The site sits at the Northern end of an existing commercial precinct that can fairly be described as a strip shopping centre
- The gaming venue will provide an inappropriate level of convenience and be attractive to people after (or before) conducting their daily or weekly shopping
- The gaming venue will also be within easy walking distance of a number of residential properties
- There is evidence to suggest that a destination gaming venue is more appropriate given that they require gamblers to make a more conscious decision to visit such a venue
- The proposed gaming venue is inappropriately located adjacent to a convenience and retail strip shopping centre, and a residential precinct, and should not be permitted to establish (sic) in such a location

130. Clause 52.28 of the Cardinia Planning Scheme contains a definition of a strip shopping centre. Pursuant to that clause an area is defined as a strip shopping centre if it meets all of the following requirements.

- *It is zoned for business use*

- *It consists of at least two separate buildings on at least two separate and adjoining lots*
- *It is an area in which a significant proportion of the buildings are shops*
- *It is an area in which a significant proportion of the lots abut a road accessible to the public generally*

131. Mr Milner pointed out that the Cardinia Planning Scheme does not place a prohibition on gaming machines in any of its strip shopping centres. He mentioned that the Council is presently in the process of formulating local policy which will guide the discretion to be exercised by the Council in selecting the shopping complexes and strip shopping centres in which gaming machines might be prohibited.

132. It was not, therefore, asserted that the Commission should be bound in any way to decide whether the proposed venue does sit within a strip shopping centre, or, if it does, whether that fact alone would preclude a successful application. Rather, it was suggested that the principles which had governed the formulation of the policy referred to above, might be regarded as relevant to the inquiry which we must make.

133. The witness drew a distinction between convenience and destination gaming. He stated that the distinction is based on the proposition that gaming machines located conveniently in conjunction with uses such as transport stops and shops are easy to access and are attractive to problem gamblers. The concept of destination gaming is that it

- involves a specific challenge or journey to access gaming machines and is thus linked to a conscious decision to gamble.
134. As Mr Milner pointed out the research on this subject is by no means complete. The final report of the Regional Electronic Gaming Machine Caps Review, a review carried out by members of the Victorian Parliament, included a recommendation that the Victorian Government should consider whether destination gambling would deliver a net community benefit to Victoria. Then, in announcing its strategy for combating problem gambling in Victoria in its paper “Taking Action on Problem Gambling” in October 2006, the Victorian Government indicated that it would investigate this subject further.
135. Very recently, and subsequent to the taking of evidence in this matter, in a press release from the government, it has indicated that it does not propose to take further action on this subject. As we understand the government’s conclusions, they relate to the possibility, being floated by the parliamentary committee referred to above, for the development of large destination gambling venues which might be permitted to have gaming machines in excess of the present limit of 105 and which might be located at, for example, racecourses. The Commission’s interpretation of the recent release from the government is that the government has rejected the possibility of such a significant change in the Victoria gambling environment. But we do not understand the government’s release as indicating any considered analysis that local government authorities or others (including this

- Commission) charged with the necessity of making decisions as to the location of gaming venues, should disregard the research which comments on destination gaming as opposed to convenience gaming.
136. The ANU Tuggeranong Study, to which we have previously referred, is said to conclude that the proximity of gaming venues to places of community congregation such as shopping centres and activity centres, does lead to an increased propensity for problem gambling. Whilst that is a conclusion referred to in the Tuggeranong report, it must be said that it appears to be largely based upon a community survey in which respondents opined that gaming venues should not be located in shopping centres, rather than any empirical evidence demonstrating harm if gaming venues are located in or close to such centres.
137. As Mr Milner pointed out, the Commission has made reference to this subject on a number of occasions, and he referred to two recent decisions (re Lynbrook Tavern and Point Cook Hotel) in which the fact that the two proposed venues were removed from shopping centres was one of the factors which contributed to the Commission's decisions to approve those applications. It must also be said that on a number of occasions the Commission has heard evidence from representatives of Gambler's Help in which those representatives have cited concerns expressed by their clients about gaming venues situated in areas where the clients are obliged to go about their everyday activities and in circumstances where the clients are easily attracted into the gaming venues.

138. Mr Milner commented that the site was located at one end of a strip shopping centre and a retail based convenience activity centre. And he considered that a potential result of placing a gaming venue in such a location is that people would be attracted to gamble during their daily or weekly shopping. But he expressed other concerns also about the location.

*“The way that the Lakeside Estate has developed has placed a large population within easy walking distance of the strip shopping centre, including a population that reside in medium density housing located immediately to the west of this precinct. Such residences will now also be in convenient walking distance of the proposed gaming venue, which again may be a significant factor in affecting current and future problem gamblers”.*

139. He also pointed out that the location of the venue, effectively at the main entrance to the Lakeside estate, made the venue conveniently accessible for residents in cars who were entering or exiting the estate. He commented that particularly with convenient parking available around the venue, it is possible that problem gamblers may be attracted to visit the site while entering or exiting the residential estate.
140. The witness drew a comparison between this proposed venue, and the proposed Gateway Hotel. In his view the site of the Castello’s venue

could be described as a destination location, with industrially zoned land on one side, and land earmarked for a homemaker centre on the other. Further, he pointed out that it was physically separated from the Lakeside Estate by the Princes Highway which is a significant barrier to pedestrian movements. We must say that in a number of matters major arterial roads have been described as a buffer which significantly discourage persons from crossing the road in order to attend a gaming venue. We accept Mr Milner's evidence on this point.

141. The material to which we have referred largely emanates from Mr Milner's witness statement. This statement was relatively brief, but to it was attached an extract from the draft Cardinia Gaming Policy which Mr Milner and Coomes Consulting had been working on. In fact, the work which the firm has been undertaking in this area has been on behalf of a large number of Councils, one of which, notably Greater Bendigo, has now adopted the draft as the Council's policy. In the case of Cardinia Mr Milner was of the understanding that the draft had been approved, but he certainly did not suggest that it had become part of the Council's Planning Policy at this stage.
  
142. In his evidence he dealt with the interesting but difficult question of an activity centre. He stated that although the proposed venue is in an activity centre, it is, according to the definition contained in the All State Planning Schemes Clause 12, a neighbourhood activity centre. The Planning Scheme proposes that within neighbourhood activity centres, there should be a mixture of uses that meet local convenience



needs. By contrast, what might be described as the more significant activity centres, notably the principal and major activity centres, are described as having a mixture of activities that generate a high number of trips including business, retail, services and entertainment. In his view neighbourhood activity centres should, therefore, be distinguished from principal and major activity centres.

143. The witness pointed out that at page 45 of the draft proposed by Coombes Consulting the destination versus convenience gaming question is dealt with as principle 7 as follows:

*“Proposals for gaming machines should be able to demonstrate that the chosen location could reasonably be perceived as a destination in its own right. This will be achieved by separation from shopping centres, key transport interchanges and community facilities, including a high concentration of people undertaking daily activities”.*

In response to a question from the Commission, the witness pointed out that for no apparent reason the same principles don't apply for venues supplying alcohol.

144. Under cross-examination Mr Milner conceded that the research indicating why the provisions relating to gaming in shopping complexes were introduced, was difficult to locate and that the question “Why does the Planning Scheme seek to prohibit gaming in

- specified shopping complexes and strip shopping centres?” has not been satisfactorily answered.
145. Ms Brennan put to Mr Milner the suggestion that there were many benefits associated with a concentration of activities within activity centres. They are quite obvious, but include the more efficient and balanced concentration of goods and services, greater synergies between businesses which may assist in job creation, the provision of an important focus for communities by increasing opportunities for social interaction and, importantly, that they provide greater opportunities for integrating land use and transport, particularly public transport and walking. The witness also agrees that the provision of a hotel without gaming at the proposed site would be appropriate.
146. The Commission also quizzed Mr Milner about the perceived disadvantages of the preference for destination as opposed to convenience venues. It would appear axiomatic, that people wishing to access destination venues will have to travel a greater distance. There may be people who wish to gamble but who do not have the use of a motor vehicle. The witness responded that reliance upon public transport would be important but this does seem quite unrealistic in many instances. Mr Milner also expressed concern at the state of affairs which has developed whereby it appears to be impossible for a new hotel to be built without gaming, largely because of the cost of the “add-ons” required, and particularly parking.

147. We now refer to the evidence of Mr Henshall. Mr Henshall stated that he was the principal of Essential Economics Proprietary Limited. He holds degrees in commerce (economics) and a post graduate diploma in town and regional planning. He stated that his area of expertise is urban economics and the assessment of economic impacts on local and regional economies associated with land use and development projects. He conceded that although he had conducted research work as to one other gaming related matter, this was the first occasion upon which he had completed the preparation of a witness statement and the giving of evidence in a matter such as this.

148. A summary of his conclusions was as follows:

*“I am of the view that there is no significant economic benefit if the application for 60 EGMs is approved. The economic return to the community would not equate to, nor exceed, the cost in additional EGM expenditures of \$2.28 million. For example, wages from increased jobs would equate to less than 50% of this amount of household expenditure on EGMs, and in any event the jobs would likely be created elsewhere if spending is directed to the local retail, health, entertainment, etc sectors in this absence of the EGMs.”*

Again, Mr Henshall was using the earlier estimate of incremental increase in gaming expenditure.

149. Mr Henshall defined the areas of dispute between his evidence and the evidence of the Urbis witnesses on behalf of the applicant. The first

issue of dispute related to the question as to whether the entire population of the Shire of Cardinia, or alternatively only the population of the Pakenham SLA, should be taken into consideration in assessing density. Mr Henshall was of the opinion that the growth area, which largely equates to Pakenham SLA, was the appropriate area and that within this area there were 24,650 adults compared with the Urbis figure of 48,100. His view was that with established municipalities with residential development across the LGA it would be appropriate to consider the adult population within an LGA in considering density. But in a case such as the present, he considered it appropriate to analyse an area that more closely resembles the true catchment which the proposed egms would serve. Essentially, he was excluding the rural areas and the area described as “the Hills”.

150. He gave several reasons for this, including the fact that in his view the settlements at Lang Lang and Koo Wee Rup focus on Cranbourne within the City of Casey as one of their major centres. (Mr Quick had been specifically questioned about this and he disagreed with this conclusion). Mr Henshall also considered that some settlements in the Cardinia-North SLA also tended to support larger centres located in the outer metropolitan east region, west of the Dandenong Ranges. The witness’s views on this subject were reinforced by a number of projects which he had carried out for other clients and in relation to other matters. In these works he had stressed the role of the Pakenham town centre and also the Cranbourne Park Shopping Centre as being the principal centres serving Cardinia’s population. To reinforce this conclusion, he referred to an alternative approach to

- defining the likely catchment. He adopted the metropolitan average expenditure of \$688 per adult and applied this to the total expenditure upon egms in Cardinia of approximately \$17 million in 2006/7. This produced an estimated adult population of 24,650 persons, as a result of which he calculated the existing egm ratio to be 8.6 egms per thousand adults in the relevant catchment.
151. Not surprisingly, as to this suggestion the witness was extensively cross-examined and on this particular aspect we consider that his evidence was incorrect. Whilst plainly residents within Pakenham SLA would be the main participants in gaming activity in the various venues in Pakenham, the Council's own survey disclosed that there were significant numbers of persons living in the areas known as the Rural and Hills areas, who do play egms and a significant proportion of whom use the egms in Pakenham.
152. Further, in the Commission's view the witness's use of the average Melbourne adult expenditure of \$688 as being indicative of likely expenditure by adults within Cardinia, must be questioned. There is overwhelming evidence that the extent of expenditure in any particular LGA is largely affected by the availability and convenience of gaming venues and egms. Mr Henshall was of the opinion that the reasons why the existing Cardinia egm expenditure is so low is due to the fact that many of those not living in Pakenham SLA must be gaming in other venues in different LGAs. We accept that some may be doing so but we think that the more likely explanation for the low

- expenditure in Cardinia is the relative lack of convenience for persons within that LGA who do not live in Pakenham SLA.
153. On the issue of household incomes and per capita household incomes, Mr Henshall adopted a position which varied from that which was adopted by the other experts in this matter. In his view the average household size was an important factor after considering median household income. Whilst median household income within Pakenham SLA, the Cardinia Shire, and metropolitan Melbourne are all very similar (ranging between \$55,588 and \$56,108), the fact that the average household size in Pakenham SLA is 2.8, compared with the Melbourne Metropolitan average of 2.6, is important. Once this figure is considered, the median household income per capita in Pakenham SLA is \$19,853, or 8 per cent lower than the figure in metropolitan Melbourne. Mr Henshall did not accept the Urbis evidence “that residents in the area are not particularly disadvantaged by mortgage commitments”. In his view a relevant factor is that “remaining income” being income available for households after housing costs have been met, is \$17,016 per capita in Cardinia compared with \$20,030 in Melbourne.
154. He also made a point which the Commission considered was soundly based, relating to travel costs for Cardinia residents. Based upon a study conducted by the Victorian Council of Social Services (VCOSS, May 2006) Mr Henshall pointed out that work related travel of Cardinia residents averages 357 kilometres per week. By contrast, the work related travel of residents in municipalities ranging from Yarra,

- Port Phillip, Stonnington and Moonee Valley is in a range of 66 kilometres per week to 86 kilometres per week. At the time of preparation of his report he calculated that Cardinia residents had work related petrol costs of about \$62 per week whereas persons residing in inner and middle ring municipalities spend approximately \$11 to \$15 (in each case, those figures would have risen significantly since the witness statement was prepared).
155. Finally, the witness was also unimpressed by the claimed economic benefits which would result from the proposed venue. He suggested that just as much employment would be created if the losses expected to be sustained by the community of approximately \$2.3 million were expended on other activities within the LGA.
156. In his evidence at the inquiry Mr Henshall equated the egm expenditure by Cardinia residents, outside the Cardinia LGA, as an example of escape spending, in similar manner to such expenditure on retail items, food and household shopping etc. He acknowledged that whilst he considered the number of residents within a household was an important item to consider when judging true household incomes, certainly the costs associated with children would be less than the cost attributable to adults in respect to certain items of expenditure. But he pointed out that in a household one of the main costs is educational expense for children. He accepted that the true definition of housing stress must take into consideration the total income of a household so that in the event that there was very high income, less stress would be encountered bearing in mind the balance which was left over for other

- purposes. But it was on this subject that he made the point that a number of the outlying SLAs have residents who have less income available to their household (after meeting housing payments). In Pakenham SLA the figure is 16 per cent less than the Melbourne average, Cardinia Shire has 15.9 per cent and Casey 16.6 per cent less than the Melbourne average. By contrast, Bayside has 27.8 per cent more and Stonnington 38.8 per cent more than the Melbourne average. We think that this is a valuable point. The witness did concede that there was a different position in the Lakeside household where incomes are a good deal higher than in the Pakenham SLA.
157. In cross-examination the witness conceded that in equating egm expenditure with retail expenditure he was making an assumption which might not be warranted and that indeed it may be the case that residents in different municipalities do spend less per adult on gaming than in other municipalities. The Commission remains of the view that it must be the case that availability of venues is critical, and we believe that ultimately Mr Henshall accepted this point. Although the Commission did not agree with some of Mr Henshall's conclusions, he was an excellent witness and made a number of very valuable points.
158. Mr Henshall's evidence concluded on the afternoon of Thursday 3 April. On the last morning of the inquiry, and in response to a request for further information from the Commission, Mr Crawford addressed the Commission as to the inconsistencies on the part of the Council. We were concerned about the sale of the land in 2004 to a consortium



which included Tattersall's as one of the purchasers at that time, and in circumstances in which it was plain to the Council that the purchasers were buying the property with a view to the erection of a hotel with gaming machines. The restrictive covenant attached to the property by the transfer of land the following year, further illustrated the understanding on the part of those at the Council associated with the transaction, as to the purposes for which the land would be likely to be used. Yet a year or so later the Council had opposed not only a planning permit (apparently on the basis that the proposed development as first submitted amounted to an over-use of the property) but was also now opposing the use of the land for gaming in any event.

159. Having made enquiries of his client Mr Crawford informed the Commission that there appeared to have been an absence of coordination between various officers or departments within the Council, although he pointed out correctly that at all times the Council had envisaged that a purchaser would be obliged to obtain the requisite permits before the project could proceed (perhaps the purchaser did not contemplate that the vendor would be opposing the obtaining of the permits and doing all in its power to prevent the land from being used for the purpose which the vendor nominated when selling the land).
160. The position is most unsatisfactory, although we do recognise that the development of policy in relation to gaming in various parts of LGA's has been a relatively new activity for many Councils. The evidence of

Dr Kerkin and Mr Milner demonstrated the steps which are being taken by Cardinia (amongst many other Councils) to develop coherent policies in this area. Perhaps the fairest explanation is that when the Council decided to sell the land to a purchaser which might build a hotel with gaming, the question of the appropriate location of gaming venues had not been adequately developed as a matter of Council policy. And ultimately, we accept Mr Crawford's submission that it cannot be a matter which is critical to our determination of this application.

### **SOME COMMENTARY AS TO THE CRITICAL ISSUES**

161. As will be plain from these reasons, a number of issues dominated this inquiry. Whilst we have been greatly assisted by the calibre of the expert witnesses who have given evidence, there is a wide divergence of opinion between a number of them as to many critical issues.

#### **Egm Density and the Catchment Issue**

162. It was asserted by the applicant throughout the inquiry that in previous cases the Commission has always adopted the position of calculating egm density by reference to the entire adult population within a municipality rather than by reference to the particular part of the municipality in which the proposed venue is located.

163. Participants in the processes which lead to inquiries before the Commission are entitled to as much certainty as the Commission can

provide as to the factors which it regards as important. In most instances the Commission has taken the view that calculation of density by reference to the entire adult population of a municipality is appropriate. But there have certainly been instances in which the Commission has been concerned about a proliferation of venues or egms within a particular part of a municipality. As an example, in the Commission's decision to reject the application for egms at the Victoria Hotel<sup>6</sup> in the city, one of the important factors which affected the Commission was the existence of a number of egm venues in very close proximity to the subject hotel.

164. It would seem inappropriate to exclude from our consideration a very high level of egms in a particular part of a municipality, if it is accepted [as we think it must be] that a greater availability of egms in a particular area is likely to lead to increased gaming, and problem gambling, in that area. Of course, it must be recognised that the existence of a number of other gaming venues near a proposed venue may constitute something of a twin-edged sword. Whilst it will give rise to concern about a greater propensity to problem gambling, the effect of a new venue in an area in which there a number of other venues is likely to be less than the establishment of a new venue in an area in which there is no other venue nearby. In this case, the fact that there will be another relatively large venue in close proximity to the subject venue by the time the proposed subject venue could be constructed, is certainly a matter which we take into consideration.

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<sup>6</sup> In the matter of an application by Schwartz Family Co. Pty Ltd.

165. Ultimately, on the question of the size of the catchment, we think that the proper position is to take into consideration those who plainly would fall within the catchment for this venue, being essentially the adult residents within the growth area or Pakenham SLA, as the primary cohort. But we cannot agree with Mr Henshall that it is appropriate to disregard the remainder of the adults within Cardinia and we repeat what we have said in matters such as the decision in relation to the Horsham Club<sup>7</sup> and Kyneton RSL<sup>8</sup>. While studies such as the ANU Tuggeranong Report do demonstrate a clear connection between proximity and gaming, in certain circumstances it will be very appropriate to take into consideration people who live a considerable distance from any particular venue if all the circumstances suggest that such people are likely to visit that venue. In the present case we are absolutely satisfied that most of the residents of Cardinia would treat Pakenham as their principal retail centre and we think that gaming within Pakenham is affected by the number of persons from outside the growth area who may only visit Pakenham on a weekly or fortnightly basis, perhaps for a large shopping expedition, and who might take advantage of the opportunity to have a meal at one of the venues offering gaming and to spend some time using the egms.

166. We have, earlier, referred to the fact that at the time the application was filed, there were 4.4 egms per thousand adults in Cardinia [well below the averages for metropolitan municipalities or municipalities

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<sup>7</sup> In the matter of an application by the Horsham Sports and Community Club Inc (VCGR 23 February 2005)

<sup>8</sup> In the matter of an application by Kyneton RSL Sub-Branch Inc. (VCGR 25 August 2006)

in the State as a whole]. The evidence of Mr Quick, referred to in paras 79 and 80 summarises the effect of the subsequent granting of licences for additional egms at three venues. We accept his evidence as to forecast population increases and adopt his figure of 6.77 egms per thousand adults.

167. Similarly, expenditure will be affected by the additional egms. Whilst it was originally \$353 per adult in Cardinia, by 2010 it will have risen to about \$600 per adult, or \$650 if this application is granted. Incidentally the evidence of Mr Whitehouse of Tattersall's, as to the likely gaming expenditure at the proposed venue [\$5.5m] of which 71% is calculated to be transferred expenditure resulting in an overall increase of \$1.6m in egm expenditure within Cardinia, was not challenged by Mr Crawford

168. Plainly, the figures both as to the ratio of egms to adults and expenditure would be a great deal higher in Pakenham and the growth area. It is not of great value to make what could only be an ill-informed guess as to the likely figures, bearing in mind the contribution to expenditure, in particular, from residents outside Pakenham

### **The Socio-Demographics in the Catchment Area**

169. Material already contained in these Reasons demonstrates how much attention was given to the issue of the conclusion which the

- Commission should reach as to the socio-demographic position of persons residing in the catchment area.
170. Although the Commission takes the view that it is likely that some persons residing outside the area known as “the growth area” are presently participants in gaming in Pakenham, and might well be attracted to the proposed new venue, it is plain that the areas which deserve most consideration are the growth areas and, in particular, the area defined as Pakenham-SLA. Within this area, separate consideration needs to be given to the Lakeside estate.
171. As the figures referred to in the evidence of Mr Quick readily demonstrate, between 2001 and 2006 there was a general improvement in the socio demographic classification of Pakenham-SLA. Its ranking has improved from a point where it was slightly below Melbourne metropolitan average to the point where it may well now be above that average (Mr Quick’s evidence was that the state rankings are not yet available).
172. When considering the most immediate catchment, being the Lakeside estate, the SEIFA Index figure is 1,043. Mr Quick suggested that the high figures for the Lakeside estate were having the effect of lifting the overall ranking for Pakenham-SLA.
173. As Justice Morris at Victorian Civil and Administrative Tribunal observed in several decisions (see, for example, the decision in

Branbeau<sup>9</sup> and the Tribunal's decision in Kilsyth and Mountain District Basketball Association<sup>10</sup>) high gaming indicia, whether as to the number of egms or expenditure, was more significant in areas of lower socio economic advantage. Many earlier decisions of the Victorian Casino and Gaming Authority, or of this Commission, have turned upon that juxtaposition.

174. Whilst the evidence from the Council's witnesses has not satisfied the Commission that residents in the relevant catchment areas should be classified as being relatively disadvantaged, there are a number of issues which the Commission regards as significant.
175. We consider that the Council is correct when it suggests that the size of the household occupying the residences in the catchment areas is a material factor. A constant amount of household income, say \$1,000 per week, will lead to a greater surplus available for non-essential expenditure in households which have two adults only, than in those households which have two adults and one or more children. The Commission considers that Mr Henshall is correct in drawing attention to the high costs of education affecting many families of the kind which dominates the demographics in the SLA, and in the Lakeside Estate.

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<sup>9</sup> Branbeau Pty Ltd -v- Victorian Commission for Gambling Regulation (Occupational and Business) [2005] VCAT 2606 (16 December 2005)

<sup>10</sup> Kilsyth and Mountain District Basketball Association Inc -v- Victorian Commission for Gambling Regulation (Occupational and Business Regulation) [2007] VCAT 2 (11 January 2007)

176. And, whilst noting that housing costs are generally lower in the areas under consideration than the Melbourne metropolitan average, and that, consequently, mortgage costs would also be lower, we do not think that the costs of travel should be disregarded. It would be a different matter if a high proportion of Cardinia residents were employed within the LGA or even nearby, but it is plain that a significant proportion are obliged to travel to Melbourne or environs daily. Residents in Cardinia are, on average, quite severely disadvantaged as to travelling expenses, compared with their peers in areas closer to the city, and they are not particularly assisted if they are able to avail themselves of public transport.

### **The location of the proposed venue**

177. Again, much attention was directed, particularly by the Council's witnesses, to the question whether the location proposed for this venue is within a strip shopping centre. Ultimately, we do not need to make a decision as to this point but we do find that at the very least it is located adjacent to a strip shopping centre. For those who walk from the estate to the Coles supermarket, or for those who enter Lakeside Terrace by car, with a view to parking and shopping at the supermarket or the convenience stores nearby, the site will be extremely convenient and accessible.

178. The Commission recognises that to describe any place in which a lawful activity is being carried on as convenient to persons going about their everyday business, would normally be classified as a



positive feature. But there are many reports and studies which do indicate the undesirability of locating gaming venues “in the High Street” or in or close to major retail centres. As examples, both in the Productivity Commission Report and in the ANU Tuggeranong Report this issue is highlighted. In several earlier decisions of the Commission we have placed importance on this subject, for example, when the Commission dealt with an application for additional egms at the Olive Tree Hotel in Sunbury<sup>11</sup>. In that matter, although the Commission was satisfied that there was significant demand for further egms at the Hotel, the fact that the Hotel was situated in the midst of the Sunbury retail area was one of the reasons why the number of additional egms which was permitted, was much lower than the applicant had sought.

179. Issues of this kind were also important to the Commission in its decision to decline an application in relation to the Victoria Hotel<sup>12</sup> with the Commission in that case commenting upon the evidence of Mr McCoriston of the Salvation Army, as to the steps which his problem gambler clients were taking to avoid contact with gaming venues in the city. It is a subject upon which a number of witnesses from Gambler’s Help have given evidence at a number of inquiries.

180. The expression “Destination Gambling” has been used in some instances to describe venues which might be situated well away from residential or commercial areas to the point where they might be quite

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<sup>11</sup> In a matter of an application by Baibrenick Holdings Pty Ltd ( VCGR 5 November 2007)

<sup>12</sup> In the matter of an application by Schwartz Family Co. Pty Ltd. (VCGR 30 November 2007)

hard for ordinary members of the community to access them. As Mr Milner commented during his evidence, some golf clubs with gaming might be classified as the ultimate destination venues. But in much of the literature on this subject “destination venues” mean, simply, venues which will not be encountered by ordinary residents going about their everyday activities, particularly including shopping. In a number of matters in which the Commission has made reference to destination venues, we have been referring to venues which are not inaccessible but which simply require a conscious decision to make a visit. As an example, the venue owned by the Mornington Racing Club, Steeples Tabaret, has been the subject of two Commission inquiries<sup>1314</sup> and in our reasons for decision in relation to both of those inquiries, we have indicated the Commission’s view that Steeples Tabaret can be classified as a destination venue. The Commission reached a similar conclusion as to the proposed Lynbrook Tavern<sup>15</sup>.

181. Whilst, as Mr Milner comments, the research as to this issue is by no means complete, we must note that since 1998 there has been provision for a prohibition on gaming machines in nominated shopping complexes and strip shopping centres, so the issue is hardly new. This explains why the Commission is concerned that in the Urbis reports by Mr Quick in this case, virtually no attention was paid to this issue in circumstances in which Mr Quick concluded that no net detriment could be demonstrated.

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<sup>13</sup> In the matter of an application by Mornington Racing Club Inc. (VCGR 17 August 2005)

<sup>14</sup> In the matter of an application by Mornington Racing Club Inc. (VCGR 24 August 2007)

<sup>15</sup> In the matter of an application by Lynbrook Tavern Pty Ltd (VCGR 8 February 2007)

182. The view that venues should be located in areas which are accessible but not convenient produces distinct disadvantages as highlighted in the answers provided by Mr Milner to questions put to him by the Commission. We must say that it is unsatisfactory that, for example, elderly couples who no longer drive a motor vehicle and who may spend no more than a few dollars in gaming at a venue which provides them with good food and fellowship, should be, essentially, deprived of the opportunity to visit such a venue. But it is obviously desirable that those who contemplate the positioning of new venues are given as much guidance as possible as to locations which may be perceived to create less risk of problem gambling and the Commission believes that the guidance which may be derived from existing legislation and reports must be a serious factor in consideration of this issue.

183. The Commission remains troubled by the inconsistency between the need for hotels to be situated in activity centres, on the one hand, and the fact that most activity centres have as their centrepiece, a concentration on retail activity. In the current matter we are satisfied that whilst the proposed site is in an activity centre, it is in a neighbourhood activity centre for which more limited uses or purposes are envisaged.

## **THE ADVANTAGES AND DISADVANTAGES ASSOCIATED WITH THE APPLICATION**

184. We now set out what we regard as the advantages and disadvantages associated with this proposal.

185. If the proposed venue is approved and constructed it will provide a new, comfortable facility of advantage particularly for the Pakenham Lakes community. It is likely to offer good bistro facilities at sensible prices, and may well be the type of facility which can be comfortably used by families with young children. It will offer a useful meeting facility. Apart from the features usually associated with a hotel such as this, we believe that it will provide offerings such as coffee and cakes throughout the day.
186. For the local community access will be extremely easy. Similarly, for residents in the Pakenham SLA, the venue is situated in a most convenient location.
187. We note the offer by the applicants of a contribution of \$75,000 to community groups and we have no doubt that such a contribution will be much needed and well used. The venue would also offer full time and part time employment for a number of people, most of whom, we suspect would be locals.
188. We note also the fact that this proposal has been mooted for at least four years. Whilst there was no direct evidence as to this, it seems likely that many residents living close to the proposed location may have been aware of the proposal for a hotel, at least, for a number of years. If this is the case, the fact that without gaming the proposed hotel will not eventuate, might be regarded as a disadvantage associated with the refusal of this application.

189. The VCAT decision in Tiplane Propriety Limited (The Point Cook Hotel<sup>16</sup>) highlights the need for new hotels to be situated in activity centres. We note that this site is within an activity centre, although we see no reason to doubt the evidence of Mr Milner that it is in a proposed neighbourhood activity centre.
190. So far as the LGA area of Cardinia is concerned, if the application is approved there will not be an excessive number of egms per thousand adults. Neither will there be expenditure upon egms at a level higher than the Melbourne metropolitan average, or such as to give rise to concern. However, this positive feature of the application must be tempered by the fact that all of the gaming venues within Cardinia are situated in Pakenham, and in close proximity to one another. The Council is entitled to be concerned about the proliferation of venues, egms, and gaming expenditure within Pakenham.
191. As to the disadvantages, an unfortunate matter confronting the applicant, is that since the land was sold, approval has been given for another large gaming venue in very close proximity to this proposed venue. (In making this remark, we do not disregard the “buffer” effect of the highway which separates the two proposed venues).
192. Whilst the applicant places weight upon the suggestion that the subject hotel will be of great advantage as a local venue catering for families etc, the fact is that many of the facilities offered in this venue

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<sup>16</sup> In the matter of an application by Tiplane Pty Ltd (VCGR 16 May 2007)

- will already be in existence at the proposed Gateway Hotel, by the time the Lakeside Hotel could be opened or in the restaurants or cafes near by. (We accept that there may be a different ambience and that Lakeside residents, in particular, may not have the sense of “their local” at the Castello’s venue).
193. To this extent the proposal differs considerably from the proposed venues at Point Cook or Lynbrook. In both of those matters the Commission accepted evidence that there was a great need for facilities of the kind proposed and that there were no other such facilities in proximity. Such is not the case in this matter.
194. The location of the proposed venue, and its proximity to the shopping centre of most relevance to the local community, must be taken into consideration and is a serious issue confronting the applicant. Whilst the evidence leading to a conclusion that gaming should not be located within shopping centres is not entirely satisfactory, the line of reasoning has existed for some 10 years and it is appropriate that it be given careful consideration.
195. In the current matter the responsible local government authority, the Cardinia Council, has presented a submission to the inquiry and presented evidence which has been coherent and based upon sound and developing research. As the Commission has said in a number of previous cases, we consider that we must give careful consideration to such a submission from the body which is the democratically elected representative of the local community. The history of applications

such as these in Cardinia shows that there is not a consistent policy of opposition to every proposal involving gaming. In this case, with the evidence of a high proliferation of gaming in Pakenham and with the advice available to the Council as to an appropriate policy as to the positioning of gaming within the municipality, the Council has chosen to present the evidence to the Commission. It is true that the Council's actions in relation to the sale of the subject land, and the restrictive covenant to which we have referred earlier in these reasons are enough to create confusion and, we suspect, commercial uncertainty and no doubt the Council will have to consider the consequences of its actions. Nevertheless, if the Council believes that an earlier decision by the Council is subsequently seen to have been in error, perhaps because of the development of additional information now available to local government authorities, the proper course for the Council to follow is to act in the manner that the Council has done in this case. It was appropriate for the Council to present to the Commission the material which shows that the earlier decision as to the sale of the property for the specified purposes, may have been an error.

196. Whilst we believe that the community in the catchment area for this venue could not be classified as suffering from a high level of disadvantage, nevertheless, the evidence as to available incomes to support higher than usual household numbers must be taken into consideration. So, also, must the evidence as to necessary travel expenditure being incurred by residents of Cardinia. Whilst the residents of the Lakeside estate certainly appear to enjoy a higher

level of advantage than other residents within the catchment area, they only represent approximately 12 per cent of the most closely-connected catchment.

## **CONCLUSION**

197. Having regard to the history of this matter, it is difficult for the Commission to disregard the sale of the land by the Council and the fact that the Council knew that the purchaser (which included Tattersall's) would be using the land for the purposes envisaged by the Council, notably a hotel which might contain gaming. The fact that the applicant has acted in a manner consistent with that which was envisaged at the time of the sale in 2004 is a matter which we note. This is not a situation in which a proposal for a gaming venue has come as a shock to the residential community concerned about a radical change of direction.
198. But since the 2004 sale a new development, notably the approval for the significant Castello's - Gateway Hotel venue has altered the position significantly. The advantages which might have been said to accrue by reason of the proposed Lakeside Hotel have been considerably reduced by the fact that prior to its construction another significant venue will have been erected in very close proximity.
199. It is the concerted view of many researchers and others who have conducted inquiries or research into problem gambling, that gaming venues should not be located in or in close proximity to shopping



areas. This is a matter which concerns the Commission greatly. We are not suggesting that a flexible approach is undesirable – we can envisage circumstances in which an existing hotel in a high street may seek a limited number of egms, in circumstances which would give rise to little concern. But this is not the situation in this case. Residents of the Lakeside Estate, or within the Pakenham-SLA, who use the Coles supermarket and other shopping facilities in Lakeside Terrace will be confronted with a gaming venue on every occasion that they visit the area for their necessary household purposes. If the proposal involved a location in an area of higher socio-economic status, or the proposal conferred benefits upon the community, greater than we believe to be the case, the applicant may have been able to satisfy the Commission.

200. Faced with the wording of the Act which requires the Commission to refuse an application unless satisfied that the net economic and social impact of approval will not be detrimental to the wellbeing of the community with which we are concerned in considering this application, the Commission has concluded that it cannot make such a finding. In these circumstances the application must be refused.

*The preceding 200 paragraphs are a true copy of the reasons for decision herein of –*

*Mr I. Dunn, Chair*

*Mr P. Cohen, Executive Commissioner*

*Mr R. Smith, Sessional Commissioner*

*Date of Hearing:* 31 March, 1, 2, 3 and 4 April 2008  
*Date of Decision:* 26 June 2008  
*Counsel for the Applicant:* Ms Susan Brennan  
*Instructing Solicitors:* Williams Winter  
*Solicitors for the Relevant Authority:* Best Hooper  
*Counsel Assisting the Commission:* Ms Lyn Corneliusen