



Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by Molwin Pty Ltd, for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises, the Dromana Hotel, 151-165 Nepean Highway, Dromana, Victoria, from forty-one (41) to fifty (50) electronic gaming machines.

Commissioners: Mr Ross Kennedy, Deputy Chairman
Mr Des Powell, Commissioner

Appearances: Mr Peter O'Farrell of Counsel for the Applicant
(Instructed by Tresola Legal)

Ms Anna Clarke as Counsel Assisting the Commission

Ms Jenny Macaffer and Mr Peter Sibley on behalf of the Mornington Peninsula Shire Council

Date of Hearing: 29 January 2015

Date of Decision: 6 March 2015

Decision: That the application be refused.

Signed: **Mr Ross Kennedy**
Deputy Chairman

REASONS FOR DECISION

INTRODUCTION

1. This is an application by Molwin Pty Ltd (**the Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Dromana Hotel (**the Hotel**) located at 151-165 Nepean Highway, Dromana, Victoria, from 41 to 50 EGMs.
2. The relevant municipal authority is the Mornington Peninsula Shire Council (**the Council**). The Council advised the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) on 14 January 2015 that it did not support the application.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (the **Act**). The Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities.¹ For this reason the Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some and harm for others. In particular, the balance is maintained by requiring an applicant who wishes to increase the number of EGMs at a venue to satisfy the Commission of the "no net detriment test", and the other matters set out in section 3.4.20(1) of the Act.²
4. The no net detriment test requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.³
5. Section 3.4.19 of the Act allows the Council to make a submission addressing the economic and social impact of the proposal on the well-being of the community and taking into account the impact of the proposal on surrounding municipal districts. The Commission is bound to take this submission into consideration when applying the no net detriment test. This recognises the special role of local government in representing the people of a community.⁴

¹ See: s 1.1(2) of the Act.

² See: *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] (Bell J).

³ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435 ("Romsey").

⁴ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] - [249].

THE MORNINGTON PENINSULA SHIRE

6. The Mornington Peninsula Shire (**the Shire**) is a metropolitan Local Government Area (**LGA**) located approximately 80 kilometres south of Melbourne and includes the townships of Mornington, Dromana, Flinders and Rosebud. Mornington Peninsula is comprised of three statistical local areas⁵ (**SLAs**), Mornington Peninsula – West, Mornington Peninsula – East and Mornington Peninsula – South. The Hotel is located in the Mornington Peninsula – South SLA in the township of Dromana.
7. The Shire is a popular tourist region; however it also encompasses a diverse mix of urban and rural land uses. While the major centres within the Shire include Mornington, Hastings, Flinders and Rosebud, encompass areas popular amongst young families and first home owners, the significant coastal townships of Rye, Sorrento and Portsea are popular amongst holiday home owners.
8. There are 17 gaming venues within the Shire with approvals to operate up to 841 EGMs, which is considerably less than the municipal limit of 1,127 gaming machines. In terms of EGM density, the Shire has an overall density of 6.79 EGMs per 1,000 adults which is 23% greater than the metropolitan average and 16% more than the State average.
9. In terms of gaming expenditure, the Shire has an average expenditure per adult of \$654, which is 14% greater than the metropolitan average and 19% greater than the State average. Gaming expenditure within the Shire has decreased by 15% in real terms (indexed to CPI) over the past 5 years, which is identical to the overall decline in metropolitan expenditure.
10. In terms of social and economic disadvantage, the Mornington Peninsula – South SLA is ranked 58rd out of the 79 metropolitan SLAs on the SEIFA Index for Disadvantage⁶, which suggests that there is a moderate to high level of disadvantage within the SLA when compared with the other metropolitan SLAs in Victoria. When broken down into a Census Collection District (**CCD**) level, 14% of CCDs within a 2.5km radius of the Club are in the first quintile of disadvantage and 42% in the second quintile of disadvantage. This indicates that there are relatively high levels of disadvantage in the areas in which it can be expected that the majority of the Hotel's gaming patrons will be drawn from.

THE MATERIAL BEFORE THE COMMISSION

11. The Applicant filed the following documents in support of its application:

⁵ The Statistical Local Area (SLA) is an Australian Standard Geographical Classification (ASGC) defined area which consists of one or more Collection Districts (CDs). SLAs are Local Government Areas (LGAs), or parts thereof. Where there is no incorporated body of local government, SLAs are defined to cover the unincorporated areas. SLAs cover, in aggregate, the whole of Australia without gaps or overlaps.

⁶ Socio-Economic Indexes for Areas (**SEIFA**) is a product developed by the ABS to assist in the assessment of the welfare of Australian communities. The SEIFA Index allows the ranking of regions/areas, providing a method of determining the level of social and economic well-being in each region.

- a completed application form to amend a venue operator's licence (vary gaming machines), dated 28 September 2014;
- a completed application form for approval to modify a gaming machine area in an approved venue, dated 28 September 2014;
- a social and economic impact assessment prepared by Mr Rhys Quick, Urbis Pty Ltd, dated September 2014;
- an expert's report prepared by Mr Tim Stillwell of Moore Stephens Accountants and Advisors, dated 29 September 2014;
- a witness statement by Mr Leigh James Barrett, Director of the Leigh Barrett and Associates Pty Ltd, dated 25 September 2014;
- a witness statement by Mr Raymond John Stella, Director of the Applicant, dated 28 September 2014.

12. The Council filed the following documents in support of its submission:

- a social and economic impact assessment prepared by the Mornington Peninsula Shire, dated January 2015;
- Mornington Peninsula Shire Responsible Gaming Strategy dated September 2001;
- Mornington Peninsula Consultative Committee on Gaming terms of reference date May 2013;
- Mornington Peninsula Shire Responsible Gaming Strategy 2007 Issues and Background Paper dated January 2007;
- Survey results on Community Attitudes to the additional 9 EGM's at the Dromana Hotel , undated;
- Letter from Peninsular Advisory Committee for Elders dated 10 December 2014;
- Letter from City of Casey from Mr Gavin Wilson, dated 11 November 2014;
- Letter from Frankston City Council from Dennis Hovenden, dated 30 October 2014.

13. The Commission also had before it two reports prepared by Commission officers, being:

- a statistical economic and social impact report dated January 2015; and

- a pre-hearing inspection and compliance report dated 20 August 2014.

THE DROMANA HOTEL

14. The Hotel is located on Nepean Highway Road within the coastal township of Dromana. It sits on the northern end of the Dromana retail strip. The Hotel currently operates 41 EGMs which were introduced in the Hotel in 1994.

15. The Hotel comprises:

- a bistro/restaurant with a seating capacity for 300 patrons in a number of separate dining areas;
- a boardwalk cafe serving light meals with capacity for up to 80 patrons;
- a central atrium area used for both casual dining and to host functions for up to 190 patrons;
- a public bar with a TAB and an outdoor deck;
- a gaming room with 41 EGMs;
- a drive-through bottle shop; and
- 13 motel rooms in the upper level including a variety of room configurations.

16. Further, at the rear of the Hotel are 15 townhouses with 6 of them rented to staff from the Hotel.

Social and Economic Impact Assessment (Urbis Report), Mr Rhys Quick

17. The Applicant engaged Urbis Pty Ltd to prepare a social and economic impact statement report. Mr Quick gave evidence at the hearing of the application and was cross-examined by the Commission and Council.

18. The Commission accepts that Mr Quick is qualified to give expert opinion on the likely social and economic impacts of this application.

19. Mr Quick told the Commission that the approval of this application would not result in any capital improvements to the Hotel, However approval would allow the Applicant to maintain ongoing improvements to the facilities offered by the Hotel. He reported that the Hotel currently spends approximately \$300,000 per annum on venue refurbishments, improvements and repairs.

20. In relation to community contributions, Mr Quick told the Commission that the Applicant has already provided cash and in kind contributions to local charities and organisations on an ad hoc basis of approximately \$35,000 each year. The Applicant now intends to donate an additional \$10,000 in cash to be distributed to local community groups

21. Mr Quick stated in his report that generally, the Mornington Peninsula Shire is not considered disadvantaged. However he notes that in the south SLA, there is an aging population, with an average age of 47, and the 29% of residents aged over 65. He explained this may be a contributing factor as to why incomes are below the state average, and household sizes are comparatively small.
22. In terms of problem gambling, the increase in expenditure by gamers who play for recreation without a problem is an economic benefit. However the proportion of spending from problem gambling is inherently difficult to measure. Mr Quick told the Commission that he believed the economic disbenefit from the new gaming expenditure derived from problem gamblers is likely to be low as the additional nine EGMs are being installed in a venue which already currently operates 41 EGMs.
23. Mr Quick stated that in terms of a potential diversion from trade in retail facilities, the impact is likely to be a fraction of the increased expenditure given that the additional expenditure is likely to come from people outside the municipality who would not have spent it at the retail areas within Dromana. Further, he reported that any impact will be spread across a whole range of businesses, and the ultimate impact on one retailer will be indiscernible, and in his opinion no job losses would occur.
24. While the Urbis report stated the additional nine EGM's will allow for the creation of between one to three new full time equivalent positions at the Hotel, Mr Quick accepted that it was more likely on the lower end of additional employment opportunities, and it may not necessarily be as a result of the additional EGM's.
25. In Mr Quick's opinion, the impact of the approval of the application on problem gambling within the Shire would be limited due to the following factors:
- a) The Hotel already provides access to gaming in this location;
 - b) The demographic profile of the area is not seen as particular vulnerable to the effects of problem gambling;
 - c) The nature of the hotel operation in a location that attracts large visitor numbers;
and
 - d) The actions of an experienced gaming operator committed to minimising problem gambling harms.
26. In summary, Mr Quick concluded that approval of this application would not have a detrimental social or economic impact on the community of Mornington Peninsula Shire.

Evidence of likely gaming expenditure – Tim Stillwell, Moore Stephens Accountants and Advisors

27. The Applicant engaged Mr Stillwell of Moore Stephens to provide an estimate of the gaming expenditure expected to be generated by an increase from 41 to 50 EGMs at the Hotel.

28. Mr Stillwell report concluded that:

- an additional nine EGMs at the Hotel would increase the gross gaming expenditure by between \$245,069 and \$294,083 for the first 12 months of trade post the installation of the additional EGMs;
- of this additional expenditure, approximately 30% is expected to be expenditure transferred from other venues; and
- after transferred expenditure is taken into account, total gaming expenditure in the Shire is expected to rise by between \$171,548 and \$205,858 per annum.

29. Mr Stillwell told the Commission that he believed the 30% transfer estimate was appropriate given that there was only one competitor venue within the direct proximity, being the Peninsula Club. Further, Mr Stillwell stated that the Peninsula Club was considered a low performing gaming venue. Therefore, based on this information and the gaming patron surveys undertaken, Mr Stillwell told the Commission it was reasonable to assume that there are patrons who travel over 5 kilometres to attend the Hotel, as well as patrons outside the Shire who visit the Hotel during holiday periods.

Evidence from the Applicant, Mr Raymond John Stella

30. Mr Stella gave evidence about the Hotel's current operations and facilities, the tourism aspects of the Hotel, the community contributions the Hotel currently makes and its Responsible Service of Gambling (**RSG**) practices.

31. Mr Stella is the company director of the Applicant. He has been involved in the gaming and hospitality industry in excess of 28 years. Prior to the purchase of the Hotel in 1986, Mr Stella owned and/or operated the Albion Hotel in Finley, New South Wales, and the Lady Bay in Warrnambool, Victoria. He stated when he purchased this Hotel his children were of an age when they were soon to be attending University and he wanted a more family orientated venue closer to Melbourne.

32. Mr Stella stated the Hotel is multi faceted and, in his opinion, appeals to patrons travelling down the Mornington Peninsula. The Hotel's dining component has a good reputation within the Shire, and as such appeals to 'day-trippers' and patrons on holidays during the summer and school holiday periods.

33. In his statement, Mr Stella noted that the four dining room areas are often booked out. However he stated that given he finds it difficult to properly discharge his obligations as a liquor licensee with young patrons, he does not take bookings for 'boozy' functions, such as 18th or 21st birthday parties, or young engagement parties.

34. Mr Stella gave evidence to the Commission that he has never kept a record of the exact amount of community contributions, however he emphasised that contributions are part of the culture of the Hotel and that is a culture he did not intend to change. However, he was able to particularise the following cash/in kind contributions:

- a) \$7000-\$8000 in kind assistance (packaged beer) to the Dromana Cricket Club;
- b) \$1000 cash per annum to the Dromana Bowling Club
- c) \$4000 in kind assistance (10 barrels of beer) to the Red Hill Football Club and \$180 in vouchers;
- d) Discounted meals to the Dromana Hotel Social Golf Club on Friday evenings to golf club attendees and their families;
- e) \$3000 in kind (trays of food) to the Tyabb Football Club
- f) \$1000 to Dromana Sailing Club (purchase of buoys)
- g) \$1000 Ad hoc donations to specific groups (eg \$500 Australia Day donation, \$500 Cancer Charity Groups)

35. Mr Stella told the commission that should this application be granted the Hotel will increase the community cash contributions to \$10,000 in addition to the ad hoc in kind donations. The in-kind donations were estimated at \$35,000; however Mr Stella stated that he may need to reassess the in kind contributions upon commencing cash contributions of \$10,000.

36. Since the preparation of the statement, Mr Stella told the Commission that the gaming room would now close at 1am, instead of 3am, during day light saving hours. While he admitted that this was a business decision, he also stated that this was to avoid encouraging patrons to come and drink at the Hotel with the potential risk for alcohol related harm issues.

37. Further, Mr Stella noted in his statement that he engages local tradespersons for all Hotel works, and that he always tries to support locals, when possible. He acknowledged that by way of return, those locals frequent the Hotel, particularly on Friday evenings, and this relationship also benefits him eg. If something urgent is required they are never far away.

38. Mr Stella told the Commission that he understands the requirements of the gaming industry and the level of regulatory compliance, and takes this responsibility very seriously. While there was some confusion during the Commission inquiry between the local Council gaming committee and the local Gamblers Help services it appears that Mr Stella is not engaged with Gamblers Help. However, he stated that the Hotel was part of the local council tourism committee, although he does not attend these meetings personally. Mr Stella stated the Hotel adheres to the recently developed RSG policy by Mr Barrett and that this will serve to monitor any potential harm that may occur in the gaming room.
39. It was put to Mr Stella that the gaming room is directly visible from the dining area, and the potential for children to open the glass door if they were of a certain height to reach the button raises a potential gambling risk. While Mr Stella did not initially accept this was an a responsible gambling issue, he stated that if the Commission required him to do so, he would consider putting in opaque glass to reduce any potential harm from the gaming area being viewed from a family orientated dining area within the Hotel.

Evidence from the Mr Leigh James Barrett

40. Mr Leigh Barrett is an independent consultant who specialises in the provision of regulatory compliance services for gaming venues in Victoria. Mr Barrett provides venue operators with staff training and responsible service of gaming policy development. The Commission has previously accepted that Mr Barrett is qualified to give expert evidence on matters of gaming regulatory compliance. Mr Barrett gave evidence at the hearing of the application and was cross-examined.
41. Mr Barrett gave evidence that on 22 August 2011, the Applicant engaged him to provide a range of regulatory compliance services for the Hotel, including a comprehensive Responsible Gambling/Customer Care Program. Further, Mr Barrett was engaged to develop a Responsible Gambling Policies and Procedures Manual, conduct staff training and undertake regular regulatory compliance audits for the Hotel.
42. Mr Barrett told the Commission since July 2012 he has conducted quarterly audits of the Hotel and has found it to be consistently compliant. However, upon cross examination of Mr Barrett, he acknowledged that it had not been recommended that the Hotel mitigate the risks associated with minors having clear visibility through the glass doors to the gaming room from the dining area. In hindsight, Mr Barrett agreed that this should be done and would recommend this action being taken.
43. Further, Mr Barrett was questioned in relation to issues regarding the line of sight from the rear entrance to the Hotel to the gaming room. Mr Barrett noted that generally this area would be covered by CCTV, however he told the Commission that he has made a recommendation

for the CCTV to be moved from behind the console operator to the be at the front of the console, and for it to be visible at all times. Finally, Mr Barrett acknowledged that the applicant had not yet actioned this recommendation.

44. Other than the glass door and changes to the CCTV position, Mr Barrett stated that he believes the layout of the Hotel is adequate in terms of observation and control of access to the gaming room. In Mr Barrett's view, an additional nine EGMS at the Hotel would still maintain the venue as a small/medium venue, especially in comparison to other venues in the Shire.
45. Further, in Mr Barrett's opinion, the Applicant is mindful of the potential for venue staff to develop gambling problems and in summarising his evidence, Mr Barrett remained confident that the Hotel's policies and procedures, together with its capable staff, will mitigate against problem gambling activity at the venue.

THE COUNCIL'S SUBMISSION

Ms Jenny Macaffer and Mr Peter Sibly – Mornington Peninsula Shire Council

46. The Council provided the Commission with a Social and Economic Impact statement prepared by Council officers and was represented by Ms Jenny Macaffer and Mr Peter Sibly at the Commission hearing (however the Commission notes that no sworn evidence was provided by the Council). Ms Macaffer is employed by Council as the Coordinator for Social Planning and Community Development and was the primary author of the Council's submission.
47. Ms Macaffer told the Commission that the Council does not prohibit electronic gaming in the Shire, and acknowledged the long standing history of the Hotel in the local area. However, the Council is committed to the mitigation of the negative impacts of gaming, and this forms the basis of the assessment and response to the application. Upon consideration of the merits of the application, the Shire's assessment indicate that the detrimental socio-economic impacts on Dromana and the surrounding region far outweigh the community benefits outlined by the Applicant. Therefore the Council is opposing the application on the basis that it will result in a detrimental affect upon the wellbeing of the community.
48. In coming to this conclusion, the Council has noted the following key factors:
 - a) Numerous areas in very close proximity to the Club exhibit significant signs of relative disadvantage and are amongst the most disadvantaged areas in the municipality;
 - b) The Hotel is located in an area with already high density of the EGMS, and thus believes that Dromana is already sufficiently saturated with gaming machines.

Further, given the recent approval of an additional 18 EGMs at the Peninsular Club, this saturation will continue to increase in the near future;

- c) While the Council conceded the reduction in trading hours from 3am to 1am will assist to reduce risk of problem gambling, certain other features of the Hotel, such as the staff members residing in the townhouses next to the Hotel, present an increased risk for problem gambling at the Hotel;
- d) The expenditure to be derived from the proposal has a very low transferred expenditure rate, resulting in a significant proportion of the expenditure being 'new' gaming expenditure;
- e) The community benefits as a result of this application are very low, no re-development or capital works to the Hotel have been promised, and no additional facilities are being offered to the community as a result of the application;
- f) The application has not engaged, or attempted to make contact with the Gamblers Help Southern;
- g) The location of the Hotel presents an opportunity for impulse gambling and is located in a strip shopping centre which heightens the potential risk for convenience gambling especially during the tourist seasons;
- h) The Hotel is in close proximity to numerous community facilities such as a community housing centre which increases the venue's accessibility to vulnerable groups; and
- i) The Council conducted a community attitudes survey in respect of this application. The results of the survey showed that the majority of respondents are not supporting an increase in EGMs at the Club.

49. Ms Macaffer told the Commission that the combination of the low transfer rate of gaming expenditure, together with a very low community benefit as a result of the application in an area of a heightened risk of problem gambling, has led the Council to the view that it must oppose this application. Further, the already high concentration of the EGMs in a small town such as Dromana, the likely increase in accessibility to EGMs due to the Peninsula Club approval together with the accessibility of the Hotel in the strip shopping centre poses an increased risk to the community.

FINDINGS BY THE COMMISSION

50. There is often a large degree of overlap between economic and social impacts of applications to operate EGMs. The Commission considers it useful for the purpose of balancing community benefits and detriments that a thorough analysis and identification of the economic and social impact on the community be undertaken.⁷

LIKELY ECONOMIC IMPACT OF APPROVAL

51. The Commission accepts that approval of this application will result in an increase in gaming expenditure at the Venue of between \$125,127 and \$152,933 in the first 12 months of operation. However the Commission is not convinced that the likely transfer rate of 30% is reasonable. Given the evidence before the Commission in relation to an application by the Peninsula Club in March 2014 was that the estimated transfer rate was 91.1%, and given the Peninsula Club is within 500 metres of the Hotel in this application, the estimate does not appear consistent. While the Council did not put any counter evidence before it in relation to an alternative transfer rate, the Commission holds that a transfer rate of 30% is unlikely.

52. Regardless of what the level of transferred expenditure eventuates, in the context of a municipality with a high gaming machine density and high levels of gaming expenditure (when compared to State averages), such an increase is relatively small. The Commission considers that this new expenditure is likely to include expenditure received from both responsible gaming (a benefit) and problem gaming (a disbenefit). Therefore, the likely the economic benefit to the municipality resulting in an increase of new expenditure is reduced and as such the Commission holds this benefit to be of little or no material benefit.

53. The Commission accepts that gaming expenditure, not associated with problem gambling, is legitimate consumption expenditure generated by and large by people enjoying a recreational activity. However, revenue derived from problem gamblers is a disbenefit as it leads to economic costs such as lost productivity, increased health and social service requirements and other social costs. The Commission is of the view that there is a small risk of an increase in problem gambling as a result of this application.

⁷ This is consistent with the approach taken by Justice Bell in *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275

54. The Commission considers that increasing the number of EGMs at the venue increases its competitiveness in the gaming market, can attract new customers and could help retain patrons that would otherwise leave for another gaming venue. However, in this application, the increase is marginal and unlikely to generate any marginal or measurable ancillary expenditure in the Club's non-gaming revenue sources. As such, the Commission does not place any material weight on this benefit.
55. The Commission finds that the community contributions directly provided by the Applicant are limited in nature, and at best, are already built into the business model of the Applicant to attract its desired patronage to the Hotel. As such, the Commission considers that these contributions are unlikely to be affected by the outcome of this application, and therefore places little weight on these contributions.
56. In terms of the economic costs presented by the Applicant, the Commission considers the approval of the application is likely to result in a small loss of gaming revenue for a number of gaming venues, and a potential diversion of trade from other businesses in the area. However, the Commission notes that the predicted losses are essentially transfers without net cost, and in any case are minimal and therefore unlikely to impact the financial position of other gaming venues or local businesses.
57. However, the Commission is concerned about the level disadvantage in the immediate surrounds of the Hotel. While the Commission accepts that it is difficult to assign any exact share of increased expenditure to problem gambling, or to assess any increase in problem gambling with certainty, it considers that the consequential impact of any increase to gambling expenditure will be greater in this case compared with a similar increase in gambling expenditure in a less disadvantaged area. Accordingly, the Commission places increased weight on the likely costs of this application relating to increased gambling expenditure attributable to problem gambling and the economic costs associated with problem gambling.
58. Overall, the Commission considers that there would be a neutral economic impact on the community if the application were to be approved.

LIKELY SOCIAL IMPACT OF APPROVAL

59. The Commission accepts that approval of this application will result in a small increase to accessibility. Wherever accessibility to EGMs is increased, there is always a risk of an increase in problem gambling. In this case, the accessibility will be further increased by the recently approved (but not yet installed) 18 EGMs at the nearby Peninsula Club. Even though it can be argued that the gambling market has matured and the Hotel has a large proportion of tourists in the peak season, this concern cannot, in the Commission's view, be entirely set aside in this application. The impact on the well-being of a community needs to be properly considered.

60. Further, the Commission does not accept the submission by the Applicant that the Council does not speak on behalf of the community. The Council has legislative standing under the Act to make a submission addressing the economic and social impact of the proposal on the well-being of the community and the Commission must take this submission into account. Therefore the Commission does place material weight on the Council submission that approval of this application will increase the accessibility to EGMs and will have, albeit a small increase a potential risk to the well-being of the community.
61. On the basis of the evidence before it, the Commission considers that the Applicant did not have a thorough understanding of responsibilities required for the operation of a gaming venue in particular within an area of a heightened risk of problem gambling. Therefore, with any increase of gaming machines, the potential risk, while small, is still an increase that must be considered against a number of factors. Whilst processes and systems were outlined by Mr Barrett, given the evidence of Mr Stella, the Commission was not convinced Mr Stella fully understood the extent and implications of this responsibility. Further, the Commission does not accept that the Applicant fully appreciates the significance of appropriate responsible service of gaming measures, and the Commission is not satisfied these measures will be appropriately enhanced to meet the higher risk of problem gambling found to be accompanying this application.
62. Given the Commission holds these concerns regarding the knowledge and understanding of Mr Stella in relation to his responsible gambling measures and responsibilities required for the operation of a moderate sized gaming venue, the Commission strongly encourages Mr Stella to make contact with Gamblers Help Southern for further advice and assistance.
63. The Commission also considers that a social impact of the application is affected by the level of relative disadvantage evident in the immediately surrounding area of the Hotel. The evidence that 56% of SA1s within a 2.5km radius of the Venue are in the 1st or 2nd quintile increases the risk profile of the surrounding area, and further supports the Council's submission regarding the risk of convenience and potential for problem gambling.
64. Further, the relative disadvantage within the immediate areas increases the risk to those who may already be problem gamblers. Whilst the Commission accepts that tourists do increase throughout the summer and holiday time periods, this is for a limited time and the residual risk for locals remains for the overwhelming majority the year. Therefore the Commission finds that there is an increased risk of problem gambling at the Hotel given the profile of the surrounding area.
65. The Commission considers that there is likely to be a marginal detrimental social impact on the community if the application were to be approved.

CONCLUSION

66. The no net detriment test in section 3.4.20(1)(c) of the Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the wellbeing of the relevant community will be either neutral or positive.⁸
67. The Commission acknowledges that many of the impacts identified as a result of this application are marginal (both positive and negative), reflecting the small number of requested EGMs and the small estimated increase in gaming expenditure. Despite this, the no net detriment test is still to be applied and, if the balance is considered negative, the application must be refused.
68. Finally, the Commission notes that in many cases of marginal social and economic impacts, the Commission can take comfort in the demonstrated understanding and commitment to responsible gambling practices on the part of the venue operator to mitigate the marginal increase in the detrimental impacts. However, after consideration of all the evidence presented in this matter, the Commission cannot be satisfied that this is the case in this application. Therefore the Commission is not satisfied that the net economic and social impact of the amendment will not be detrimental to the well-being of the community, including the immediately surrounding area or the wider area of the Mornington Peninsula Shire.
69. The application is therefore refused.

The preceding sixty-nine (69) paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy (Deputy Chairman) and Mr Des Powell (Commissioner).

⁸ *Romsey* (2008) 19 VR 422, 435.