



Victorian Commission for
Gambling and Liquor Regulation

REASONS FOR DECISION

In the matter of an application under section 3.3.4(1) of the *Gambling Regulation Act 2003* by Pink Hill Hotel Pty Ltd for approval of premises at the Terminus Hotel, 22-31 Harker Street, Healesville as suitable for gaming with 30 electronic gaming machines.

Commission: Bruce Thompson, Deputy Chairman
Robert Kerr, Commissioner

Date of Reasons: 9 October 2012

Decision: That the application be granted, subject to the conditions at paragraph 54.

Signed:

Bruce Thompson
Deputy Chairman

REASONS FOR DECISION

BACKGROUND

1. This is an application by Pink Hill Hotel Pty Ltd (the **Applicant**) under section 3.3.4(1) of the *Gambling Regulation Act 2003* (the **Act**) for approval of premises at the Terminus Hotel, 22-31 Harker Street, Healesville as suitable for gaming with 30 electronic gaming machines (**EGMs**).
2. The relevant municipal council in respect of this application is the Shire of Yarra Ranges (the **Council**). On 27 July 2012 the Council provided the Commission and the Applicant with a written submission in opposition of the application.
3. The Commission held a public inquiry to consider the application pursuant to section 28(2)(g)(iii) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* on 6 August 2012.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Determination of this application is governed by section 3.3.4(1) of the *Gambling Regulation Act 2003* (**the Act**) which states that the Commission must determine an application by either granting or refusing an application for approval of premises as suitable for gaming.
5. Section 3.3.7 of the Act sets out the matters to which the Commission must have regard in determining an application of this nature, and provides (relevantly):
 - (1) The Commission must not grant an application for approval of premises as suitable for gaming unless satisfied that—
 - (a) the applicant has authority to make the application in respect of the premises; and
 - (b) the premises are or, on the completion of building works will be, suitable for the management and operation of gaming machines; and
 - (c) the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located.
 - (2) In particular, the Commission must consider whether the size, layout and facilities of the premises are or will be suitable.
 - (3) The Commission must also consider any submission made by the relevant responsible authority under section 3.3.6.

* * * * *

- (5) The Commission cannot approve an area as a gaming machine area unless that area is wholly indoors.
- a. The Council has the right, by virtue of section 3.3.6 of the Act, to make a submission to the Commission which addresses the economic and social impact of the proposed amendment on the wellbeing of the community of the municipal district, taking into account the impact of the proposed amendment on surrounding districts. The Commission is bound to take this submission into consideration when applying the 'no net detriment test'.¹
- b. The 'no net detriment test' requires the Commission to weigh the likely positive economic and social impacts of an application against the likely negative economic and social 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.²
- c. The Act recognises that, notwithstanding individual rights of self-determination and gaming's recreational legitimacy, gaming on EGMs causes harm to some communities and some members of some communities.³ It is for this reason that the Act includes safeguards to ensure that an appropriate balance is struck between a lawful and legitimate recreational activity for some and harm for others.

THE MATERIAL BEFORE THE COMMISSION

6. The Applicant filed the following documents in support of its application:
- a. Social and Economic Impact Report, prepared by Urbis Pty Ltd, dated April 2012;
- b. Expenditure Report, prepared by Mr Richard Whitehouse of Progressive Venue Services, dated May 2012;
- c. Responsible Gambling Policies and Procedures
- d. Proposed Floor Plans for Gaming Lounge;
- e. Witness Statement of Mr Robin Daley, the sole director of the Applicant, dated 26 April 2012;

¹ See *Gambling Regulation Act 2003* (Vic), s 3.3.4(1)(c).

² *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435.

³ See *Gambling Regulation Act 2003* (Vic), s 1.1(2).

- f. Witness Statement of Mr Scott Taylor, Director of the Heartwell Foundation, dated 16 May 2012.
7. The Council relied on its written Social and Economic Impact submission, and submitted the following documents to the Commission:
 - a. Witness Statement of Mr Gary Slater, General Manager of the Healesville RSL Sub Branch Inc.
8. Additionally, a statistical report prepared by Commission officers, titled Economic and Social Impact Report (the **Commission Report**), dated July 2012 was considered by the Commission.

THE TERMINUS HOTEL AND THE SHIRE OF YARRA RANGES

9. Based on the material in the Commission Report:
 - a. The Terminus Hotel (the **Hotel**) is located at 22-31 Harker Street, Healesville. The Hotel is located within the Local Government of Area (**LGA**) of the Shire of Yarra Ranges.
 - b. The Shire of Yarra Ranges is located approximately 60 kilometres east of Melbourne, covers an area of 2,470 km² and is made up of six Statistical Local Areas (**SLAs**). The premises are located in the Yarra Ranges (S) - North SLA (**North**).
 - c. It is noted in passing that the LGA has an SLA (Yarra Ranges (S) – Pt B) that is located outside the Melbourne Statistical Division under the Australian Standard Geographical Classification, and so this SLA is considered to be rural. However the Commission Report classifies the LGA as metropolitan, given that the Yarra Ranges (S) – Pt B SLA accounts for a small percentage of population in the LGA and also given that the premises is located in North, which is within the Melbourne Statistical Division.
 - d. The Shire of Yarra Ranges has a Regional Cap of 1,092 EGMs in the part of the LGA that is located within the Melbourne Statistical Division. There are currently eight venues operating EGMs within Yarra Ranges offering 427 EGMs in total.

- e. The Shire of Yarra Ranges has an adult population of 112,159. The annual rate of population growth projected by the Department of Planning and Community Development is 0.2% over the next five years.⁴
- f. Overall, the material provided to the Commission showed that both the municipality and the area surrounding the premises are not particularly socially and economically disadvantaged, although pockets of disadvantage exist. For example, the SEIFA⁵ score (based on 2006 data) for North is 1,003.73, which is ranked 61 out of 79 metropolitan municipalities in Victoria (with 79 being the most disadvantaged). However the Yarra Ranges (S) - Central and Yarra Ranges (S) – Dandenongs, Yarra Ranges (S) – Lilydale and Yarra Ranges (S) - Seville SLAs were ranked 65th, 18th, 40th, and 37th of 79 respectively. Yarra Ranges (S) – Pt B was ranked 61st of the 80 rural SLAs in Victoria. These SEIFA rankings indicate a mixed level of social and economic disadvantage throughout various areas of the municipality.

Social and Economic Impact Statement – Urbis Pty Ltd

10. The Applicant called Mr Rhys Quick, of Urbis Pty Ltd, to give evidence regarding the social and economic impact of the application on the Shire of Yarra Ranges and the surrounding area.
11. In Mr Quick’s opinion, the approval of the premises and the implementation of the 30 EGMs sought in this application will not be detrimental to the well-being of the community of Yarra Ranges. His reasons for this can be summarised as follows:⁶
 - a. The Applicant plans to “revitalise the venue with a redevelopment, increasing the range of facilities and entertainment options”;
 - b. Gaming is “just the one part of the total venue offering”;
 - c. An “increased range and quality of entertainment and leisure facilities for local residents, workers and tourists is an important positive outcome”;

⁴ *Victoria in Future 2008*, Department of Planning and Community Development.

⁵ SEIFA is a measure of relative socio-economic disadvantage produced by the Australia Bureau of Statistics. The index is created by combining a number of indicators of disadvantage including low educational attainment, high employment, proportion of the population in unskilled occupations and low equivalised household income levels.

⁶ Taken from Social and Economic Impact Report, Urbis Pty Ltd, April 2012, p 33.

- d. The community contribution aspect of this application will greatly assist local groups and causes;
- e. The Applicant will “endeavour to provide support to the local community through financial and in-kind means, as well as contribute greatly towards the Heartwell Foundation”;
- f. The equivalent of six full time positions will be created as a result of this application, comprised of a mixture of full time, part time and casual employment roles;
- g. The area “has below average levels of disadvantage”, including a “very small proportion of high disadvantaged households” in the North SLA;
- h. The location of the Hotel “means that it has the potential to serve a large tourist market in addition to local residents”;
- i. Yarra Ranges has a lower than average provision of EGMS, with current levels being “well below” the regional cap and “expected to further diminish based on recent entitlement purchases in the EGM auction”, even if this application is approved;
- j. The change in EGM expenditure as a result of this application will be low, leaving Yarra Ranges “at a very low expenditure per adult level”;
- k. The risk of increased problem gambling as a result of this application is “likely to be very low”, and any increase in that risk is “outweighed by the benefits the additional revenue flows the venue could generate in terms of community contributions and the ability to fund capital improvements to the venue to improve its service offering to residents and tourists alike.”

Evidence of Likely Expenditure

- 12. The Applicant provided a report prepared by Mr Richard Whitehouse of Progressive Venue Services which commented on the likely EGM expenditure which would result from the proposed 30 EGMs at the premises.
- 13. Mr Whitehouse’s evidence was, inter alia, that \$1.456 million in total expenditure would be generated by the Hotel as a result of the 30 new EGMs in the first 12 months of operation, and that 56.1%⁷ of that total revenue would be

⁷ Equating to \$817,795.

transferred from other venues. This would result in new EGM expenditure in the LGA of \$638,899 in the first 12 months of operation of the 30 new EGMs.

14. The transferred expenditure figure was calculated by Mr Whitehouse by inputting Commission EGM expenditure data into the Geotech Model, which has been cited and considered by the Commission in a number of cases previously.
15. Mr Whitehouse also gave evidence that a significant component of the transferred expenditure would come from the Healesville RSL, with a forecast 24.62% decrease in expenditure levels at the RSL that would consequently flow to the Hotel.
16. Council did not call any competing expenditure evidence, however did cross-examine Mr Whitehouse on his evidence-in-chief.

Evidence from the Applicant

17. The Commission heard evidence from Mr Scott Taylor, Director of the Heartwell Foundation, which is a not for profit charity organisation that assists underdeveloped youth. The primary purpose of the Heartwell Foundation is "to provide movement education and rehabilitation programs to children, particularly to those living with disability or illness, or children disadvantaged by socioeconomic circumstance".⁸ Mr Taylor spoke of the commitment by the Applicant to donate \$30,000 annually to the Foundation as having the ability to assist 300 children and their families in the LGA, allowing them to participate in the activities and educational programs provided by the Foundation relating to health, diet and activity levels. Currently, the Foundation does not receive any Government or Council financial support, according to Mr Taylor.
18. The Commission then heard evidence from Mr Robin Daley, the sole director of the Applicant. Mr Daley is also a director of DSL Securities Pty Ltd, the company that owns the freehold premises of the Hotel. The Applicant is not the current licensee of the Hotel, but will take over from the current licensee (Lakeside Lodge Falls Creek Vic Pty Ltd) in the event this application is approved. Mr Daley is also a director of the current licensee.
19. Mr Daley has experience in operating gaming and hospitality operations, being the current Chairman of the Cranbourne Racing Club (which operates Trios Tabaret) and having been on the Board of that Club since it first obtained

⁸ Witness Statement of Scott Taylor, para 4.

premises approval in 1999. Mr Daley, through the Applicant, has also obtained premises approval in respect of the proposed Pink Hills Hotel located in Cranbourne.⁹ It is Mr Daley's evidence that his experience in the gaming and regulatory environment through the Cranbourne Racing Club and the proposed Pink Hill Hotel that makes him "acutely aware of the regulatory and compliance requirements in the gaming industry".¹⁰

20. The Applicant purchased the premises as a freehold concern in July 2010 at auction from liquidators for a price of \$2.2 million (plus taxes and duties), including buildings, stock, plant and equipment. The premises was not "operating as a financially viable concern" at the time of purchase, according to Mr Daley, and the Applicant undertook renovations¹¹ in the 18 months after purchase at an estimated cost of \$450,000 and included:¹²

- a. Compliance costs (health and occupational health and safety);
- b. Accommodation refurbishment, including fit out of motel;
- c. Bottle shop renovation;
- d. Installation of operating plant and equipment for bottle shop, kitchen and bars;
- e. Stock;
- f. Roofing repairs;
- g. Refurbishment of TAB in public bar;
- h. Re-carpeting;
- i. Kitchen consumables;
- j. Point of sale systems (cash registers);
- k. Back of house systems (e.g. computers etc);
- l. Car park maintenance;
- m. Garden maintenance;
- n. Complete refurbishment of current central bistro area;

⁹ Approved to operate 60 EGMs: *In the Matter of Pink Hill Hotel Pty Ltd (Pink Hill Hotel)*, 23 July 2010.

¹⁰ Witness Statement of Robin Daley, paras 4-6.

¹¹ Described by Mr Daley as "compulsory remedial works": Witness Statement of Robin Daley, para 12.

¹² See Witness Statement of Robin Daley, para 12.

- o. Remove and replace entire kitchen;
 - p. General maintenance and painting etc.
21. The final part of the Applicant's renovation plan is to convert currently unused space into a gaming room to allow for the installation of the 30 EGMs sought in this application.
22. Mr Daley gave evidence of a perceived shift in the clientele of the Hotel since the renovations were carried out. Whereas the previous clientele was primarily a younger audience, this has since shifted to a broader scale clientele of all ages, particularly older patrons.¹³
23. The above renovations have resulted in a modest increase in profitability however the Hotel still suffered a loss for the financial year ending 30 June 2011 of more than \$100,000.¹⁴
24. Mr Daley also gave evidence that the current licensee does not pay any rent to the freehold owner at this time, and that the licensee (whether it be the Applicant - if this application is approved - or otherwise) will commence paying rent at the rate of approximately \$282,000 per annum (plus GST) once "the operation runs smoothly and profitably".¹⁵ Mr Daley provided the Commission with financial forecasts and his evidence was, inter alia, that the Hotel required the additional revenue generated by the EGMs sought in this application in order to be commercially viable and provide social and economic benefits to the local community as a result.
25. In terms of community contributions, Mr Daley spoke of the fact that the Hotel is used by the local Lions Club for lunches and meetings, by a Poker Club and by a Vintage Car Club. The Hotel provides free room hire and discounts on food and beverages to them, and Mr Daley sees the Hotel as a "pseudo-social club".¹⁶ As referred to earlier, the Applicant will make an annual contribution to the Heartwell Foundation of \$30,000 per annum and Mr Daley gave that commitment to the Commission during the course of his evidence.
26. The Applicant proposed to adopt a Responsible Service of Gaming policy consistent with that provided at Appendix B of Mr Daley's Witness Statement

¹³ Witness Statement of Robin Daley, para 14.

¹⁴ Ibid, para 15.

¹⁵ Ibid, para 18.

¹⁶ Witness Statement of Robin Daley, para 27.

and will also attempt to minimise the effect of this application on problem gambling in the municipality in the following ways:¹⁷

- a. Compliance with regulations and industry Codes of Conduct;
- b. Offering a range of entertainment and recreational options available to customers;
- c. Having well-developed venue orientated responsible gambling policy and procedures in place that are well known by all staff; and
- d. Demonstrating commitment to ongoing staff professional development in conjunction with local Gambler's Help services.

27. Mr Daley also said in his evidence that he believed the Hotel would be a destination venue, rather than one of convenience.¹⁸ This was due to the Hotel not being located in a strip shopping centre or other high traffic area, meaning that customers will need to make a conscious choice to visit the Hotel. Moreover, Mr Daley's evidence was that the gaming room would be an "adjunct to all other quality hospitality components the venue will offer".¹⁹

28. In the last twelve months, the Hotel has had a number of inspections by liquor inspectors. On these visits, the inspectors have reported that there have been several occasions where the Hotel has not properly maintained a Responsible Service of Alcohol register. When asked by the Commission to explain this, with reference to the Commission's need to consider the Hotel's record of regulatory compliance as a factor in this application, Mr Daley said that he was not aware of those breaches in liquor regulation.

Evidence from the Council

29. The Council called Mr Gary Slater, the General Manager of the Healesville RSL Sub-Branch Inc (the **RSL**). Mr Slater gave evidence regarding what effect the forecast 24.62% decrease in the RSL's EGM revenue would have on its ability to provide welfare and social services to the local community, as is its purpose. Mr Slater's evidence was, inter alia, that as gaming revenue comprises 75% of the RSL's total revenue, its ability to provide these services that are largely subsidised by EGM revenue will suffer, including:

¹⁷ Ibid, paras 30 and 34.

¹⁸ Ibid, para 35.

¹⁹ Ibid.

- a. It becoming necessary to charge community groups such as Rotary, U3A, Christian Blind Society, Probus Groups and local indigenous groups to use RSL facilities for meetings and events;
 - b. Cancellation or charging for use of the community bus, which is currently used by local schools and sporting groups as well as the RSL and other local groups; and
 - c. Reduction or cancellation of welfare services provided to returned local servicemen and women.
30. In cross examination, the Applicant's counsel Ms Porritt put to Mr Slater that with the new taxation regime coming into effect in Victoria, the RSL would in fact be in a better financial position in relation to its EGM revenue than it would be otherwise, and that this increase in surplus EGM revenue would largely absorb any effect that this application would have on the RSL's ability to provide services. Mr Slater did not concede this, and following the inquiry he provided the Commission with his financial modelling that he undertook. The Applicant provided its response to this and its own financial modelling to the Commission on 3 September 2012. Both have been considered by the Commission. This material supports the Applicant's proposition that, even if the RSL was to lose a percentage of its revenue as forecast, it would still have additional revenue from taxation savings, increasing its net cash flow. It therefore makes it difficult to contend that the RSL would in fact be worse off (compared to last year) if this application is approved, as clearly it would have additional funds available to it for application to its social and welfare programs under the new taxation regime in any event. It would also promote competition between venues in Healesville, which the Commission considers to be a good outcome for the community.
31. Council also called Ms Isha Scott, the author of the Council's Social and Economic Impact submission, to give evidence. Ms Scott's evidence was that the application would (on balance) be detrimental to the social and economic wellbeing of the community of Yarra Ranges for the following reasons:²⁰
- a. Employment – modest employment benefits arising from installation of EGMs, however this is outweighed by the perceived effects of the application on problem gambling;

²⁰ Taken from Shire of Yarra Ranges Social and Economic Impact Assessment, pp 1-3.

- b. Problem gambling – likely to have a negative impact on the local and indigenous community, as the local area is shown to exhibit signs of vulnerability based on social and economic disadvantage, as well the lingering crippling social and economic effects of the 2009 Black Saturday bushfires. A survey of community service organisations illustrated this concern;
- c. Community funding - Ms Scott acknowledges that the proposed donation of \$30,000 to the Heartwell Foundation will have a positive social impact, but this is again outweighed by the perceived risks to the local community in terms of problem gambling;
- d. Entertainment and recreation opportunities - No impact;
- e. Local character – EGMs “contrast to the cultured, gourmet and scenic character that is integral to both community identification with Healesville and tourism in the area.”

Other Evidence

- 32. The Commission received 14 objections to the application from members of the community. The Commission has considered these objections.
- 33. The Commission is bound to take these objections into account.²¹
- 34. It is noted that neither the Applicant nor Council produced a community attitudinal survey, providing a ‘snapshot’ of the wider community’s attitude towards this application.

FINDING BY THE COMMISSION

- 35. The ‘no net detriment test’ in section 3.3.7(1)(c) of the Act requires the Commission to weigh the likely positive economic and social impacts of an application against the likely negative economic and social impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission concludes that the net economic and social impact of approval on the well-being of the relevant community will be either neutral or positive.²²

²¹ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, paras 40 to 45.

²² *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435.

36. Furthermore an application of this nature must be refused unless the Applicant can satisfy the Commission that there is an “absence of detriment to the community”.²³
37. There is frequently a large degree of overlap between economic and social impacts of applications to operate EGMs. However, the Commission considers that it is useful for the purpose of the balancing exercise to identify and analyse the economic and social impacts separately to arrive at a net position for each before reaching the final determination.²⁴

Social impact of approval

38. If this application is approved there will be an increase to the number of gaming venues in Yarra Ranges by one, and to the number of EGMs by 30. The current number of EGMs in Yarra Ranges per 1,000 adults is 3.81, 37% less than the metropolitan LGA average of 6.06 and 38% below the state-wide average of 6.18. This level of EGM density is predicted to increase to 4.07 if this application is approved. Real expenditure on EGMs per adult has been falling in Yarra Ranges, and is likely to continue to fall if this application is approved, based on the expenditure and population forecasts before the Commission.
39. In terms of risk to problem gambling, the Commission considers that the risk is one that has the potential to affect the community in this particular application, but is one that can be appropriately mitigated by the Applicant through robust responsible gambling practices and procedures. Despite the SEIFA scores, the LGA exhibits some signs of vulnerability including levels of equivalised household income,²⁵ the proportion of people experiencing housing stress²⁶ and the number of adults reliant on government pensions.²⁷ Furthermore, the Commission must pay particular attention to the significant indigenous population and those recovering from the devastating effects of the 2009

²³ *New Theme Pty Ltd v Victorian Casino & Gaming Authority* [2002] VSCA 80, para 65.

²⁴ This is consistent with the approach undertaken by Justice Bell in *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275.

²⁵ 18.82% below the average of all metropolitan collection districts: Commission Social and Economic Impact Report, p 10.

²⁶ 33.38% compared to the metropolitan average of 31.91%: Commission Social and Economic Impact Report, p 12.

²⁷ The SLA of Yarra Ranges (S) – Central was ranked 13th and North was ranked 14th out of the 79 metropolitan SLA in terms of number of persons per 1,000 adults receiving the Age Pension, Newstart Allowance or a Disability Support Pension as at June 2011: Commission Social and Economic Impact Report, pp 20-22.

bushfires, two particularly vulnerable groups of the Yarra Ranges community. These are all warning signs of a community that is vulnerable to the effects of problem gambling and so any proposal that will result in an increase in the number of EGMs, and an increase in EGM expenditure, must be treated with caution.

40. The Commission is not satisfied that the responsible gambling practices and procedures, as they currently stand, are sufficient to address the risk of an increase to problem gambling in Yarra Ranges as a result of the application. They do not appear to address the specific needs of the Healesville community and, as Mr Daley noted in his oral evidence, the proposed Responsible Gambling policies provided to the Commission were taken from another Hotel (apparently in the Shire of Moira). Furthermore, the Commission had no evidence to consider regarding whether or not these proposed responsible gambling measures were indeed sufficient. It is usual practice in applications for new premises for applicants to call professional or expert evidence from an industry source who can comment the applicant's responsible gambling practices and procedures either met or exceeded best practice standards. No cogent evidence regarding the expertise of the proposed gaming room manager was provided, save for the manager's name. The Applicant's proposed responsible gambling measures therefore remain untested.
41. Another concern for the Commission was the fact that Mr Daley, the sole director of the Applicant, was unaware of a number of breaches by the Hotel of liquor regulation in the past twelve months, arising from a failure (albeit minor) of the licensee to keep a Responsible Service of Alcohol register. This suggested to the Commission that the governance oversight and reporting processes between the venue management and the Applicant were not satisfactory.
42. The Applicant would therefore need to demonstrate to the Commission that an appropriate Management Plan and operating protocols were in place to manage and minimise the possibility of harm to the community as a result of problem gambling before the premises could be approved as suitable for gaming.
43. The views of the community are also a significant factor in balancing the positive and negative aspects of this application. It is clear from the objections received that a number of members of the community are opposed to this application. The general theme of these objections was that gaming in general was bad for

the community of Healesville, particularly considering that part of the community is still suffering the after-effects of the 2009 Black Saturday bushfires. The views of the community should therefore be afforded due weight in the required 'balancing act'.

44. While the Commission recognises that the donation of \$30,000 annually to the Hartwell Foundation may have a significant flow-on benefit to the local community, it is difficult for the Commission to place weight upon other in-kind donations made to local community groups. The facilities of the Hotel do not readily provide for a separate meeting and/or function room for community groups, with these groups having to share facilities with members of the public in the bistro. This, in the Commission's view, affects the value of this type of in-kind community contribution.
45. Further, the layout of the premises does not appear to lend itself to the 'social club' atmosphere, as Mr Daley has said the Hotel will promote. There is little, if any, space for customers to use the Hotel for the sole purpose of having a drink and engaging with others, unless one was to use the proposed gaming room, the TAB or the bistro. In other words, there appears to be nowhere in the Hotel where a customer who does not wish to play EGMs or use the TAB to sit without being exposed to these facilities, apart from the bistro. This is significant, in the Commission's view, as it affects the broader attraction and usability of the Hotel for members of the public who do not wish to gamble. It provides real accessibility issues for those members of the community affected by problem gambling, and who are endeavouring not to expose themselves to any facet of gambling.
46. Mr Daley's evidence was that the Hotel required significant capital investment in order to become competitive and attract a broader clientele. These works included a general upgrade and facelift to the Hotel and modernisation of the plant and equipment. The evidence suggested that some of these works were required as part of normal maintenance. While there is some modest benefit to the community as a result of these works, the Commission is of the view that the Applicant purchased the Hotel as a going concern, despite it not functioning as a going concern at the time of purchase. There is no evidence to suggest that the Hotel will not function as a going concern without EGMs, but with a low return on capital. The Commission noted in Mr Daley's evidence the significant

swing factor between profit and loss arising from the implementation of EGMs. Therefore the Commission is unable to place significant weight on the value of these works to the local community. The social value of these works, therefore, is neutral.

47. The Commission is satisfied that, provided certain conditions are imposed, there will be a net social impact outcome on Yarra Ranges that is neutral as a result of this application.

Economic impact

48. The Commission considers that there will be a likely positive economic impact on the relevant community, albeit a modest impact.
49. The proposal will result in an increase in gaming expenditure of between 1.94% and 2.30% in the LGA.²⁸ The Commission's calculations show the current level of EGM expenditure per adult in Yarra Ranges is \$279, 57% below the metropolitan average of \$651 and 54% below the State average of \$613, and this will rise to \$286 if this application is approved and the EGMs become active (i.e. an increase of 2.51%). This, in the Commission's view, is a modest increase on EGM expenditure in the Yarra Ranges LGA, however there is also an attendant consumption benefit that must be considered.
50. Notwithstanding any increase in EGM expenditure, the further economic benefit of granting this application, being the additional employment arising from the redevelopment of the premises, cannot be ignored. The number of new positions that will be created by this application remains disputed between the parties, since some employment will be shifted with transferred EGM expenditure. However it is likely that the application will result in some form of modest increase in the number of employees at the Hotel, particularly in the gaming room through the employment of a manager and associated ancillary staff.

Conclusion

51. The Commission has considered the likely social and economic impacts of the proposal and is satisfied that the net economic and social impact of approving this application will not be detrimental to the well-being of the community of the Shire of Yarra Ranges, provided certain conditions are met.

²⁸ EGM Expenditure Report, Progressive Venue Services, p 12.

52. Based on the material provided to the Commission prior to, and at the time of the public inquiry, the Commission is satisfied that the Applicant has the authority to make the application.
53. The Commission is satisfied that, upon these conditions being satisfied, the Applicant has taken, or will take, sufficient measures to prevent problem gambling. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the application, subject to certain conditions.
54. Pursuant to section 3.3.9 of the Act, this approval does not take effect until:
 - a. The director of the Applicant has completed an approved course in the Responsible Service of Gaming and has provided the Commission with evidence of completion of same; and
 - b. The Applicant has provided the Commission with a Management Plan for harm minimisation in respect of problem gambling, incorporating an appropriate governance framework and operational protocols and procedures, and until the Commission has approved same.

The preceding document is a true copy of the Reasons for Decision of Mr Bruce Thompson (Deputy Chairman) and Mr Robert Kerr.

<i>Date of Inquiry:</i>	<i>15 August 2012</i>
<i>Date of Decision:</i>	<i>27 September 2012</i>
<i>Date of Reasons:</i>	<i>9 October 2012</i>
<i>Counsel for the Applicant:</i>	<i>Ms Sarah Porritt</i>
<i>Instructed by:</i>	<i>Mr Dale Curtis</i>
<i>Counsel for the Council:</i>	<i>Mr John Rantino</i>
<i>Instructed by:</i>	<i>Maddocks</i>
<i>Counsel Assisting the Commission:</i>	<i>Mr James McIntyre</i>