



Victorian Commission for Gambling Regulation

DECISION AND REASONS FOR DECISION
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In the matter of the *Gambling Regulation Act 2003*

– and –

In the matter of an application by Beretta's Langwarrin Hotel Pty Ltd under section 3.4.17(1)(b) of the Act for amendment of the venue operator's licence to vary the number of gaming machines at the approved premises at the Langwarrin Hotel, 5 Union Road, from forty four (44) to sixty (60)

DECISION

Commission: Mr I Dunn, Chair
Ms Suzie Jones, Sessional Commissioner

Date: 12 August 2008

Decision: The application is granted subject to the conditions set out in paragraph 80.

(sgd) I Dunn, Chair

REASONS FOR DECISION

Date: 12 August 2008

Mr I Dunn, Chair

Ms Suzie Jones, Sessional Commissioner

1. This was an application by Beretta's Langwarrin Hotel Pty Ltd under section 3.4.17(1)(b) of the Act for amendment of a venue operator's licence to vary the number of gaming machines at the approved premises, Langwarrin Hotel, 5 Union Road Langwarrin, from 44 to 60.

THE LEGISLATION

2. Section 10.1.22 of the Act provides that an application to amend a venue operator's licence to increase the number of gaming machines (egms) at a venue must be held in public unless there are special circumstances requiring that the inquiry, or part thereof, be held in private. This inquiry was held entirely in public. The Commission's power to hold inquiries is found in section 10.1.20 of the Act.
3. Determination of this type of application is governed by section 3.4.20 of the Act, the terms of the inquiry itself and the evidence brought. The most relevant provision is section 3.4.20(1)(c) which provides:
 - (1) Without limiting the matters which the Commission may consider in deciding whether to make a proposed amendment, the Commission must not amend a venue operator's licence unless –
.....
 - (c) if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the net economic and social impact of the amendment will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located.

4. Upon making an application the applicant is obliged by section 3.4.18(2) of the Act to notify the relevant authority.

THE ROLE OF THE CITY OF FRANKSTON

5. In accordance with the Act, the applicant served a copy of the application upon the relevant local government authority, notably the City of Frankston.
6. The Chief Executive Officer of the City of Frankston wrote to the Commission on 11 September 2007 advising that the City had determined to oppose the application. In this letter the CEO advised that City's opposition to the proposal was based on a considered response in conformity with Council's "Gambling Policy and Action Plan 2005-2008".
7. The City played an active role in the proceedings throughout and was represented by Mr John Rantino from the law firm of Maddocks Lawyers.

THE BACKGROUND TO THIS APPLICATION

8. This is the second occasion upon which the Commission has considered an application for an increase in egms by this applicant. On 30 November 2005 the Commission allowed an application for amendment of the venue operator's licence to permit an increase in the number of egms from 34 to 44 (*In the matter of Langwarrin Hotel*). The material contained in paragraphs 17 to 19, in particular, of the Reasons for Decision in the 2005 application is relevant to the present application and we see no need to repeat what was said in those paragraphs.
9. At that time the purpose for which additional egms was being sought was to finance a refurbishment of the hotel. Elaborate and impressive plans were presented in support of the application.

10. The refurbishment has taken place and it seems to be agreed, even by critics of the current application, that it has been a great success. Indeed, a major reason for the current application is the need to add extra egms to provide a better facility or “offer’ to the large numbers of patrons who use the other facilities at the hotel, particularly the bistro.

THE CASE PRESENTED FOR THE APPLICANT

11. After making her initial written submissions, Ms Brennan, counsel for the applicant, called a number of witnesses. We consider that much of the evidence was uncontroversial, and we do not need to refer to all of it.
12. The principal witness as to the current operations at the hotel was Mr Peter Beretta, a director of the applicant company. He was supported by Mr Tony Halstead who currently manages the hotel. From the evidence of these witnesses we note the following matters.
13. Since the previous application, some \$8m has been spent on the refurbishment—much more than was proposed. The work has been carried out to high standards (an inspection of the premises by the Commission confirms this). Unusually, the changes to the Sports Bar have lead to much greater patronage than is customary, with the nature of the clientele changing throughout the day and evening. The bistro has attracted more patronage than expected—some 3500 meals are served each week. There is even a portion of the bistro reserved for adults, a recognition that the massive usage of the hotel by family groups can make the atmosphere somewhat rowdy! The bistro also has a children’s play area and is very popular during rainy days, in respect of this point Mr Halstead said in his witness statement:

“Some days you can barely walk through the bistro from end to end there are so many strollers”.

14. Busiest times in the gaming room coincide with the peak times in the bistro (we will refer, in due course, to the evidence of patronage of the gaming room). Both in the written and oral evidence and in our inspections of the venue we have been impressed by the sheer volume of activity at the hotel.
15. Mr Halstead, in particular, gave extensive evidence about the hotel’s policies in relation to problem gambling. The hotel maintains a policy of liaison with Gamblers Help Southern, an incident register is maintained which records, amongst other matters, details of people experiencing problems with their gambling. Mr Halstead, who has considerable experience elsewhere, commented that in his experience at the subject hotel, there were very few incidents revealing excessive gambling.
16. Mr Halstead also provided evidence about what he believes is a large number of patrons who cannot be accommodated in the gaming room. He used the expression “in my opinion, 500 meals into only 44 gaming machines does not fit”. Essentially this was the thrust of the applicant’s case, and we do conclude that there is a demonstrated need for additional egms. It must be said that gaming plays a relatively minor role in the operations of this hotel, and this will not change greatly if the application is granted.

ADDITIONAL BENEFITS TO BE PROVIDED BY THE APPLICANT

17. The mere demonstration of a higher demand for egms than can be met, may not, of itself, be decisive, particularly if there is evidence of either greater numbers of egms than average in the relevant community, or (as is

- the case here) greater than average expenditure. But in this case the application was strengthened by the evidence as to two other matters.
18. The first is the applicant's record in supporting something known as the Langwarrin Community Project. The applicant already makes substantial donations to this Project, which was described as a project aimed at providing support and social infrastructure for all persons living in Langwarrin. If the application is granted the applicant will commit \$60,000 per annum to the Project, enabling it to employ a coordinator (evidence from Mrs Roz Moran was helpful as to this matter). The applicant also makes donations to other community based organisations, principally sporting clubs.
 19. The second matter to which we must refer is the proposal put forward by Mr Beretta, that if the application is approved the applicant will carry out extensive work to the car park of the hotel and will also build a motel with conference, or function room, facilities, on the land opposite the hotel in Union Rd.
 20. The car park extensions although obviously important, might be thought to be needed in any event, whether or not egms are granted. But in the Commission's view the proposal for the motel/conference/function facility is very significant. We accept that there is almost no accommodation offered near the hotel, or indeed in Langwarrin. The well-known holiday accommodation in Frankston, is over 5km to the west near Port Philip Bay.
 21. As to this point Mr Beretta was extensively cross-examined by Mr Rantino for the Council. The thrust of the cross examination was that as the

proposed motel would be a financial success in any event there is no need for additional gaming revenue in order to finance it. On this point Mr Beretta was adamant. He referred to the fact that he has other borrowings and was not prepared to take additional risks to undertake a building project which would be expensive. Whilst he admitted he had prepared no more than “back of the envelope” calculations when deciding to commit to the project (but subject to the success of this application) we were satisfied about his evidence. We have no reason to doubt that if the application is granted, the motel project will proceed and that both accommodation and function facilities are needed in Langwarrin which is, as we discuss subsequently, the most advantaged part of the Frankston municipality.

22. Before dealing with the social and economic impact evidence we refer to additional evidence called by the applicant as to a number of other matters. This related to matters such as the appeal of the hotel within its catchment area, the fact that there is perceived to be a smaller number of egms than is justified by the number of patrons at the hotel, the very high rating which is achieved by comparison with other venues within the Tabcorp network and strategic threats to the current advantageous position in which the hotel presently finds itself. Witnesses were called as to all of these matters, we saw no reason to disagree with their evidence, and we accept the thrust of it. We are satisfied that, comparatively, there are fewer egms than might be expected in a hotel with this level of patronage. We are satisfied that some patrons will be dissatisfied with the number, and composition, of the egms on offer, and may choose to go elsewhere for that reason. We are satisfied that the hotel, which we believe is very well managed, does nevertheless deserve a high rating when compared to other venues offering gaming, and particularly for its bistro offering, by comparison with other

gaming venues either within Frankston or within the Tabcorp network. In these circumstances we see no need to refer further to this evidence.

23. The witness called to provide the evidence as to the social and economic impact of the proposal was Mr David Soussan, a senior planner, of Ratio Consultants. That firm had prepared two reports, one when this application was lodged with the Commission and an updated report dated April 2008.

24. The first matter dealt with by Mr Soussan related to patron surveys at the hotel. These were carried out on two occasions and were designed to reveal the residential addresses of those using the bistro and gaming rooms within the hotel. The gaming room survey (carried out by asking patrons to point to a map revealing their addresses) was broken up into post codes for comparison with the SEIFA index. There was evidence as to the inconsistencies between postcodes in 2001 and 2006, the fact that some postcodes had changed etc, but we think that ultimately little turns on this. Mr Soussan then examined the SEIFA scores for the various postcodes and revealed the following:
 - Some 12% of respondents to the most recent survey were from addresses outside Frankston;
 - Over 55% were from addresses close to the hotel, and in the more advantaged part of Frankston;
 - Others identified various other locations within Frankston but the critical point is that only a tiny proportion, 1.9% identified the area known as The Pines, as their residential address.

This is significant because this area attracts the lowest SEIFA indicator within Frankston.

25. Overall, over 69% of respondents revealed addresses in collector districts attracting a high or good SEIFA rating. By contrast 11% revealed addresses with poorer SEIFA scores.
26. The witness then turned to utilisation surveys within the gaming room. These confirmed the matters to which reference has already been made, notably that there is very high usage of the existing egms. As an example, during the survey conducted from 11 February 2008 to 16 February 2008 there were 43 half hour periods during which there were more than 30 patrons in the gaming room and 28 such periods during which there were more than 30 patrons engaged at the gaming machine. (On quite a number of occasions there were in excess of 40). By comparison with the evidence which has been provided at many other inquiries before the Commission, this is a very high rate of utilisation.
27. The witness commented that the number of egms within Frankston (6.38 per one thousand adults) remains less than the Melbourne metropolitan average. Frankston has approximately 20 per cent more adults per venue than the state average. But despite these figures, gaming expenditure in Frankston had increased from \$708 per adult in 2005-6 to \$740 per adult in 2006-7. This means that gaming expenditure within Frankston as a whole is about 8.8 per cent higher than the metropolitan average. Mr Soussan did make the calculations as to average expenditure within the Langwarrin postcode, 3910. This showed a relatively low figure of \$483 per adult, but in a relatively densely populated municipality such as Frankston we do not believe that such a figure is of great assistance.

28. Frankston has a smaller proportion of its population who completed secondary school or who have obtained tertiary qualifications than the average for the Melbourne Statistical Division. By contrast, it has a higher number of people employed as “tradespeople”. It is interesting that the SLA known as Frankston East, in which this venue is situated, has a considerably higher proportion of technicians and trade workers than either the City of Frankston, or the average for municipalities in the Melbourne Statistical Division. Frankston East SLA also has, by a considerable margin, more persons who are purchasing the houses in which they live. Nearly 60 per cent of residents in Frankston East fall into that category, compared with approximately 36 per cent for the Melbourne Statistical Division. On the other hand, only approximately 20 per cent of Frankston East residents fully own their residences – a comparable figure for the Melbourne Statistical Division is approximately 37 per cent. There are also many fewer people renting in the Frankston East SLA than in the Melbourne Statistical Division.

29. The surveys of household income showed that residents in Langwarrin, or within Frankston East, enjoy a higher income than either Frankston LGA as a whole, or the Melbourne Statistical Division. For example, in the postal area of Langwarrin, or within Frankston East SLA, the portion of people earning less than \$500 per week is 11.9 per cent and 12.4 per cent respectively. This compares with 19.5 per cent in the Melbourne Statistical Division. And the proportion of households in Langwarrin in the “high” income bracket (defined as over \$2000 per week) at 27.2 per cent is also slightly higher than the Melbourne Statistical Division.

30. Overall, the evidence of Mr Soussan demonstrated that the areas within Frankston East SLA are more advantaged than in the City of Frankston as a whole, and this is particularly the case for Langwarrin.
31. This is borne out by the SEIFA index. Langwarrin has a very high figure of 1,047. This figure (based upon the 2006 census) compares with the City of Frankston as a whole of 997. There are certainly some areas within Frankston LGA with a much lower score. For example, Frankston North and the Pines have a rating of only 834.
32. The witness commented that the Council's submission appeared to encourage entertainment uses within the Frankston activity centre, and as a consequence sought to discourage such uses within Langwarrin. He considered that there was a genuine social need in Langwarrin, and we agreed with this view.
33. In summary, our conclusion as to the demographic issues is that the subject hotel is located in the most advantaged part of the City of Frankston and in the area in which any increase in egm expenditure is best able to be accommodated without harm. The surveys showing that the large majority of patrons are from the Langwarrin area is, of course, a significant feature of the applicant's case. Nevertheless, the overall position regarding gaming expenditure within the City of Frankston is a concern.

THE SURVEY EVIDENCE

34. Part of the applicant's case involved an attempted rebuttal of evidence which was relied upon by the Council and which consisted of a survey which was conducted. The survey was entitled "Poker Machine Opinion

Survey” (Langwarrin Hotel) and was conducted in October 2007. We think it preferable if we deal with this issue at this point.

35. In the Council’s submission after setting out a number of relevant points, there was the following:

“Frankston’s community opposition to the application is supported by surveys undertaken by Council (which) demonstrate that the community is opposed to the increase of egms within Frankston generally and is opposed to this application specifically.

It is submitted that community attitudes towards gambling and the community’s wishes in regard to the distribution of egms within its municipality are valid social considerations to which the Commission should have regard.

The strength of a community’s opposition to an application has in the past been a factor which the Commission has accepted as being the difference between the grant and refusal of an application.”

36. No doubt this was a reference to the decision of the Commission to refuse an application for a venue operator’s licence for the Romsey Hotel (*In the matter of Romsey Hotel Pty Ltd*). In that matter, at paragraph 81 of its reasons, the Commission stated:

The Commission believes that in considering the issue of net social and economic detriment the Commission must be influenced by its conclusion as to the effect which the granting of the application would have upon this community. No doubt there have been people

In the matter of the Langwarrin Hotel
within the community who have forcefully expressed their views of hostility towards EGMs and who may well have a position of such hostility to EGMs anywhere, despite the fact that gambling on EGMs is a legitimate recreational activity. But in all the material which we have considered, in the inspections of the township which we have considered, from the oral evidence which was led before us, including demographic figures, we have gained the overwhelming impression that members of the local community find the prospect of gaming at its only hotel so disconcerting that it would have a significant effect on that community. It is worth noting that the strength of local opposition to this application was greater by far than any opposition mounted in relation to the Drouin matter. The Wallan application attracted some degree of local opposition, although the proposal was not opposed by the Shire of Mitchell.

37. In Romsey the applicant sought review at VCAT and was successful in having the Commission's decision set aside. The Council in that matter (Shire of Macedon Ranges) thereafter appealed to the Court of Appeal which overturned the VCAT decision but ordered that the matter be remitted to VCAT for further consideration. Included in the reasons of the Court of Appeal was the following:

Further – and perhaps, in some cases, more significantly – evidence of community attitude, together with other evidence as to the character of a community, may give rise to an inference as to the impact that a gaming proposal is likely to have upon the social character of that community. If satisfied that the impact would involve substantial change, the decision-maker is less likely to be satisfied that approval of the proposal will not result in net

detriment. In the present case we take the Commission to have reasoned in this way, namely that the particular factors which were distinctive of the social character of Romsey, in a positive way, were at unacceptable risk of change if the gaming proposal were approved.¹

38. It is important to note that the Court of Appeal's decision does not support the proposition that the community's opinion will necessarily be decisive. But it is a matter which must be taken into consideration. It is in this context that we must consider the survey which was carried out on behalf of the Council in this matter.
39. The evidence as to this subject was supplied by Ms Amy Parsons who holds the position of Market Research Officer at Frankston City Council. She provided a witness statement and gave evidence at the inquiry. In her witness statement she stated that in October 2007 a Mr Popovski from the Council's Community Projects department requested that she coordinate a survey to gauge local resident opinion regarding, inter alia, this matter. Mr Popovski provided her with a copy of an earlier research report relating to the Langwarrin Hotel poker machine application of May 2005. The witness made it plain that she had not had any involvement in the carrying out of that survey but that her brief was to carry out a survey along similar lines to the 2005 survey.
40. For this purpose, she arranged for the Council to engage Gippsland Research and Information Service (GRIS) to conduct a telephone survey. GRIS is a research unit based at Monash University. The manager at GRIS

¹ Macedon Ranges Shire Council v Romsey Hotel Pty Ltd & Anor VSCA 45 at 45

In the matter of the Langwarrin Hotel

adapted the earlier survey for current purposes. Participants were randomly selected from the electronic white pages telephone directory by using postcode area 3910 being the postcode for Langwarrin and interviews were conducted in the week commencing 22 October 2007. This method of survey excludes mobile phone users. After GRIS had carried out its work, the results were forwarded to the Council and Ms Parsons collated the results.

41. In addition to the telephone survey conducted by GRIS, the Council carried out an online survey by posting it on the Council's website. Both the telephone survey and the online survey were publicised in local newspapers (on a total of two occasions).
42. Further, Frankston Council has what is known as a "Community Consultation Database" which consists of approximately 200 people but which is not limited to any particular geographical area. Persons elect to be on the database. In this instance approximately 200 people received an e-mail from Ms Parsons inviting them to take part in the survey.
43. Following the advertisements, only one resident requested a copy of the survey.
44. So far as the telephone survey is concerned, the opening question was "Do you support the approval of an additional 16 poker machines being installed at the Langwarrin Hotel". Subsequent questions asked whether a respondent considered that additional egms would create new jobs, funds for particular community projects and matters of this kind. Respondents

were asked whether they did engage in gaming and, if so, how often and other relevant matters such as their age.

45. A problem with a survey of this kind, is that respondents were only presented with part of the picture. They were informed of the application by the applicant for additional egms, but they were not informed of other matters surrounding the application. In this case we would have thought that the most relevant matters were the applicant's statement, which was emphasised through Mr Beretta's and other witness statements, that if the application was granted a motel with conference (function facilities) would be built across the road from the hotel. We would have thought also that the offer of the applicant to make the further significant contribution to the Langwarrin Community Project might have been mentioned.
46. The telephone survey produced a response showing that a significant majority of respondents answered no to the first question. We are of the view, given the lack of any additional information in the question, that this is not surprising.
47. As a consequence of the construction of the survey those respondents who supported the approval of additional egms at the Langwarrin Hotel were not asked whether they believed that the extra egms would create a beneficial difference to the local community, a question which was asked of those respondents who did not support additional egms. We are of the view that a person's belief as to the benefits which may flow from the introduction of any additional egms is a relevant matter notwithstanding whether that person supports or does not support additional egms.

48. Ms Parsons was cross-examined extensively by Ms Brennan and it became plain that in carrying out the work which she had been requested to do, as a consequence of instructions she had received, she was suffering from severe limitations and her role was very limited. She made it plain that she had never read the application, that she knew nothing of the proposals by the applicant for a motel, or a contribution to the Langwarrin Community Project.

49. In all the circumstances, although the survey could have been of considerable value, the Commission has reservations as to matters of methodology, and also because it did not seek to present any fair summary of the applicant's position. When one considers the test which is laid out in the Act, the fact that it requires a balancing of advantages and disadvantages associated with the proposal, in the Commission's view a survey which properly presents both sides of the equation is of much more value.

50. We should add that this was one of the matters upon which this survey was criticised by a witness called on behalf of the applicant, Mr Philip Calwell, who is the head of one of the four research teams at DBM Consultants which is a full service market research agency. He criticised the survey on a number of grounds. The 2004 electronic white pages which was the database for selection of phone numbers is based upon the 2003 white pages and is therefore somewhat out of date because persons who have entered the area since 2003 would not be included. He agreed that all market research agencies struggle to obtain an adequate response from people under the age of 24 and sometimes up to the age of 35 (because such people tend to use mobile phones rather than landlines). He criticised

the survey on a number of technical grounds, relying for illustrative purposes upon surveys which his firm had conducted, for example in relation to the application by Harness Racing Victoria² at Melton. In that survey, respondents had been informed of all the facets of the proposed development and asked for their responses. Ultimately, they were informed that the positive features of the development would only transpire if gaming machines were included as part of the development and they were then asked for their response to the proposal overall.

51. We must say that this appears to the Commission to be a more appropriate manner to conduct a survey in respect of an application such as this.
52. In addition to the telephone survey conducted on behalf of the Council evidence was also given by Ms Parsons as to the results of an “online” survey.
53. Ms Parsons’ evidence on this point was that it was Council’s policy that all surveys, where applicable, would be reproduced online. The survey was placed on the Council website in the week that the telephone survey was conducted and it was distributed to her community consultation database, which was a database of people who had indicated at an earlier stage that they would like to participate in research when it came up. At the relevant time there were approximately 200 people on this database.
54. Ms Parsons’ evidence was that 16 people participated in the “online” survey and that she considered this a low response rate. Of the 16 people who did respond 75% (12 people) did not support the approval of

² Melton Harness Racing and Entertainment Complex 25 May 2006

additional egms at the Langwarrin Hotel. Given that the questions posed in the “on line” survey were the same as the telephone survey, that is they did not set out any of the benefits attached to the application, it is not surprising that 75% did not support it.

WHAT WILL BE THE ADDITIONAL GAMING EXPENDITURE?

55. Evidence as to the amount of additional gaming expenditure which would occur as a result of this application being approved was given by Mr David Ridley of Tabcorp. The Council also called an expert, Mr Colin Gill, Forensic Accountant of Ferrier Hodgson. In this matter the Commission had determined to receive the evidence of the two expert witnesses called in respect of gaming expenditure concurrently, and to that end both Mr Ridley and Mr Gill were sworn in together and the evidence and rebuttal evidence dealt with in a systematic manner, in which the witnesses felt free to engage in dialogue with each other, with counsel, and with the Commission.
56. Mr Ridley gave evidence that there would be an increase in gaming expenditure at the Langwarrin Hotel, if this application were to be granted, of \$1,051,000 per annum. Mr Ridley predicted that \$567,000 (54%) of this increased expenditure would come from other gaming venues currently operating within the City of Frankston (transferred expenditure). This would result in an increase in gaming expenditure within the City of Frankston of \$484,000.
57. One aspect of Mr Ridley’s evidence of which Mr Gill was critical was his use of a multiplying factor (in this case a factor of two) when calculating the amount of incremental expenditure which would arise as a consequence of the additional 16 egms. Mr Ridley’s evidence is, that whilst it is most

likely that the additional egms will be utilised during the peak usage periods at the hotel, the additional egms will also experience some usage outside these times. Mr Ridley says that based on his experience this “additional” usage generally ranges between a factor 1.5 to 3 and he takes this factor into account when predicting the incremental egm expenditure that will occur at the venue. His original belief had been that a factor of 1.5 would be appropriate. But because, in the months before the Inquiry, gaming expenditure at the venue had increased significantly, he now believed that a factor of 2 was appropriate.

58. The Commission understands Mr Gill’s concern that there is some degree of arbitrariness involved in determining what factor to use. However the Commission notes that historically Mr Ridley does not systematically underestimate the incremental expenditure that will result from “top ups”. On the contrary the evidence that has been put before the Commission in previous cases, and particularly in the Mornington Racing Club matter³, shows that Mr Ridley tends to overestimate the incremental expenditure.
59. Ultimately the Commission was satisfied that an estimate of \$1.05m increased expenditure at the Langwarrin Hotel was reasonable. We then had to consider his estimate that 54% of this figure would be transferred from other venues. This percentage was also challenged by Mr Gill. The venue is a considerable distance from other gaming venues. The most relevant, Frankston RSL, has a strong following of patrons obviously keen on a RSL setting. Nevertheless, ultimately we consider that Mr Ridley’s estimate should be accepted.

³ In the matter of Steeples Tabaret 24 August 2007

60. The current annual EGM expenditure within the City of Frankston is \$749 per adult compared with the metropolitan annual expenditure of \$688 per adult. If this application is granted the annual egm expenditure per adult would rise to \$754, an increase of 0.66% over the current rate.
61. The current gaming machine density in the City of Frankston is 6.38 egms per 1,000 adults and the average metropolitan density is 6.67 egms per 1000 adults. Again if this application were to be granted the egm density in the City of Frankston would rise to 6.55 egms per 1,000 adults.
62. Having heard the evidence of both experts called in relation to gaming expenditure in this fashion has significant benefits which include the giving of contemporaneous evidence on matters of contention and it also goes some way to ensure that there will be no failure to cross-examine a witness in relation to matters which are referred to in rebuttal by a subsequent witness. We are also of the view that in accepting the evidence in this manner a considerable amount of hearing time is saved which leads to a saving in costs for all parties.

THE SUBMISSIONS OF THE CITY OF FRANKSTON

63. Counsel for the respondent filed written submissions with the Commission following the receipt of evidence and in these submission he identified two negative economic and social impacts which would flow if the application were to be granted.
64. The first of these is said to be an “increase in the propensity for problem gambling arising from the making of egms more accessible to the community” and the second is “the impact on the community of increasing

- the number egms into a community which has expressed strong opposition to their introduction”.
65. The Commission acknowledges that any increase in the number of egms in a particular area has the potential to impact on problem gaming. However, in the Council’s submission there has been no evidence put before the Commission that makes any attempt to estimate what that impact may be should this application be granted. In fact there has been no evidence put before the Commission which gives any indication as to how significant, or insignificant, the issue of problem gaming in the Langwarrin area may be.
 66. The evidence before the Commission, as has been set out earlier, is that the hotel is in a relatively advantaged part of the LGA, there was only 1.9% of the hotel patrons who come from The Pines and that almost 70% of patrons revealed addresses from collector districts which attracted a high or good SEIFA rating.
 67. As mentioned earlier in this decision the applicant has in place a problem gambling policy and maintains links with Gamblers Help Southern. An inspection of the applicant’s incident register by the Commission did not reveal any incidents which would give the Commission concern in relation to how the applicant dealt with problem gambling.
 68. The respondent submits that the second negative impact is sufficiently established by the results of the “Poker Machine Application Langwarrin Hotel Research Report 2007”.

69. We have dealt with the question of the survey and its results earlier in these reasons and do not see the need to address this again save to say that the Commission considers any survey of residents a relevant matter.

THE ADVANTAGES AND DISADVANTAGES ASSOCIATED WITH THIS PROPOSAL

70. We now turn to a consideration of the positive and negative features of this application.
71. In this case, the evidence as to the inadequate numbers of egms at the subject venue is, perhaps, stronger than in any application which has come before the Commission. It is plain that there is a small number of egms relative to the number of patrons who frequent the various parts of the hotel, and particularly the bistro. It must not be overlooked that the legitimate interests of patrons of an entertainment venue who may frequent that venue because of the variety of matters which it provides for entertainment, must be considered. Here, we are absolutely satisfied that there is a smaller number of egms than would be justified by the number of people wishing to use them.
72. In some of the comments which were included in the survey conducted on behalf of Tabcorp as to the hotel's performance, there were references to the refurbishment of the hotel since 2005 and the improvements which have been effected. It is plain that this applicant has made appropriate decisions as to this hotel. It is well run and appears to the Commission to provide a valuable service, particularly for its local residents. This enables us to say with greater confidence that if the applicant does proceed to the erection of a motel and conference facility across the road from the subject venue, it is likely to be well conducted and to be of considerable benefit to

- the community. We think that the points which were made in evidence about the undesirability of persons travelling a long distance after attending local functions, are well made. For patrons to drive even to the hotels and other accommodations in the centre of Frankston is undesirable if it can be avoided. We suspect that there will be very high demand for the function facilities and that many of those who stay in the residential accommodation will be attending a function in the premises. We also suspect that it will have considerable value to commercial interests during the week.
73. We also note the applicant's offer of a significant additional payment to the Langwarrin Community Project. This applicant deserves credit for the manner in which it has supported a local, community based organisation which we have no doubt confers considerable value upon the community.
74. Another positive feature of the application is that the subject hotel is situated in the part of the Frankston municipality in which there are fewer disadvantaged people. In fact, the SEIFA index for Langwarrin is extremely high. It is true, however, that the hotel does attract a proportion of its patronage from areas in Frankston which are much more disadvantaged.
75. As to the disadvantages, we believe that the most important is the level of gaming expenditure within the City of Frankston. It is already over the Melbourne metropolitan average by some eight percent, and will be increased by a very small percentage if this application is granted.
76. We have considered the evidence of community opinion. Apart from the limitations of the telephone survey to which we have referred, we note also

that there was an extremely small response rate when the Council advertised the survey in the local papers. Only one person requested a copy of the survey. In a number of the matters coming before the Commission, community involvement surrounding an application has been so significant that following such newspaper advertisements there has been a clamour from persons wishing to be involved.

77. The fact that there was not, is not perhaps so surprising. The situation at Romsey, for example, was very different from that which is affecting the residents of Langwarrin. In Romsey their only hotel was faced with the prospect of gaining egms and thus, in the opinion of residents, changing its character altogether. In the current case, the subject hotel already has gaming and the incremental effect of this proposal upon the community will, we suspect, be quite small.

CONCLUSIONS

78. Having weighed up the advantages and disadvantages associated with the proposal, we are of the view that the evidence is sufficient to enable us to be satisfied that the net economic and social impact of this proposal will not be detrimental. In reaching this conclusion we are much affected by the proposal for the motel. Whilst we consider that the evidence certainly establishes that the subject hotel has a need for additional egms at the present time, the fact that there is greater than average egm expenditure within Frankston would cause us to hesitate were it not for the strongly positive features of this application.
79. Whilst we have no doubt that Mr Beretta has every intention of proceeding with the plans for the construction of a motel and conference facilities, we think it preferable if our approval of this application is, in part, conditional.

80. The application for amendment to the venue operator's licence to permit an additional 16 egms is, therefore, approved but on the basis that the licence is amended forthwith to permit an additional 8 egms and that the licence be further amended to permit an additional 8 egms upon the applicant establishing to the Commission's satisfaction that the motel (which we regard as the most significant of the additional facilities to be offered) has been constructed and is ready for occupation.
81. Before granting an application such as this, the Commission must consider the requirement in paragraph (a) of subsection 3.4.20(1), that amendment of the licence to permit additional egms at a venue does not conflict with any direction given by the Minister under section 3.2.3 of the Act.
82. A direction has been given by the Minister for Gaming which specifies, relevantly, the maximum number of gaming machines permitted to operate in the State, the proportion of which is to be located outside the Melbourne Statistical Division, the allocation as between hotels and clubs and as between the gaming operators (being Tattersall's and Tabcorp). We are satisfied that, at the time of granting this application, the Ministerial direction under section 3.2.3 will not be contravened.
83. Paragraph (b) of section 3.4.20 is not of relevance to this application, at this time, as the venue is not located in a region subject to a cap on the number of egms.

84. The administrative process of amending the licence will take place at a time subsequent to our decision, as allowed by section 3.4.20(4), which provides –
- “(4) An amendment takes effect when notice of the Commission’s decision is given to the venue operator or on any later date that may be specified in the notice.
85. The administrative process of the amendment to the licence will only take place, both for the initial 8 additional egms and the 8 egms which are conditional upon the completion of the motel, if the amendment of the licence, at each stage, will not result in the Commission being in breach of the Ministerial direction given under section 3.2.3, or any Ministerial direction in respect of regional caps which may be in effect at the relevant time.
86. Having regard to the somewhat unusual nature of these orders, particularly in paragraph 80, we reserve the right of either party to seek directions as to implementation of these orders.

The preceding 86 paragraphs are a true copy of the reasons for decision herein of –

Mr I Dunn, Chair

Ms S Jones, Sessional Commissioner

Date of Hearing: 17, 18 & 29 April 2008

Date of Decision: 12 August 2008

Counsel for the Applicant: Ms Susan Brennan

Instructing Solicitors: Bazzani Scully Brand

Counsel Assisting the Commission: Mr. S Parsons