



Victorian Commission  
for Gambling Regulation

**DECISION AND REASONS FOR DECISION**

In the matter of the *Gambling Regulation Act*  
2003

- and -

In the matter of an application under section  
3.3.4 of the *Gambling Regulation Act* 2003 by  
The Pink Hill Hotel Pty Ltd for approval of  
premises at The Pink Hill Hotel, 13 May Road,  
Beaconsfield as suitable for gaming with sixty  
(60) gaming machines.

**DECISION**

**Commission:** Mr F.B. Thompson, Chairman

Mrs J. King, Deputy Chair

**Date:** 23 July 2010

**Decision:** That the application be granted.

(Sgd.) F.B. Thompson  
Chairman

## **REASONS FOR DECISION**

**Date:** 23 July 2010

**Mr F.B. Thompson, Chairman**  
**Mrs J. King, Deputy Chair**

1. On 9 October 2009, The Pink Hill Hotel Pty Ltd applied to the Commission for approval of premises at The Pink Hill Hotel, Beaconsfield, as suitable for gaming, with sixty (60) electronic gaming machines (“egms”).

### **THE LEGISLATION**

2. The legislative provisions governing this application are found in the *Gambling Regulation Act 2003* (the Act). Section 10.1.20 (1) of the Act provides that the Commission may hold inquiries for the purpose of the exercise of its functions under the Act. Section 10.1.22(1) provides that the Commission may hold such inquiries in public or private. Subsection (2) requires that inquiries for the purpose of making a finding or a determination relating, amongst other things, to an application for approval of premises for gaming must be conducted in public unless the Commission determines that there are special circumstances requiring that the inquiry or part of it shall be held in private. The inquiry, in this instance, was held entirely in public.
3. The matters to be taken into consideration by the Commission in making its determination are set out in section 3.3.7 the relevant parts of which are as follows –
  - “The Commission must not grant an application for approval of premises as suitable for gaming unless satisfied that –
    - (a) the Applicant has authority to make the application in respect of the premises; and

- (b) the premises are or, on the completion of building works will be, suitable for the management and operation of gaming machines; and
  - (c) the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located.”
- 4. Upon making an application the Applicant is required by section 3.3.5, of the Act to notify the responsible local government authority, which in this instance is the Shire of Cardinia (the Council).
- 5. Section 3.3.6 provides that the relevant authority may make a submission addressing the economic and social impact of the proposal on the well-being of the community, and also taking into account the impact of the proposal on surrounding municipal districts.

#### **THE SHIRE OF CARDINIA**

- 6. The Council filed a written submission in opposition to the application and, at the inquiry, was represented by Mr Nicholas Crawford, then a partner in the firm of Best Hooper.
- 7. The Council adopted a Responsible Gaming Policy in August 2005 in order to guide its decision making process and responses to applications for egm approval. The Council stated in its submission that the application did not comply with its policy in a number of respects, namely: location, egm density, risk and vulnerability of the community, community opposition and responsible gaming practices.
- 8. The Council issued a refusal to grant a planning permit for the proposed venue on 14 December 2009. The Applicant has applied to VCAT for review of this refusal and the matter has been set down for hearing in November 2010.

## **BACKGROUND TO THIS APPLICATION**

9. We have analysed the Applicant's evidence under the following headings –

- The proposed venue and its location;
- The hotel development
- Financial aspects and egm revenue prediction;
- Patron catchment;
- Population growth and egm density;
- Community attitudes to the proposal; and
- Responsible gambling.

### The proposed venue and its location

10. The proposed Pink Hill Hotel is to be a purpose built, architecturally designed building. The hotel is to be situated on a large parcel of land with residential development to its north.

11. The subject site is on the south-east corner of the land, as shown on an aerial photograph on page 14 of the report prepared by Ratio Consultants Pty Ltd (the Ratio report) with a pointer worded "Approximate location of The Pink Hill Hotel and car park". The site of the hotel in Figure 4:1 of the Ratio report is referred to as the "subject site", but in the aerial photograph the entire piece of land is referred to as the "subject site". To avoid any doubt, in these reasons for decision the site of the hotel is referred to as "the subject site" and the entire piece of land is referred to as "the land".

12. The subject site is elevated above the surrounding land and slopes quite heavily to the north and west. The western boundary of the site fronts onto O'Neil Road and the rear of the Beaconsfield Child Care Centre and the Beaconsfield Community Centre.

13. The subject site is to be developed by The Pink Hill Hotel Pty Ltd, of which Mr Robin Daley is the sole director, secretary, and shareholder. The subject land is owned by D.S.L. Securities Pty Ltd (DSL), and Mr Daley's evidence was that he is a sole director of DSL; he did not make reference to the shareholding in that company.
14. Mr Daley's evidence was that part of the subject land has been developed as Beaconsfield Grange Estate. He said that development of the final 8 hectares is stage 7 of the Beaconsfield Grange Estate, and that apart from the hotel, future development includes a medical centre, an aged-care facility and the road which will facilitate traffic movement when the estate is fully developed.
15. Stage 1 of the building works, costing \$8.4 million, and expected to open by mid 2012, provides for a sports lounge with wagering facilities, a gaming machine area, a lounge area for up to 100 patrons, a bistro catering for up to 165 patrons, a community function room/second bistro with access to an alfresco dining area catering for up to 145 patrons, and a children's play room. Stage 2 of the building works, costing \$2.9 million and opening by 2014, provides for a multipurpose function room catering for up to 400 patrons and four separate rooms of varying sizes. Mr Daley's evidence was that Stage 2 will be completed by a date not more than two years from the commencement of trading of the hotel.
16. The proposed hotel will be four kilometres southeast of the Berwick township and eight kilometres west of Pakenham. Approximately half a kilometre from the proposed venue, heading west, the built-up retail and services area of Beaconsfield township commences. The township

has a fully established and comprehensive range of retail outlets and service providers.

The hotel development

17. Mr David Gordon is the architect of the proposed building. His evidence before the Commission consisted of a presentation of the building plans and an explanation as to the building components, exterior finishes and the location of car parking. He demonstrated the location of a temporary wall which would need to be built to close off Stage 1 work pending commencement and completion of Stage 2 work.
18. On cross-examination by Mr Crawford, Mr Gordon conceded that upon entering the venue, it would be necessary to walk past the gaming lounge before going into the bistro and everywhere else, although that was not necessarily specific to his design consideration, he said.
19. In response to a question from Mr Crawford, Mr Gordon said that there would be direct access from the gaming room to the alfresco area, adding that every area in the hotel would have access to an alfresco or smoking area. Mr Crawford put to the witness the proposition that the tribunal in the matter of Club Edgewater had considered it important to discourage people from going back to gamble after taking a break for smoking, and that therefore it might be important to consider relocation of the smoking area away from the gaming room. Mr Gordon conceded the point, but said that he considered it important that patrons be able to maintain visual contact with the machine they had been using and to which they intended to return.

20. Mr Gordon said, in response to a question from Mrs King, that the children's playroom would be fully enclosed with soundproof glass so that children are visible to parents from the gaming room or bistro.

Financial aspects and egm revenue prediction

21. Mr Ivan Martin, chartered accountant, was called to give evidence on behalf of the Applicant. Mr Martin advised that he has ongoing experience within the gaming industry and is currently a director of the management company of Club Kilsyth and Club Ringwood, the auditor of the Wantirna Hill Club and Vermont Football Club, and that he presently does consultancy work for the Werribee Football Club and has done so in the past for Tabcorp.
22. Mr Martin had filed a document entitled The Pink Hill Hotel Beaconsfield; Business Plan 2012 which, it was stated, would be updated annually. It was stated that The Pink Hill Hotel will be a family hotel and that the Daley family, well known in Cardinia and Casey, "will have a day to day hand in the running and operations of the hotel". In the initial budgets for the hotel, the amount of \$100,000 is set as the amount which the hotel would commit annually to contribute clubs and community organisations within Cardinia, one quarter of which will be dedicated to problem gambling. It was stated that initially the hotel will pay a rental calculated at 8.75% of \$10,360,000.
23. In his oral evidence Mr Martin said he had based his budget on a cost per gaming machine entitlement of \$7,500. He sought to explain the impact on the venue's cashflow in years one, two, three and four, of having to repay the entitlement loan of \$5.25 million over four years, whilst for accounting purposes the entitlement cost will be amortised

over ten years, being the life of the entitlements. In other words, by virtue of the entitlement payments, including the initial deposit and 2012 payment of \$1,050 million being accounted for in the first four years instead of ten, the profitability of the Hotel would be reduced by \$525,000 in each of those four years.

24. When asked by Ms Brennan about the role, in economic terms, of gaming machines at the venue, Mr Martin said that without the income stream associated with gaming, the venture couldn't proceed, adding that unless it could be foreseen that there would be something over five and a half million in revenue, one way or another, "you wouldn't build a venture of that size and at that cost".
25. On the question of predicted gaming revenue, Mr Michael Clyne gave evidence. His expertise in the field of gaming revenue estimates has been accepted by the Commission in numerous matters such as this. Mr Clyne's evidence was that in the first year of operation total gaming expenditure at the hotel would be approximately \$7,665,000, of which transferred expenditure would account for approximately 60 to 80%, resulting in an estimated average egm expenditure per adult in the Shire of \$466 per annum, a figure which is below the Victorian average of \$680 (2008/09) and below the Melbourne metropolitan average of \$728 (2008/09).
26. Mr Clyne explained the starting point from which his expenditure prediction had been made. He referred to the fact that there are only two hotel venues within the Shire of Cardinia and said that, whilst the Pakenham Inn has egm numbers (50) similar to what is proposed for The Pink Hill Hotel, there is a greater similarity between the proposed hotel and the Berwick Inn Taverner (Berwick Inn). Accordingly, the

methodology he had used for estimating gaming expenditure at The Pink Hill Hotel had been to commence with the daily egm expenditure at the Berwick Inn, \$429, and then use that figure to predict the expenditure for 2012 by looking at factors such as new venue impact, location and generating power, facilities, traffic count, relative venue attractiveness, bistro size, venue management, and catchment. He estimated that likely patronage of the hotel would come from within a five kilometre radius. The Berwick Inn, although not within the Shire of Cardinia, but within the City of Casey, is within a five kilometre radius of the proposed hotel; as is Castello's Berwick Hotel, also within the City of Casey. Each is a high performing and popular venue.

27. Mr Clyne said that following the methodology described above, he had then assumed a 1% growth over and above the Berwick Inn's existing performance which, he said, had been that venue's growth over the last three years (other than for the year ended December 2009 when there had been a decline of 1.1%). He had then estimated the impact on the proposed hotel of the factors listed above and had concluded that egm expenditure at the proposed hotel was likely to be \$350 per day. When asked by Ms Brennan whether the reasonableness of the approach he had adopted had been tested, Mr Clyne nominated three different venues as examples (Melbourne Entertainment Complex, Geelong Football Club in Point Cook and Lynbrook Hotel) and said that although two of them were clubs rather than hotels, the results did not give him any degree of concern in regard to his estimate of expenditure at the proposed venue.
28. When asked by Ms Brennan as to his prediction for the level of transferred expenditure, Mr Clyne said that it would be in the range of

60 to 80 %, and that he had used the percentage at the lower end of the range in his witness statement.

#### Patron catchment

29. On behalf of the Applicant, the expert evidence of both Colleen Peterson and Michael Clyne was that the appropriate patron catchment is that which is within a five kilometre radius of the venue. Although there are parts of six postcodes within that radius, in Ms Peterson's view the patrons would primarily come from three postcodes: Berwick, Beaconsfield and Officer. The proposed site was until recently within Officer but since changes in the postal boundaries in 2009 it is now within Beaconsfield, very close to the border with Officer and close to the boundary between the Shire of Cardinia and the City of Casey. Mr Clyne has prepared his expenditure estimates according to gaming expenditure at the only two venues within those postcodes. This approach seems to us consistent with the findings of the Council's 2008 survey conducted by Wallis Consulting Group Pty Ltd, which showed that residents of Pakenham are more likely to play egms in Pakenham, and residents of Officer and Beaconsfield are more likely to play egms in Berwick.

#### Population growth and egm density

30. One of the objectives of the Council's gaming policy is to keep the egm density within the region (meaning, presumably, the municipality) below the Victorian average and it has expressed concern about the density of egms in the "growth area" and in the catchment area of the proposed venue. The Shire of Cardinia currently has a relatively low density of egms, being approximately 35% below both the metropolitan and Victorian averages. The maximum number of egms permitted in Cardinia is 458 and approval of this application would increase the

number to 285 (not including 48 additional egms approved but not yet installed in Castello's Pakenham Hotel or six additional egms approved but not yet installed in the Pakenham Football Social Club).

31. An important feature of the Applicant's case was the significant rate of population growth predicted for the area and fact that this will result in a reduction in egm density by the time the premises is built and operating in 2012. The populations of the Shire of Cardinia and City of Casey increased by 26% and 22.5% respectively between 2001 and 2006 and are expected to increase by 46% and 30% between 2006 and 2012 based on State Government estimates. In particular, Officer, Beaconsfield and Pakenham, referred to in Ms Peterson's Report as the "growth area sub-region", are expected to experience strong population growth over the next twenty to thirty years. Ms Peterson did say, however, that population growth in Officer is forecast to occur mainly after 2012 because there are no approved development plans in place to enable the land in the growth corridor to start being developed.
32. It was Ms Peterson's opinion that after the gaming auction in May 2010 there would be very limited opportunities for new gaming venues to establish in the area. In response to a question from the Chair as to the zoning of land within the growth corridor, Ms Peterson said that on the other side of May Road and running through to Pakenham the land had been rezoned for farming, with the consequence that land uses of places of assembly are now prohibited.
33. Ms Peterson said that the egm density within the catchment at the time of opening in 2012 would, in her opinion, be 6.33 egms per 1000 adults, based on population predictions for the catchment area in 2012. This egm density compares well with the metropolitan and Victorian

averages of 6.81 and 6.86 respectively (based on population figures for 2007). Ms Peterson explained in her report that data was not available to forecast adult population growth in the patron catchment area but, based on the State Government population growth statistics for the LGAs in combination with the local statistics available from the Shire of Cardinia (prepared by i.d. consulting) and the City of Casey (prepared by Ratio Consulting), she derived the figure of 32,866 as being the 2012 population for the catchment area (incorporating the Berwick, Beaconsfield and Officer postcodes).

34. Ms Peterson's egm density calculation also assumed that, other than the 60 egms at the proposed hotel, the number of egms in the catchment area will not increase before 2012. The two egm venues within the catchment, Berwick Inn and Berwick Springs Hotel, have 63 egms and 85 egms respectively. When this point was put to her by Mr Crawford, Ms Peterson said –

“well that's...right; the number of egms remain constant. So you are right, there could be subsequent applications or equally, if all the egms are not taken up in the auction there could actually be a reduction. So you are right, this assumes a constant number of machines plus Pakenham plus Pink Hill.”

35. The figure of 6.33 for egm density in the catchment area does not take into account the 48 additional (80 in total) egms approved for Castello's Pakenham Hotel in 2006 as the site is located just outside the five kilometre radius of The Pink Hill Hotel site. Construction of that venue has not yet commenced. Ms Peterson explains in her report that, even taking these additional egms into account, and based on 2007 population figures, the Shire of Cardinia egm density would remain below the metropolitan and State averages.

36. The Chair asked Ms Peterson how it was that the Council's figure for egm density within the five kilometre radius of the venue was 9.2 egms per 1,000 adults. Ms Peterson said it was not possible to explain the disparity between her own estimate of egm density within the catchment with that of the Council, without knowing the basis for the Council's calculation. She surmised that the discrepancy was likely due to the Council using 2006 census figures rather than projected population figures, which she believed were more appropriate in view of the fact that the hotel would not be opening until 2012. Ms Peterson said that the only way to accurately determine the density of egms within the five kilometre radius would involve obtaining the ABS population figures for each collector district within each postcode, and this information was not readily available. She posited that the Council may have obtained the population data in this way.
37. Following further enquiries by the Commission, the Council's solicitors confirmed that the Council's egm density calculation was indeed based on 2006 population figures in 52 collector districts within a five kilometre radius of the venue, giving a total adult population of 22,466. No map or breakdown of these population figures was provided. The Applicant's solicitors have reiterated that Ms Peterson did not have 2006 collector district figures available to her and that population forecasting is not possible at collector district level. At the hearing Ms Peterson said that she did not agree with the approach of analysing the egm density based on smaller areas such as collector districts, due to the fact that gaming venues tend to attract patrons from a wider region than the primary catchment area.
38. On cross examination by Mr Crawford Ms Peterson conceded that looking at the figures used at page 5 of her addendum report in relation

to the “growth area” (as referred to in the Council’s submission), the 2006 egm density was 15.66 egms per 1,000 adults but would reduce to 9.23 by the time of opening in 2012 and 7.42 after three years of operation, due to population increases. Ms Peterson assumed the growth area to mean the Cardinia Growth Area Subregion (as defined by i.d. consulting), which includes Berwick, Officer and Pakenham. However, Ms Peterson again stated that she did not consider this “finer grain” measure of egm density to be appropriate.

#### Demographics in the catchment

39. The Shire of Cardinia is well rated in terms of Socio-Economic Indexes for Areas (SEIFA index). The Ratio report showed that Berwick, Beaconsfield and Officer each have more people in the higher income category, less in the low income category, and many more in the middle income category, whereas that profile shifts, moving further east towards Pakenham. Disposable income levels in Berwick, Beaconsfield and Officer sit well above the median.
  
40. The three postcodes comprising the primary patron catchment, Berwick, Beaconsfield and Officer, all have SEIFA scores well above the postcode median and also have high rankings on the Jesuit Social Services score (15 to 17), indicating that these areas are amongst the least disadvantaged in the State. Ms Peterson’s evidence was that the current (June 2009 quarter) unemployment statistics for Cardinia LGA have dropped to 4.3%, well below the State and metropolitan averages of 5.1% and 5.0% respectively, and that the average unemployment for the Casey LGA is 4.9%. She considered this falling unemployment rate to be a very positive social and economic indicator.

41. It was submitted on behalf of the Council at the hearing that, while Cardinia ranked well in terms of disadvantage on the SEIFA index, there is a high concentration of couples with children and high expenses (such as high mortgages and transport costs) in the catchment area. However, Ms Peterson pointed out that disposable income levels in Berwick, Beaconsfield and Officer sit well above the median and, although there is a greater proportion of residents with higher mortgages, housing stress in the catchment is much lower (at 7.9%) than in Melbourne (15 to 18%) and in Cardinia (at 19 to 24%).

#### Community attitudes to the proposal

42. The question of community attitude towards gaming applications has become an important issue after the proceedings in the Court of Appeal in the matter of Macedon Ranges Shire Council v Romsey Hotel Pty Ltd<sup>1</sup>, and the decision of Justice Bell in the Victorian Civil and Administrative Tribunal (VCAT) in the matter of Romsey Hotel v Victorian Commission for Gambling Regulation<sup>2</sup> on remittal from the Court of Appeal for re-hearing and determination according to law.

43. In terms of community opposition to the present proposal, Ms Peterson, in her addendum report stated –

“A total of 122 objections and one petition were received to the planning permit application. Of these, approximately 35% of these objections refer to an opposition to gaming machines. The majority of objections related to noise and disorderly behaviour associated with patrons to the venue, traffic, and inconsistency with the semi-rural/community atmosphere of area. These concerns will be considered by VCAT as part of its review of Council’s decision to refuse the planning permit application and are not relevant considerations for the VCGR.”

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<sup>1</sup> [2008] VSCA 45.

<sup>2</sup> [2009] VCAT 2275.

The Council estimated that the proportion of planning objections relating to gaming was 48% rather than 35%.

44. The Applicant had not commissioned a community attitude survey in relation to this gaming application. Ms Peterson sought to explain this by reason of the present matter being distinguishable from the Romsey matter in that unlike Romsey, Beaconsfield is not an isolated community and further, the Beaconsfield community already has ready access to gaming approximately five kilometres north-west of the proposed venue, at one of the venues in the City of Casey.
  
45. The Shire of Cardinia, at the stage of the planning application, had commissioned Wallis Consulting Group Pty Ltd to conduct a survey, and a report entitled “Attitudes towards Developments of Facilities in the Shire and Electronic Gaming Machines” dated June 2008 was filed with the Commission. The report concerned the findings of a telephone survey of 430 residents of the Shire of Cardinia in the growth sub-regions of Beaconsfield, Officer and Pakenham. Although the report pre-dates the application before the Commission and although it had been commissioned in relation to the planning application, one of its findings is particularly relevant to the application before the Commission. The report showed that a great majority of respondents opposed the development of any of six nominated, desirable, facilities upon being asked “what if” the facilities included egms. Most residents were against egms per se, while others were concerned about the number of machines and the potential social impact. However, as pointed out by Ms Peterson in her addendum report of February 2010, the report also showed that the majority of residents (83%) used the current gaming venues for their other non-gaming activities.

46. The Commission itself had received, in 2008 at the time of the planning application, and prior to the application presently before it, a copy of a petition signed by 77 people with addresses in Berwick, Beaconsfield and Officer (one signatory was from Nar Nar Goon), and 27 letters from persons opposing the introduction of egms into the locality of Beaconsfield and Officer. Some of the letters referred specifically to either an application by DSL Investments for 75 gaming machines or to an application by Pakenham Racing Club, whilst other letters were in general terms, although from addresses in Beaconsfield and Officer. Each of the letters was responded to at the time, by the Executive Commissioner, advising the respondent as to the measures being taken by the Government in relation to problem gambling, and stating –

“Please be advised that as at the date of this letter the VCGR has not received applications for DSL Investments, May Road Beaconsfield or Pakenham Racing Club, 325 Princes Highway.”

47. After the Commission inquiry, the petition and letters which had been received by the Commission during 2008 were provided to the Applicant’s solicitor, with names and street numbers deleted. The need to omit these confidential details arises out of the Commission’s general duty of confidentiality under section 10.1.30 of the Act. The Shire of Cardinia is not statutorily bound in this way, and Mr Crawford was able to tender in evidence all letters of community concern which the Council had received as part the planning process. The Commission recognises that there may have been some overlap between objectors to the planning application and those who objected to egms at Beaconsfield and Officer.

48. Following service of copies of the petition and letters, the Commission received a letter from the solicitor for the Applicant, drawing the Commission’s attention to the fact that the petition and letters were not

specific to DSL's current gaming application before the Commission but related to three separate planning applications, and that none of the developments proposed in these applications has proceeded. On that basis, it was submitted by the solicitor that "given the age and the subject matter of these community representations, they have little or no probative value in determining the outcome of our client's Application".

### Responsible gambling

49. Ms Mary Louise Crowe is an independent consultant to the gaming industry in relation to the provision of the responsible service of gaming, the responsible service of alcohol, and other "best practice" requirements of a well-run gaming venue.
50. Ms Crowe has had a wide range of experience, having been involved in the gaming industry since 1992, predominantly with Tattersall's. The Commission has previously accepted, and continues to accept Ms Crowe's expertise to give evidence as to the types of measures which she would advise the operator of a well-run gaming venue to implement.
51. After hearing Ms Crowe's evidence, the Commission was satisfied that she is a person qualified to advise the proposed operator of a gaming venue according to accepted rules of best practice.

### **CONCLUSION**

52. The test which must be satisfied, in terms of the economic and social impact of a proposal for egms, relates to the well-being of the community of the municipal district in which the premises are located, according to the words of the statute.

53. The evidence brought on behalf of the Applicant in relation to this test focused on the community within a five kilometre radius of the proposed venue, in terms of likely patronage, expenditure and amenity. It was submitted that the introduction of a gaming venue within the Officer/Beaconsfield area would result in a more even distribution of egms within Cardinia.
54. A major element of the Applicant's case was that the population of the Shire, comprising as it does a number of growth areas, is expanding rapidly and likely to expand further. Ms Peterson said in her closing submissions that it is the significant population growth which is the justification of the need for the hotel. The evidence presented before us is that the hotel would be developed, in terms of gaming, within the next two years; the development of a conference centre and an additional four rooms would follow two years thereafter. Ms Peterson presented statistics evidencing population growth between 2001 and 2006, and predicting further growth between 2006 and 2012. Ms Peterson presented her own calculation of the likely population of the five kilometre catchment area in 2012, the expected year of opening.
55. The Commission has previously given weight to population growth, present or future, in its decisions on applications for approval. This was an important factor in the Point Cook Community Sports Club (Brook on Sneydes) decision in 2007, for example, where significant population increase in the SLA by the time the venue started operating meant that the anticipated increase in egm expenditure was less significant than it would otherwise have been. Population growth was also taken into account by the Commission in the recent Sanctuary Lakes Hotel decision, where the ameliorating effects of population

growth on egm density and expenditure reduced the concern that the growth in these statistics would otherwise cause. In the Castello's Pakenham Hotel and Castello's Berwick Springs Hotel decisions in 2006 and 2007, both historical and predicted population growth for Berwick, Beaconsfield and Pakenham were taken into account. Again, in the Caroline Springs Hotel decision in 2008, population projections for the LGA, SLA and catchment area were factors taken into account by the Commission.

56. While the Council's use of 2006 population figures may give the most reliable figure for egm density at a certain point in time, the fact cannot be ignored that there has been considerable population growth in the intervening years, and that significant further growth is predicted in the catchment area. Ms Peterson's figures for population growth were obtained from reliable sources and, not having been challenged during the inquiry, are accepted by the Commission as valid.
  
57. If one looks only at the statistics for egm density (4.68 per 1,000 adults) and egm expenditure (\$466 per adult) in the Shire of Cardinia, the approval of 60 additional egms for the proposed venue would not cause much concern. However, particularly in view of the fact that the proposed venue will be located close to the boundary with the City of Casey LGA, it is in the Commission's view appropriate to attach more weight to the statistics for the patron catchment area, which we accept as being the five kilometre radius of the site. Determining the statistics for the catchment area can be problematic as it will usually encompass parts of several postcodes, and municipal authorities have been known to conduct the analysis based on suburbs or collector districts in order to obtain more accurate results. However, in Ms Peterson's view this "finer grain" analysis is not appropriate and statistics are not readily

available on a collector district level. Although Ms Peterson's methodology in this case does result in areas outside the five kilometre radius being included in the egm density calculation, the Commission does not believe this undermines the results as there will always be a proportion of patrons who come from outside the five kilometre area.

58. Ms Peterson's figure of 6.33 egms per 1,000 adults in the catchment area does not appear to give cause for concern, being lower than the metropolitan and State averages (6.86 and 6.81 respectively<sup>3</sup>). However, it must be borne in mind that the 6.33 figure is based on the 2012 projected population, while the metropolitan and State average figures are based on 2007 population figures. As Ms Peterson has not provided an egm density figure for the catchment area based on the 2006 population, or predicted State and metropolitan egm densities for 2012, it is not possible for the Commission to compare like with like. Further difficulties in analysing the egm density arose from the figure of 9.2 egms per 1,000 adults presented by the Council based on collector district populations in 2006 and the origin of this figure only emerged following enquiries by the Commission subsequent to the hearing. These issues initially gave rise to some concern for the Commission, and the lack of consistency in the figures presented has caused us some difficulty; however our concern is lessened by the fact that rapid population growth is undoubtedly occurring and is predicted to continue in the area.
59. The Commission's concern about egm density in the growth area is also lessened by the extent of further population growth expected and the Commission accepts Ms Peterson's point that the clustering of services in such areas is consistent with their role within a municipality.

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<sup>3</sup> See page 6 of Council's Comment document.

The Commission also gives weight to Ms Peterson's view that it would be difficult for a new venue to establish in the area in the next ten years due to the new gaming environment, as well as the zoning of land east of The Pink Hill Hotel site for farming.

60. On the positive side, the Commission has no doubt that the proposed hotel would be a well-designed and attractive building. Apart from the Woolworths supermarket, the hotel would be the most modern and attractive development in Beaconsfield. It would offer upmarket dining, although the community within Beaconsfield or surrounding areas is not entirely devoid of dining opportunities. The Applicant has stated that a development of this scale could not proceed without the revenue stream provided by gaming and the Commission has previously acknowledged the importance of egms to the viability of new entertainment venues.
  
61. A factor which caused the Commission concern has been the location of the proposed venue. Although the proposed hotel is to be on an elevated part of the subject land, the road which is to run through the subject land will provide greater ease of access for residents on the subject land and adjacent housing. The proposed site is approximately one kilometre from the commencement of Beaconsfield township, and approximately two kilometres from its main shopping area, but will be relatively proximate to residential housing and to a playing field, a community centre and child minding centre, all on O'Neil Road, on, and/or opposite to the western boundary of the subject land. However, specific locational issues will be addressed in the planning review by VCAT and the Commission is satisfied that the venue will be sufficiently separated from neighbouring residential and community amenities.

62. The Commission usually (unless there are special circumstances) takes the view that the community most affected by the introduction of gaming machines is the community in closest proximity to the venue. Part of the local community has registered opposition in various ways to introduction of additional egms in their area and this must be taken into account, in accordance with the Romsey Hotel decisions. However, the current application may be distinguished from the Romsey situation on the basis that it does not involve an isolated community and there is already access to gaming in the surrounding area. In the Commission's view, the likelihood and magnitude of any detrimental impact due to the introduction of egms in the proposed venue is less than it would be in an isolated area with no access to egms.
63. It is regrettable that the Applicant did not actively seek the views of the community in relation to this particular egm approval application. There was evidence, however, of considerable community opposition to gaming in the planning objections that were submitted to the Commission at the hearing, as well as in the survey conducted by the Council and in the letters submitted to the Commission in 2008. The Commission has taken this evidence into account but considers that the majority of the opposition recorded in the planning objections related to the noise, traffic and other non-gaming impacts of proposed development, which are not factors that are relevant to the Commission's consideration of the application. Much of the opposition to the installation of egms reflected general anti-gaming sentiment rather than anticipated detriment to the community well-being as a result of this particular application. In considering how much weight to

give to this evidence, the Commission must have regard to Government policy that recognises gaming as a legitimate recreational pursuit.

64. The catchment area, while not uniform in terms of social and economic profile, in general shows signs of relative advantage including high household income and disposable income and low unemployment compared with metropolitan average, and does not show signs of vulnerability to problem gambling. Having taken all of the evidence of community opposition into account, along with the characteristics of that community, the Commission is satisfied that the introduction of egms at the proposed venue will not cause significant discontent in a substantial part of the community, such as to refuse the application on this basis.
65. Further positive impacts to be expected from the approval of the application are the provision by the Applicant of \$100,000 per year to local community groups, the additional employment that the venue will create for the area, and the improved access to gaming facilities for residents of Beaconsfield, Officer and Berwick.
66. The Commission is impressed by the magnitude of the proposal and the range of services that would be available to the local residents of Beaconsfield, Officer and Berwick. The proposed hotel is eight kilometres from the nearest venue in the Shire of Cardinia and will result in a broader distribution of egms within Cardinia. The Commission has given serious consideration to the submission made by the Council in relation to egm density but considers that the reality of future population growth and development in the area provides justification for introducing further gaming venues in this area.

67. Having weighed up all positive and negative impacts as presented on behalf of the Applicant and Council, the Commission is satisfied that approval of this application will not result in any net social and economic detriment to the well-being of the surrounding community.
68. This application is granted on condition that the approval does not take effect until the Applicant satisfies the Commission that the Applicant has obtained a permit under the *Planning and Environment Act 1987* permitting the premises to be used for gaming on gaming machines or that the use of the premises for gaming on gaming machines would not contravene the planning scheme that applies under the *Planning and Environment Act 1987*.
69. It is a further condition of this approval that it does not take effect until the Commission has notified the Applicant in writing that the premises have been inspected for the purposes of section 3.3.7(1) (b) and that the Commission is satisfied that the premises are suitable for the management and operation of gaming machines.

***The preceding 69 paragraphs are a true copy of the reasons for decision herein of –***

***Mr F.B. Thompson, Chairman***  
***Mrs J. King, Deputy Chair***

<b><i>Dates of Hearing</i></b>	18 February 2010
<b><i>Date of Decision</i></b>	23 July 2010
<b><i>Counsel for the Applicant:</i></b>	Ms Susan Brennan
<b><i>Instructing Solicitors</i></b>	Wisewould Mahony
<b><i>Counsel for the Responsible Authority</i></b>	Mr Nicholas Crawford
<b><i>Instructing Solicitors</i></b>	Best Hooper
<b><i>Counsel Assisting the Commission</i></b>	Ms Lyn Corneliusen