



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 by the Taverner Hotel Group 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 Matthew Flinders Taverner, 667 Warrigal Road Chadstone, from fifty nine (59) to eighty (80).

DECISION

Commission: Mr Ian Dunn, Chair
Mr Peter Cohen, Executive Commissioner
Mr Rod Smith, Sessional Commissioner

Date: 31 July 2009

Decision: The application is granted in part. The Commission approves an additional sixteen (16) gaming machines subject to the conditions set out in paragraph 138 of the Reasons for Decision.

(sgd) I Dunn, Chair

REASONS FOR DECISION

Date: 31 July 2009

Mr Ian Dunn, Chair
Mr Peter Cohen, Executive Commissioner
Mr Rod Smith, Sessional Commissioner

1. This was an application by the Taverner Hotel Group 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, Matthew Flinders Taverner, 667 Warrigal Road Chadstone, from 59 to 80.

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

In the matter of the Matthew Flinders Taverner

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 MONASH

5. In accordance with the Act, the applicant served a copy of the application upon the relevant local government authority, notably the City of Monash.
6. The Director, Customer Service for the City of Monash wrote to the Commission on 23 April 2008 advising that the City would make a submission to the Commission. Attached to this letter was the submission made by the City which indicated the City of Monash opposed the application.

THE BACKGROUND TO THIS APPLICATION

7. As a consequence of the decision by the Minister for Gaming to impose further caps on the number of egms in various regions (including part of the City of Monash) the Matthew Flinders Taverner (the subject venue) experienced a reduction in the number of gaming machines from 105 to 59. This was the largest reduction in numbers in any venue in Victoria and occurred in December 2007. Later, in these reasons, we analyse the impact of the Minister's determination and the effect which it should have upon the Commission's consideration of this application, bearing in mind that the application was made virtually upon the same day that the egms were removed from the subject venue.
8. If the application were simply for the Commission's approval to reintroduce 21 of the egms which were removed as a result of the Minister's

determination, and without any countervailing consideration, it might be thought to be problematic at the least, but, no doubt in order to achieve the greatest chance that the Commission might approve the application, other components have been introduced in support of the application.

9. The first is that what is proposed is that if the application is successful, gaming at the Oakleigh-Carnegie RSL Sub-branch (Oakleigh RSL) some three kilometres to the south of the Matthew Flinders Taverner will cease. Further, in that event the applicant will make not only a significant “one-off” contribution of \$350,000 to the Victorian branch of the RSL, but it will also contribute up to \$4,000 per month to the Oakleigh RSL for an indefinite period. There are presently 20 egms at the Oakleigh RSL.
10. Initially, in order that it could be demonstrated that there would be no increase in the number of egms within the capped area, the applicant made a further proposal, notably that the number of egms at the Oakleigh Junction Hotel (a venue controlled by the applicant) should be reduced from 47 to 46.
11. Considerably later in the proceedings the applicant made a further proposal effected by an amendment to its application, notably that in the event that the application was successful, the number of egms at the Mountain View Hotel in Glen Waverley (another venue controlled by this applicant in the City of Monash) would be reduced from 100 to 85. Accordingly, by the commencement of this inquiry, the proposal was that if the application were to be approved for an additional 21 egms at the subject venue, there would be 36 egms removed from three venues referred to above, meaning that the overall movement in egms within the City of Monash would be a reduction of 15 and there would be a reduction of one venue within the capped part of

the City of Monash. So far as the capped area is concerned, if the application is approved there will be no change in the number of egms because the Mountain View Hotel is not within the capped part of the City of Monash.

12. There is one further matter which should be mentioned at this point. When confronted by the fact that Ms Colleen Peterson, of RATIO, the consultant who was engaged by the applicant to prepare the applicant's report as to social and economic impact upon the relevant community assuming the application were to be approved, has considered that she cannot enthusiastically support the proposal, the applicant has made an additional offer. If the application is approved the applicant will contribute the sum of \$25,000 per annum for the engagement by the City of Monash of a counsellor to deal specifically with issues of problem gambling. On this basis, Miss Peterson felt able to express the view that on balance the social and economic impact if the application were successful, would not be detrimental.
13. The mere recitation of these matters demonstrates the importance of the success of this application to the applicant.
14. Before dealing with other aspects of the matter, reference should be made to the particular features of this venue. The Matthew Flinders Taverner has been in operation since the 1960s and was a well known centre for hotel hospitality and entertainment, long before gaming was introduced to Victoria. This, no doubt, explains its success. It attracts a huge number of people for the other activities which it offers besides gaming, notably its bistro, its sports bar and function rooms, and its accommodation. It has also

been an extremely successful gaming venue. In the year 2006-2007 its gaming revenue was exceeded by only one other venue within Victoria, in the year 2007-2008 (the year in which the egms were removed from the venue) its gaming revenue was exceeded by nine venues within Victoria and in 2008-2009 (the first full year it operated with the reduced number of egms) its gaming revenue was exceeded by 28 venues within Victoria.

15. No doubt its location has had much to do with its success. It is situated in a prominent position on the east side of Warrigal Road, approximately 20 kilometres south east of the Melbourne CBD. As is often the case, a consideration of this venue merely by reference to the local government area (LGA) in which it is situated, is somewhat unsatisfactory. Whilst it is located within the City of Monash, it is on the extreme western edge of that LGA. If it were located across Warrigal Road it would be within the City of Stonnington, an LGA exhibiting the second highest level of socio economic advantage within Victoria. However, as we discuss later in these reasons, within close proximity to the subject venue there are areas of significant disadvantage and the effects of this application upon those areas are matters which have given the greatest concern to the Commission.

THE ATTITUDE OF THE CITY OF MONASH

16. The applicant, having complied with the requirements of the Act, served a copy of its application and supporting material upon the City of Monash. Thereafter, as the applicant varied its application (the proposed reduction in the number of egms at the Mountain View Hotel was only notified to the Commission and the Council a few months before the inquiry) the further material was also served upon the Council. The Council filed a detailed submission in opposition to the application and was represented throughout

the inquiry by Mr Rantino of Maddocks. The Council's submissions are dealt with in detail later in these reasons.

GAMBLING WITHIN THE CITY OF MONASH

17. Although, as stated earlier, consideration of this matter simply by reference to the City of Monash seems somewhat unsatisfactory, nevertheless the relevant statistics within Monash are of great importance. Within Monash there are presently 16 venues offering a total of 1020 egms. Approximately 60 per cent of the egms are within hotels, although 422 are located within clubs. (The Council draws attention to the fact that two of the clubs operate for the benefit of AFL football clubs and that, therefore, the benefit which they provide within the local community is more limited than might otherwise be the case). The result is that there are 7.6 egms per thousand adults within Monash which is higher than the metropolitan average of 6.66 egms per thousand adults. If the proposal advanced by the applicant is accepted, there will be a reduction in the number of egms per thousand adults to 7.49.

18. Whilst in various parts of the material supporting the Monash submission, it was suggested that the City of Monash had the greatest number of egms and also the highest gaming expenditure in Victoria, this is not the case. Monash has the tenth highest number of egms per thousand adults and the fifth highest expenditure per adult at \$937 per adult compared with a metropolitan average of \$706. Whilst, if the application is approved, egm expenditure at the subject venue is expected to increase significantly, allowance must be made for the ending of gaming at the Oakleigh RSL, and the reductions in the number of egms at the two other venues previously referenced. In the applicant's submission, the net annual increase in gaming expenditure within Monash will only amount to \$1 per adult – from \$937 to \$938 per Monash

adult. Obviously however, the high level of expenditure is another matter giving the Commission cause for concern when considering this application.

19. Reference should also be made to the precise location within Monash of this venue. As indicated earlier, situated on Warrigal Road it is on the western boundary of Monash and it is situated some distance from the nearest gaming venues, in Oakleigh, within the LGA. The boundaries of Monash extend for a considerable distance. Whilst there are four venues in Oakleigh/Clayton which are some three to four kilometres to the south, there are also gaming venues within Monash as far to the east as Wheelers Hill and Mulgrave.

THE CASE PRESENTED FOR THE APPLICANT

20. The applicant called a number of witnesses. Mr Andrew Kastoras is the Victorian Operation's Manager for the ALH Group. He stated that, when referring to the implementation of the capping decision in December 2007, the subject venue had been unfairly impacted. Had a pro-rata system been adopted, the number removed would have been fewer (this is undoubtedly correct). He attributed the disproportionate impact to the fact that there are no other venues in the postcode in which the Matthew Flinders Taverner is located. (As we deal with the question of the December 2007 caps in detail later, we shall not address this issue further at this point). His evidence was that as a result of the loss of 43 percent of the machines at the subject venue (a reduction from 105 to 59) only 27 percent of the overall revenue had been lost. He attributed this result which was better than might have been anticipated to:

“The efficient management of the venue, which implemented a new layout, new denominations of machines, new games, new carpet and paint, and new jackpots on machines”.

21. Bar sales had fallen significantly but food sales had only fallen by some two percent.

22. The revenue per egm at the subject venue had, of course, risen. In the 12 months prior to the introduction of the cap it had been \$513, and in the 12 months after the introduction of the cap it increased to \$619. The witness attributed the very high expenditure per machine to a number of factors which we now list below:

“I consider that there are a number of factors which contribute to the Matthew Flinders being such a high performing venue, including:

- a. Iconic reputation*
- b. Quality and appearance of the venue*
- c. Broad patronage due to paramount location*
- d. Excellent access on main road*
- e. Range of facilities on offer*
- f. Quality food and beverage at a competitive price*
- g. Opening hours*
- h. Standards of customer service*
- i. Location of competing venues*
- j. Car parking availability*
- k. EGM mix offering new games*
- l. Jackpots available*
- m. Machine denomination mix*
- n. Level of investment in venue*
- o. Accommodation offered providing a link for customers into the bistro and gaming room”.*

In the matter of the Matthew Flinders Taverner

23. The witness explained that when the egms had been removed the configuration of machines had been altered so that there are now more one dollar machines than previously, and a higher proportion of 20 cent and one dollar machines than would normally be the case. As an example, 14 of the egms, or 24 percent, are now one dollar machines whereas, overall, in the ALH network one dollar machines account for 13 percent of egms.

24. An important matter to which he drew our attention was the comparison between the number of meals served at the Matthew Flinders, compared with the number of egms. Again, because this information is of importance, we have included this table from his witness statement:

<u>Matthew Flinders – Similar ALH Hotels</u>									
Hotel Name	Location	Max Capacity	Bistro Seats (approx)	Weekly Meals Served	No. of egms	No. of Function Rooms	No. of Bars	Motel Facilities	Ratio of egms to meals served
Matthew Flinders	Chadstone	1365	460	3000	59	2	5	Yes	1:51
Village Green	Mulgrave	1700	450	2600	79	1	3	No	1:32
Monash	Clayton	1050	320	950	60	0	1	Yes	1:16
Waltzing Matilda	Springvale	2466	350	1100	80	1	3	Yes	1:14
Berwick Springs Hotel	Berwick	1637	450	3000	85	1	5	No	1:35
Hallam	Hallam	1577	340	1800	92	0	5	No	1:19
Keysborough	Keysborough	950	160	1200	89	0	2	Yes	1:13
Stamford	Rowville	2080	450	3200	103	1	7	No	1:31
Burvale	Nunawading	1850	300	950	103	1	4	Yes	1:09
Shoppingtown	Doncaster	1652	350	1750	100	1	5	Yes	1:17
Sandbelt	Moorabbin	2115	300	1800	100	1	5	Yes	1:18

25. The table does demonstrate that there are significantly more meals served per egm at the subject venue, than the other 10 venues to which reference is made.
26. A matter which was put to the witness, and indeed to several of the witnesses called on behalf of the applicant, was that notwithstanding the removal of egms, the utilisation rate of the egms presently at the subject venue is not extraordinarily high. Throughout the various inquiries which have been conducted by the Commission, witnesses have described gaming rooms as being fully utilised if more than 70 percent of egms are being used (in one or two recent cases a figure of 80 percent has been used).
27. A survey had been undertaken at the request of Ms Peterson for RATIO and this showed that over a two week period there were only 13 hours in which 70 percent utilisation had been achieved. We found it remarkable that Mr Kastoras was unaware of this. He, and the other witnesses who followed him, were inclined to the view that the relatively low utilisation rate may be due to the reduction in the number of lower denomination machines. In other words, the fact that there are fewer one cent and two cent machines than previously has led some patrons to desert this venue. The Commission accepts this suggestion may be correct but it does demonstrate a difficulty which confronted this applicant, notably that throughout the inquiry there appeared to be no compelling reason why additional egms were required. In a number of recent inquiries there has, to the contrary, been incontrovertible evidence of demand for further egms. The relatively low utilisation figures appeared to negate somewhat the witness's evidence as to the high ratio of meals to gaming machines, a point which he found somewhat difficult to accept under cross-examination from Mr Rantino.

28. Mr David John Curry who described his role at ALH as being “General Manager, Victoria” was the next witness. His role in the government relations area includes the various submissions lodged by ALH. He is on the State and National Executive of the Australian Hotels’ Association and works closely with the Australian Gaming Council. He thus had a better knowledge of some of the wider issues confronting the industry.

29. By the time he gave his evidence some attention had been directed to the question of the level of contributions made to the community. It must be said that the contributions made by the subject venue itself are extraordinarily modest but evidence was offered which suggested that individual managers have limited discretion as to funds which they can give away. It was suggested that the overall level of beneficence of the ALH Group was more impressive and certainly significant sums had been advanced in the previous 12 months, particularly for bushfire relief. It is not open nor valuable to the Commission to compare contributions made by various industry groups for public purposes and all that we can conclude in respect of the present application is that the level of contributions made by the subject venue, at least prior to the inquiry, was extremely modest. It was pointed out that during the hearing that if the application is approved there will be continuing contributions to the Oakleigh RSL but rather than being construed as an act of charity, these would be better classified as a payment made for the transfer of the Oakleigh RSL’s egms to the subject venue.

30. Mr Curry, however, also gave valuable evidence on the question of the group’s attention to the issue of problem gambling. He referred to the fact

that the group employs Mr David Schwarz, who gave evidence subsequently and to whom we make reference. The witness commented that:

“In that respect, that is why we have participated in things like the David Schwarz program and other things that link into responsible service of not only gaming, but things that help contribute to that. We pride ourselves on being family-based venues, so we do not run any forms of adult entertainment. We do not do any promotions that encourage rapid consumption of alcohol: for example, things like happy hours etc. So we are very careful that we are portrayed as a family-friendly local, so to speak.”

31. The witness gave impressive evidence about work which had been done with the Banyule Community Health Peer Connection Program. This, and other programs which he mentioned are considered to be an alternative to the Gambler’s Help program because there is a view (which he conceded is untested) that people may be more comfortable dealing with someone who they know has had a problem with gambling. We regard this as a valuable initiative and note that the results are to be collated and tested.
32. The witness stated that he thought that the connection between problem gambling and a reduction in the number of egms was unclear, citing the example of South Australia where a 20 percent reduction in egms produced almost no reduction in egm expenditure. And he made a point which was fundamental to the applicant’s case notably that in the present matter, the subject venue has retained gaming (albeit with a lower number of egms than in 2007). If there are problem gamblers who used to gamble at the subject venue, quite plainly they can still do so. Indeed the absence of high utilisation rates, demonstrates that such problem gamblers could be readily

accommodated. The point which he was making was an obvious one, that it is difficult to discern why people who are problem gamblers will be more attracted to the subject venue if it has an additional number of egms. This issue created controversy throughout the hearing.

33. It was Mr Curry who also provided the evidence as to the contribution of \$25,000 per annum to the Monash Council to pay for the services of a part-time financial counsellor to assist with people who have an issue with their gambling. The ALH Group would wish to have an involvement in determining how the money is allocated. Mr Curry, otherwise, attempted to suggest that overall the contribution of the venue to local community causes was not derisory. We can only say that it is not the strongest feature of this application.
34. Mr Curry was also somewhat embarrassed by the proposition that since he ceased attending meetings of the Responsible Gambling Taskforce (within the City of Monash) in October 2006, no representative from the subject venue or the ALH Group has attended. Similarly, Mr Curry was unable to answer a number of questions about the proposed donations both to the RSL (Victoria) and to the Oakleigh RSL. He mentioned that Mr Blair-Holt would be able to answer some questions, but although Mr Blair-Holt attended the hearing from time to time, he didn't give evidence. (Ultimately, we have accepted the evidence from Mr Sherlock, of the RSL, as to these subjects).
35. Ms Doreen Thompson is an Area Manager for the ALH Group and she was the Venue Manager at the subject venue for two years which greatly enhanced the value of her evidence. She concentrated on the facilities which are provided at the venue. In certain attachments to the Council's

submission there was the suggestion that the facilities at the subject venue have been accumulated as the result of gaming profits. The Commission doubts that this is the case. The facilities were much greater at this venue compared with other hotels long before gaming was first offered. The bistro seats 350. There is a nightclub operating on Friday and Saturday nights for patrons over the age of 28. There is a large function room with a very large pool room with six pool tables. There is a very capacious sports' bar. And there is also the accommodation and a number of witnesses commented that they considered that the provision of accommodation led to much greater usage of facilities such as bistro and gaming. The witness conceded that the revenue from food had not suffered in proportion to the gaming revenue because:

"The bistro is very much a family bistro".

36. She concentrated in her evidence upon the facilities for children at the venue which she regarded as:

"Having the best children's facilities throughout the eastern suburbs"

Having visited the venue the Commissioners note that the children's play area is physically separated from the gaming area and has a variety of suitable amusement machines for children.

37. Ms Thompson agreed with the suggestion from the Commission that it appeared that because patrons were attracted by the offer of food at the subject venue, they were continuing to frequent the bistro, but a lower proportion of patrons than previously were using the gaming room either before or after dining, perhaps as a consequence of the smaller number of lower denomination egms.

38. Ms Thompson was the first of the applicant's witnesses to refer to the disadvantaged area known as Jordanville¹ and her evidence clearly demonstrated a familiarity with that area and the problems which people who live there are encountering. She had had an involvement in a group known as "The Edge" – a community group of people who assist in looking after disadvantaged people and particularly looking after the children of families who are disadvantaged. Certain nights are made available in the function room for The Edge. This evidence led into a most interesting analysis of the witness's observation of problem gambling.
39. She made the point that at the subject venue, employees tend to be long-serving. She informed us that, she, and she believed that the current manager Mr Thomas behaved similarly, had adopted an interventionist approach if there was a perception that a patron was having difficulty with gambling. Such a patron would be likely to be identified by one of the staff members, as a result of which the responsible manager would intervene, perhaps by offering a cup of coffee, or simply the opportunity for a conversation. Ms Thompson gave one particularly vivid example involving one patron. The patron had recently been widowed and Ms Thompson observed that she was drinking more than she had previously, in addition to spending lengthy periods on the gaming machines. Eventually Ms Thompson prevailed upon the patron to allow her to drive her home one day when they were able to discuss her problems. The patron subsequently self-excluded, but eventually got on top of her gambling, and has been able to resume visits to the subject venue for dining and other social intercourse. She and Ms Thompson have now developed a firm friendship. Ms Thompson indicated that there had

¹ There is no postcode for Jordanville, although there is a railway station by that name and various other references to it may be found. It forms a small part of the suburbs of Chadstone and Ashwood and may be described as being directly to the east and north east of the subject venue.

been four or five such episodes whilst she was the manager at the subject venue.

40. The witness made it plain that not all such interventions produced a satisfactory ending. Some patrons would be affronted by the approach, and would leave the venue and transfer their patronage to another venue. Ms Thompson made it plain, however, that this approach was favoured throughout the ALH Group. At one point she said:

“But we keep trying. We don’t want problem gamblers in our venue because it is not good for anybody. Certainly not for them, most importantly but not for our staff either because they get upset too”.

41. During cross-examination Ms Thompson commented that the subject venue had been the most patronised venue within the ALH Group prior to the reduction in egms but that it had now fallen to number four or five and was dropping in patronage. In her eyes the Matthew Flinders Taverner was something of a model which other venues within the group should aim to emulate in the areas of staffing, staff turnover, and service.

42. The witness also commented that she did not think that the reduction in the number of egms had been effective in reducing the number of problem gamblers. This was, of course, a critical issue for our consideration. Her evidence did highlight an issue which appeared to confront the Council both in its submission and in the witnesses who gave evidence in support of that submission, notably that by reason of the fact that the subject venue had continued to operate, albeit with a reduced number of egms, if there were problem gamblers who had patronised it previously, it is hard to envisage that they have simply stopped gambling. Whilst their choice of egms has

been reduced, the fact is that the facility has remained and there have been choices, although more limited, of machines. On this point Ms Thompson's evidence could be summarised as follows:

“What I suppose I am saying is that I don't think that you are going to stop the problem gambling unless you take gaming out of Victoria totally. I think if somebody wants to gamble, they will gamble, but I just feel that the Matthew Flinders having an extra 21 machines is not going to encourage extra gambling because the person who wanted to do it will do it. I think that the balance of the Matthew Flinders is probably not quite right because of the vast size of the venue; that each area in the venue is quite large and it sort of is the very small component”.

43. As to staffing, Ms Thompson made it plain that the reduced activity at the hotel as a whole, had led to the need for fewer staff and she gave evidence that she had been able to arrange employment at other venues within the group for several of the better Matthew Flinders Taverner staff. At present, staff within the venue are being transferred into other areas of activity, and the size of the overall business means that that has been successful thus far:

“But if it was to impact the business any further then I can't say what would happen”.

44. In saying this, she stressed that the overall reduction in turnover had been a slow process – it had not hit the venue at any single point in time after the removal of the egms. She was pressed by Mr Rantino as to whether the downward trend had plateaued and she replied, somewhat doubtfully, that she hoped that it had but that she was not certain. (This hearing occurred shortly after the second of the stimulus packages were provided by the

Federal Government which included a cash component, some of which would have been spent on gambling.)

45. One other point which the witness made was that the nightclub patrons had a very low percentage of cross-over into gaming. This is consistent with evidence which we have heard in other inquiries.
46. Ms Thompson was an excellent witness and we saw no reason to doubt any aspect of her evidence.
47. Ms Thompson was followed by the present Venue Manager Mr Brian Thomas who has been in that role for the past two years.
48. He first gave evidence about the present patronage at the hotel. Apart from the bistro which averaged 3,400 meals per week for the month of May 2009 (including 400 children's meals and 200 seniors' meals a week) there are also meals served in the downstairs bar. On Friday and Saturday nights the nightclub caters for 200-300 people and it also operates as a restaurant until approximately 9.30pm when furniture is moved and dining gives way to the nightclub. Again, Mr Thomas confirmed that there was a small overlap between the nightclub and gaming. Rotary uses the small function room known as the state room every Wednesday night. He commented that:

“You wouldn't see any of the Rotary people in the gaming room”.
49. The motel runs at approximately 70 per cent occupancy, largely due to the fact that a number of power companies send their apprentices to the nearby TAFE and this leads to at least 80 per cent of the rooms from Sunday night through to Friday being occupied by these students. The thrust of Mr

Thomas's evidence was that prior to the removal of the egms, in particular, the venue had been extremely busy in all of its facets, that there had not been an immediate drop but that ultimately there had been a considerable reduction in activity, virtually across all aspects of the business other than the bistro and the accommodation which has been relatively untouched. Incidentally, the witness did concede that some proportion of the TAFE students do use the gaming room.

50. The evidence provided by Mr Thomas was valuable in presenting a picture as to the level of activity at the venue, but the witness did have a lot more difficulty on the subject of contributions made by the hotel within the local community. He said that, effectively, he could not authorise the payment of a sum in excess of \$100 without authorisation from ALH Group management. Many items which he had listed as contributions to the community were, in fact, sums of money which had been raised from patrons at the hotel, rather than from the hotel's own resources. He agreed that when he had managed a hotel not in the ALH Group, notably the Croydon Hotel some years earlier, he had a much greater discretion to make larger payments, although he did make the point that if, for example, a local sporting group needed funds for equipment, a letter from such a club to the hotel, whilst it would need to be referred to state management, would probably receive a positive response. Ultimately he did, however, concede that the contributions to the local community from the hotel are not significant.
51. Before moving on to the socio-economic evidence which was led on behalf of the applicant, it may be useful to summarise the evidence presented by those who might be described as the internal witnesses for the applicant. The

overall picture is of a hotel which has, since the implementation of the second round of regional caps, suffered a significant drop in revenue, particularly in gaming but also in bars. By contrast, food sales have only dropped by about 2 per cent which may well be consistent with the impact of the global financial crisis in any event. The witnesses have not been able to establish that there is a demonstrated need for further machines, simply by reference to utilisation rates because, as we have indicated earlier, the survey conducted on behalf of the applicant does not demonstrate high utilisation in any event. We accept that this may be affected by the fact a higher proportion of the machines than usual offer larger denomination sums. The evidence established that the decision to offer such high denomination machines was a conscious one made by management in order to keep the turnover as high as possible. We would observe that, had it been considered desirable to attempt to maintain the overall number of patrons within the hotel at the highest possible level, a different decision could have been made as to the denomination of the egms on offer.

52. In summary, therefore, the evidence from the internal witnesses would not, of itself, have satisfied the Commission that there was any compelling reason why additional egms should be permitted, particularly so soon after their removal in December 2007.
53. The applicant also called Mr David Schwarz to give evidence as to the issue of problem gambling and the steps being taken to combat it within the ALH Group.
54. Mr Schwarz, who has been engaged as the responsible gambling ambassador for the ALH Group since 2007, prepared a detailed witness statement which

formed the basis of his evidence at the inquiry. The picture which he presented as to his own difficulties with gambling has attracted considerable publicity, particularly within the community involved with AFL football.

55. The picture that he presented was both tragic but also encouraging and very informative. It is unnecessary to go into the early details of his gambling; from the age of 14 he gambled every day until the age of 32. He calculated that during his years playing football he had earned \$3.5m but that when he left football in 2002, because of his gambling, not only had he lost all of that money, but also was in debt to the extent of \$1m. With the great assistance of his wife, Mr Schwarz was able to give up gambling but in very painful circumstances, with no use of a credit card and no access to any money other than that which she gave to him by way of handout. He was fortunate in being able to secure short-term employment with a radio station, which led to major media commitments which now provide his daily living. But he was also known to Mr Bruce Mathieson, a director of the ALH Group as a result of which he was appointed to his current ambassadorial role.
56. This role does have real substance. Mr Schwarz provides confidential counselling to staff in the ALH Group who may access him through a confidential e-mail address. Programs are run for managers and other staff and Mr Schwarz' purpose is to try to educate the staff as to methods by which they can assist those who may have a difficulty with their gambling. Mr Schwarz is a strong believer in the intervention approach which we have described from the evidence of Ms Thompson. He stated that in some instances, the intervention does result in a player stopping playing. At one point in his evidence he said:

“Because a lot of people go to venues to actually – because they are lonely, that they need an escape that they need to be able to sit there and do something. And then when someone comes up and starts, you know, a conversation, it’s ‘Oh, hang on, I am important’. So there are many reasons and there are many characteristics and there’s many psycho – you can do a lot of psychoanalysis on it. But I think it’s just knowing and showing that you, you know, to come in there and have a play, have a meal, go home happy is the main issue”.

57. Mr Schwarz was personally very familiar with the subject venue. This was one of the venues in which he had gambled for many years. He has now conducted training courses at the venue. When asked for his comment as to the effect that an additional 21 egms might have he replied:

“Look, I am not 100 per cent sure on it. I just know from the problem gambling side, as I just quoted, from problem gamblers it doesn’t matter. We just want to gamble. You know, whether there is 59 or whether there is 100 or whatever we just want to get a bet on. I think the behaviours and the interaction between staff is more important than the number of machines.”

58. He stated that a considerable purpose of his work was to enable staff at the Matthew Flinders and other ALH venues to make better judgments so that they are capable of detecting and understanding behaviours of potential problem gamblers:

“It’s not rocket-science. It is not about, you know, going in there and analysing someone when they walk and start putting their money in. It’s about offering a cup of coffee. It’s about offering, you know, a glass of coke. It’s about breaking the routine. Now that’s not tough,

In the matter of the Matthew Flinders Taverner

yet the long-term benefits of that, to just get someone to take a break, maybe be aware of what other options there are, is the first step. Then, obviously, if they do need help and you build the trust up of those people then you have got the referral programs in place”.

59. We think that this well summarises the thrust of his most impressive evidence, which when combined with the evidence of Ms Thompson, presents an impressive picture of the active role played by the ALH Group and this venue as to problem gambling.

THE MATTERS CONCERNING THE RSL

60. The applicant called two witnesses from the RSL. Mr Mark Sherlock is the Chief Financial Officer of the Returned and Services League of Australia Victorian Branch. In his detailed witness statement Mr Sherlock set out the details as to the performance of the Oakleigh RSL in recent years. From 1999 to 2008 it has operated at a loss on all but two occasions, 2000 and 2008, when surpluses of some \$3,300 were made. By contrast, in the other eight years, approximately \$390,000 had been lost. The surplus of \$1,000 for 2008 was only an estimate and without the first contribution to the sub-branch from the ALH Group, a loss would have been sustained in that year also.
61. Mr Sherlock stated that the payments to be made by the ALH Group were as follows:
- a. A donation of \$350,000 to the RSL, upon the installation of additional egms at the subject venue
 - b. A one-off payment of \$50,000 to the RSL (which has already been made)

- c. A donation of up to \$48,000 to the Oakleigh RSL annually to assist with its continued operation. This latter figure is to be paid by payments of \$4,000 each month, assuming that all of the egms from the Oakleigh RSL are transferred to the subject venue. If approval is given for a smaller number, a reduced payment is to be made, eg if the transfer of 10 egms is approved, the payment would be \$2,000 per month
 - d. In the event that the application is unsuccessful, \$1,000 will be paid to the sub-branch each month for 10 years
62. Both in his written statement and in the oral evidence which he presented, Mr Sherlock painted a picture of a sub-branch which has had a long and distinguished history but which simply cannot be maintained at its present level. It is only continuing to operate effectively because of the voluntary efforts of the next witness who was called, Mr John Poland. In Mr Sherlock's view, the existing levels of patronage or the usage of the egms, does not compensate for the expenses which are incurred. Attempts have been made to revitalise the sub-branch by offering meals at weekends but the provision of meals is by a sub-contractor so that the branch does not receive any real return from that source.
63. The financial situation had been alleviated to some extent when the Oakleigh Sub-branch had amalgamated with the Carnegie Sub-branch. The evidence demonstrated that the net revenue from gaming at the sub-branch had been approximately \$640,000 in the past year. The Commission queried Mr Sherlock as to whether the sub-branch really would be in a sounder position financially if the egms were removed, bearing in mind the loss of this revenue. But he was adamant that because of the staffing issues associated

with the operation of gaming, the RSL investigation's showed that indeed the sub-branch would be in a better financial situation if the egms were removed, provided the \$4,000 per month was received from the Matthew Flinders Taverner or the ALH Group.

64. Unfortunately, the picture painted by Mr Sherlock as to the future of the sub-branch is rather gloomy in any event, and it simply reflects the fact that members of the RSL are becoming older and that even with the efforts which have been made to expand the eligibility for membership of various groups in the community, including persons such as emergency service workers, many sub-branches will be facing an inevitable closure. Because this sub-branch has a veterans' centre adjoining it, it is desired that it be maintained for as long as possible. We gained the impression that even with the changes which are proposed, Mr Sherlock is not confident that the sub-branch could continue for more than 10 years. On the other hand, it was his clear evidence that unless the proposal involving the removal of the egms and the receipt of the \$4,000 is implemented, the lifespan of the sub-branch will be considerably shorter – no more than two to three years.

65. An important point which Mr Sherlock very reasonably stressed throughout his evidence, was that the voluntary contributions of Mr Poland and the Treasurer Mr Upton, could not be expected to be continued. We accept this aspect of the evidence without reservation. The importance of maintaining a veterans' centre for as a long as possible, was also stressed. These centres assist RSL members in matters such as the various types of pensions which may be available and other issues associated with the welfare of veterans and the wider veteran community. Again, we accept this evidence.

66. There was one aspect of the evidence of Mr Sherlock upon which the Commission did have some reservations. Mr Sherlock stated that legal advice had been obtained as to the possibility that the egms at the sub-branch could be transferred to other RSL venues within the City of Monash, and that such possibilities had been explored but had ultimately come to nothing because of problems associated with those sub-branches. The Commission has been aware of earlier matters in which a particular sub-branch has ceased to operate gaming machines and those gaming machines have been removed to another RSL sub-branch which has, thereby, been strengthened as a result of this exercise. In turn the stronger sub-branch which has received the additional egms has been able to make a continuing contribution to the sub-branch from which the egms have been removed.
67. Both in the evidence which he gave on his first occasion in the witness box and when he returned to the witness box subsequently, Mr Sherlock was questioned about this. Ultimately we are satisfied that appropriate steps have been taken to investigate the possibility that the egms could be transferred within the RSL network and that for various reasons this cannot be achieved. One other important aspect of his evidence was the fact that in this instance (unlike approximately 90 per cent of the sub-branches) the RSL does not own the freehold upon which the sub-branch is erected. That freehold is owned by the local council.
68. Mr Sherlock was followed by Mr John Poland whose current role is that of Acting General Manager and Secretary of the Oakleigh RSL. He listed a number of the activities which take place at the sub-branch where the most attractive old buildings are also used for external purposes such as neighbourhood watch and a mother's club. The main commercial activity is

the sale of drinks and gaming, particularly on Saturday nights when there is jazz and dancing. The bistro has only been operating for over 12 months and as yet is not returning any money to the sub-branch whilst it encourages the operator's business to try to establish something which is viable.

69. As to the gaming, Mr Poland is of the view that the other activities of the RSL actually subsidise the gaming activity. He gave evidence of significant overhead expenses such as electricity. He stated that if the \$4,000 per month were received as proposed, he would be able to implement changes in the veterans' programs which are offered. Indeed, he is of the view that the \$48,000 per annum would make a huge difference, that there are various activities which he considers should be offered to veterans, but which the sub-branch is simply unable to afford. And he pointed out that whilst the premises are attractive, they are extremely hot during the summer and very cold during the winter.
70. The evidence adduced by both Mr Sherlock and Mr Poland did not include any particularly sophisticated accounting and the Commission has some reservations as to the viability of the sub-branch even if this application is granted and the sub-branch receives a monthly payment of \$4,000 as proposed. Nevertheless, the efforts of Mr Poland and Mr Upton and others are to be commended. The work which is carried out is, without question, of great value to the wider veterans' community and the Commission is satisfied that if the sub-branch is obliged to close, it will constitute a considerable detriment to the local community. As the Commission has observed on a number of occasions, other organisations do not exist in the community to provide the assistance which is provided by the RSL, particularly through the myriad volunteers who contribute most of the work.

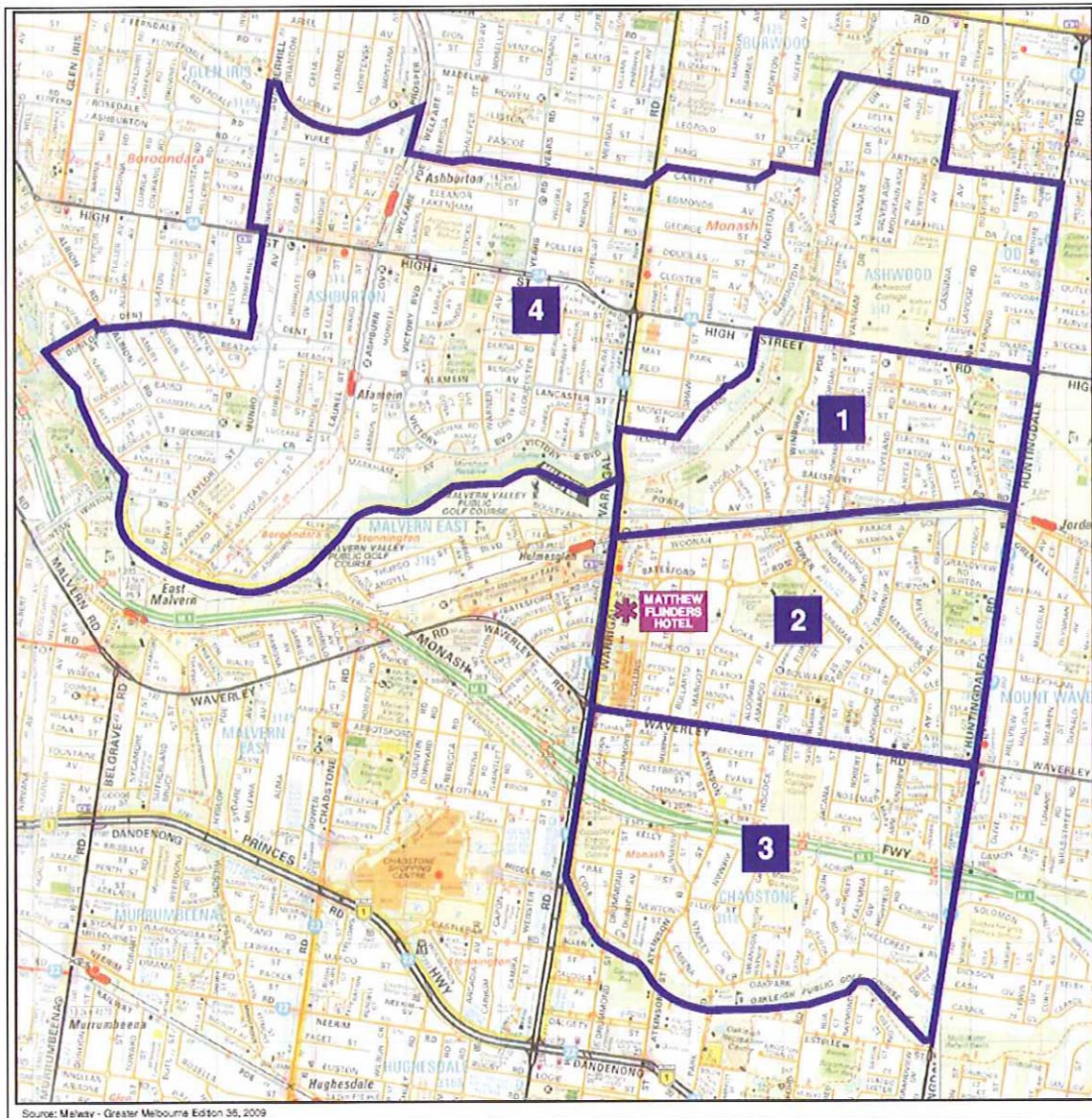
Accordingly, whilst we have some reservations as to certain aspects of the evidence, after giving the matter careful consideration we accept the evidence provided both on behalf of the RSL (Victoria) and on behalf of the Oakleigh RSL.

THE SOCIO-ECONOMIC EVIDENCE

71. As we have mentioned previously the applicant engaged RATIO to prepare a report as to the socio-economic implications of approval of this application.
72. By the time Ms Peterson was commissioned to prepare her report, the Council's submission had already been filed so that Ms Peterson had access to the report prepared by Coomes Consulting which carried out a similar exercise on behalf of the Council. It was refreshing to note that both of the consultants who gave evidence on behalf of the applicant and Council respectively conceded that within their reports there was a great deal of agreement.
73. At this point we should also mention that the evidence as to likely expenditure at the venue if the application is granted, was already available to the consultants. Whilst the two witnesses as to expenditure Mr Whitehouse and Mr Gill (and we refer to them in the subsequent portion of these reasons) were not in agreement as to all issues, it could be confidently asserted that if this application is approved the likely overall increase in expenditure would be very modest. There would be no additional egms in Monash – in fact there would be fewer. The knowledge of these matters enabled the consultants and indeed the Commission to concentrate on what appeared to be the crucial aspect of this matter, notably the impact of a greater number of egms at the subject venue, upon some relatively small but significantly disadvantaged areas nearby.

74. As it transpired, Ms Peterson is very familiar with the Jordanville area and was able to give valuable evidence accordingly. Her views might be summarised by saying that so concerned was she that the residents of the Jordanville area appear to be over-represented amongst the hotel's patrons, that she initially felt unable to express a positive opinion about this application. It is plain that it was her suggestion that the applicant should offer the sum of \$25,000 for assistance in the engagement of an additional problem gambling counsellor that tilted the balance in favour of the application in her opinion. We commend Ms Peterson for her frankness and we were assisted by knowing the importance which she attributed to this particular issue.
75. However, before dealing with that issue there are other matters to which reference should be made. As indicated earlier, it was at Ms Peterson's instigation that the utilisation survey was conducted which showed that for 13 hours in a two week period, the gaming room achieved 70 per cent utilisation. It should also be noted that only on one occasion did it achieve much in excess of 70 per cent, notably at midnight on a Saturday night when 90 per cent of the egms were being used. On the other occasions that the 70 per cent was achieved, the utilisation rate barely exceeded that figure.
76. Another important aspect, however, of the gaming patron's survey which Ms Peterson also required was that it demonstrated the most likely areas from which the hotel's patrons are derived. Because this survey is of considerable significance in our reasons, we have included it in the reasons for decision. The areas marked 1 and 2 in figure 10 are known as Jordanville.

FIGURE 10: SURVEY AREAS FOR PATRON SURVEY



77. We are also including Table 6.1 which shows the further distilled figures from that survey. The survey threw up some interesting results, apart from the fact that 11 percent of patrons were from Jordanville. 52 percent of patrons were from within a five kilometre radius of the venue with a much higher percentage than usual (48 percent) coming from a greater distance away. As Ms Peterson commented, this does demonstrate the drawing power of this hotel as a destination venue and it is also plain that it picks up a considerable proportion of its patronage from what is known as the “dry

In the matter of the Matthew Flinders Taverner

areas” within the city of Boroondara. This is not surprising bearing in mind the relative absence of other venues to the north of the subject venue, again as the result of the dry area policy. Another interesting result from the survey is that only 30 per cent of patrons reside within the City of Monash, thus demonstrating the significance of its specific location, on the western fringe of Monash and in close proximity to the other municipalities from where patronage is drawn, notably Stonnington, Boroondara and Whitehorse. Ms Peterson urged some caution in the use of this survey, bearing in mind that a higher number of persons than usual declined to take part.

TABLE 6.1. MATTHEW FLINDERS POSTCODE REVIEW

Suburb	Postcode	2009 Survey Results
South Ashwood	Area 1 ³	6%
Chadstone (north of Waverley Road)	Area 2	5%
Chadstone (south of Waverley Road)	Area 3	7%
Ashburton	Area 4	6%
Mount Waverley	3149	7%
Camberwell	3124	4%*
Caulfield East, Malvern East	3145	4%
Burwood	3125	4%
Glen Iris	3146	4%
Hughesdale, Huntingdale, Oakleigh, Oakleigh East	3166	3%
Mont Albert, Surrey Hills	3127	3%*
Carnegie, Glen Huntly, Murrumbeena	3163	2%
Birkdale QLD	4159	2%
Patrons who declined to participate		17%
TOTAL NUMBER PATRONS SURVEYED	3610	

Source: Gaming Patron Surveys.

78. In respect of the areas other than Jordanville, and with a couple of very isolated exceptions, no significant level of disadvantage may be discerned.

- SEIFA index scores are much higher than average in the majority of the collector districts from which patrons to this venue are attracted.
79. Ms Peterson also had regard to the other factors which we are obliged to take into consideration, notably the fact that if the application is granted there would be a cessation of gaming at the Oakleigh RSL, and a reduction in the number of egms at the Mountain View Hotel. That latter venue may be dealt with quite briefly. The highest proportions of patrons at the Mountain View are from Blackburn, Blackburn North, Blackburn South, Mount Waverley, Forrest Hill, Nunawading, Vermont and Vermont South. Between them those suburbs account for 36 per cent of patrons. It can be reasonably suggested that any reduction in gaming at the Mountain View Hotel will not affect a great number of people who exhibit signs of disadvantage.
80. The position is rather different in relation to the Oakleigh RSL. The patron survey conducted in relation to that venue demonstrated that 34 per cent of the Oakleigh RSL's membership come from the areas known as Hughesdale, Huntingdale, Oakleigh and Oakleigh East and 11 per cent from Murrumbeena, Carnegie and Glenhuntly. Between them, these areas thus account for 45 per cent of the membership. The gaming patron survey conducted between 1 January 2009 and 3 May 2009 showed rather different figures but nevertheless 18 per cent of gaming patrons were from the suburbs referred to above. The Commission's own observation of the areas surrounding the Sub-branch would confirm the impression that it is certainly not located in one of the more advantaged areas within Monash. Whether RSL Sub-branch members will continue to engage in gaming if the egms are removed from their Sub-branch might be regarded as doubtful as there is plainly a close relationship between members and their venue.

81. On balance we consider that the reduction in gaming at the Mountain View Hotel has neither a positive nor negative impact upon the related community, whilst the ending of gaming at the Oakleigh RSL could be regarded as a positive feature of this application.

82. Reverting now to the question of Jordanville, Ms Peterson's conclusion was that about 11 percent of gaming patrons at the hotel are attracted from that area. Whilst this is not a huge proportion bearing in mind that Jordanville is located virtually adjacent to the venue, it does mean that residents from that area are overrepresented. It is this issue which troubled her when she was asked to prepare her report and it is a matter which the Commission considers to be the single most troubling aspect of the application. As we comment in due course, it is also the issue most relied upon by the witnesses called on behalf of the Council and also Mr Westcott of Coomes Consulting.

83. When analysing this issue Ms Peterson pointed out that the residents of Jordanville would undoubtedly attend the subject venue for many purposes other than gaming and she highlighted an advantage of this venue, notably the wide range of options which it offers. Within the area known as Jordanville SEIFA index scores are relatively low, although the figures are masked somewhat by the inclusion of Jordanville as part of the area described as Chadstone and Chadstone Centre. The actual score is 994, putting it in the fifth decile of disadvantage (with lower scores reflecting a higher level of disadvantage) or in the 41st percentile. By contrast, many of the areas represented in the survey, such as Camberwell, Mont Albert, Surrey Hills and Glen Iris have extraordinarily high SEIFA scores and rank in the 98th percentile. It should also be noted that Clayton and Notting Hill have

lower SEIFA scores. At 984 they rank in the fourth decile, and 32nd percentile. They supply only a very small proportion of the patrons at the subject venue, but, of course, a higher proportion of patrons at the Oakleigh RSL. Overall, the SEIFA scores for Monash are high. Monash sits in the ninth decile. The surrounding municipalities are similarly, or even more, advantaged. Put another way, 69 other municipalities display higher levels of socio-economic disadvantage than the City of Monash, and between the 2001 and the 2006 census, Monash's position has improved relative to other municipalities.

84. It can thus be summarised by mentioning that the areas of particular disadvantage are very small indeed as a proportion of the catchment area for the venue as a whole. But an examination of the area by the Commission confirms Ms Peterson's evidence (and indeed, that of Mr Westcott) that the Jordanville area with its high level of public housing does exhibit a number of signs of considerable disadvantage.

85. Finally, reference should be made to the Jesuit Social Services Report on social disadvantage, "Dropping off the Edge". In this study, an analysis of all the postal areas within a five kilometre radius of the venue (including postcodes within and outside the Monash LGA) shows that not one of these postcodes attracts a Jesuit Social Services ranking below the median. All ranked between the 11th to the 18th quintile (higher scores reveal a lesser level of disadvantage). Ashwood and Ashburton have a moderate ranking in the 14th quintile with Chadstone listed in the 13th quintile. Of interest is the fact that Oakleigh, Hughesdale and Huntingdale, significant sources of patronage and membership of the Oakleigh RSL, have the lowest ranking within Monash, in the 11th quintile.

86. Finally, it is necessary to comment on the particular aspects of disadvantage which can be identified. Within the areas to the east and north east of the venue [which we identify as Jordanville] there are a larger number of single parent households than elsewhere. A significantly lower proportion of residents in Jordanville were born in Australia and they therefore suffer the disadvantage of having to master another language. As to education, residents from this area are completing year 12 or its equivalent at a higher rate than the Melbourne Statistical Division average. However, there are more households in the Chadstone and Ashwood postal areas [which cover Jordanville] with incomes in the lower income bracket and, conversely, fewer in higher income brackets, than in Monash as a whole. As Ms Peterson commented in her report, the higher incidence of public housing does make it less likely that Jordanville will be “gentrified” in the future. But some of the indicators to which we have referred above demonstrate a lesser degree of disadvantage than we might have imagined would be the case.

THE SOCIO ECONOMIC EVIDENCE OF THE COUNCIL

87. We think it more convenient to deal with the evidence of Mr Westcott at this point. Mr Timothy James Westcott is a Senior Consultant, previously engaged at Coomes Consulting Group. While that firm is now known as CPG Australia, we believe it more convenient if we refer to the reports prepared by Mr Westcott as being “the Coomes Reports”.
88. Because of changes made to the application, from time to time by the applicant, it was necessary for several reports to be prepared by Mr Westcott. He was thus very familiar with the subject matter. His reports were thorough and he gave his evidence in an impressive manner.

89. If there was a difference in approach between the Coomes Reports and Ms Peterson's RATIO Report, it may be summarised by saying that Coomes placed greater significance upon the areas in very close proximity to the subject venue, particularly within one kilometre and consequently attributed less significance to the areas further removed. We think there was some substance in the comment that Ms Peterson made about this, that in the light of the patron's survey, she thought that too great a reliance upon residents living within one kilometre of the venue was not justified.
90. Mr Westcott mentioned with approval the survey which Ms Peterson had conducted but pointed out that it did confirm the overrepresentation of persons from Jordanville at the venue. In Mr Westcott's view, this confirmed the general research that gaming tends to be a predominately local activity.
91. An important point which was drawn out in cross-examination was that when preparing his reports, Mr Westcott had made the assumption that there must be a high rate of utilisation of the existing egms at the venue – a not unreasonable assumption bearing in mind the very high net machine revenue (NMR) at the hotel. To this extent he was disadvantaged in that it was only after Ms Peterson's insistence on a survey of patrons in February 2009 that it could be shown that indeed the utilisation rate is not high. This, naturally, led to a number of questions as to the real impact of additional egms upon the persons living in the most disadvantaged areas, bearing in mind that they do have ready access to egms already. It was put to the witness that one might assume that there would be the likelihood of a greater surge in gaming expenditure from residents in the disadvantaged areas, if the current situation was one in which they did not have access to egms whereas of course this is

not the case. The witness agreed that this was significant, particularly as, bearing in mind the relative absence of motor vehicles within the disadvantaged areas, it seems likely that many residents access the venue on foot.

92. Under questioning from the Commission Mr Westcott agreed that if a Jordanville resident was a problem gambler at the time of the removal of the egms in 2007, it is unlikely that he or she would have ceased to be a problem gambler simply because a number of egms have been removed. The witness agreed with this proposition and also with the further proposition that those who had ceased to gamble at the Matthew Flinders Taverner because of the reduction in number of the type of egms that they prefer, would be most unlikely to be those exhibiting a problem with their gambling. Of course, Mr Westcott made the reasonable proposition that in an area such as Jordanville, any expenditure on gaming machines tends to make people more vulnerable – we accept this.
93. Having heard excellent presentations of evidence by both Ms Peterson and Mr Westcott, we have no doubt that the area known as Jordanville, which is overrepresented by the number of patrons who attend the subject venue is a significantly disadvantaged area. By contrast, all of the other areas from which significant numbers of patrons are drawn do not exhibit disadvantage. A higher number of patrons than might normally be the case travel more than five kilometres for the various activities at the subject venue, and particularly from areas north of the hotel where there are few gaming opportunities, and where the suburbs from which those patrons are drawn are amongst the most advantaged in Victoria.

94. Our concerns about the level of disadvantage in Jordanville are tempered somewhat by the fact that this is an application for an increased number of egms, rather than for a new venue. Having heard the evidence of Mr Schwarz and Ms Thompson in particular, when combined with the two witnesses providing socio-economic evidence, the Commission does consider that those residents of Jordanville who have a problem with their gambling are probably gaming at the subject venue already and to this extent the additional number of egms proposed would probably not constitute a significant risk for these people. However, as Mr Westcott points out, more people from Jordanville who are not presently attracted to gaming, perhaps because of the small number of low denomination egms at the subject venue, may be more attracted to gaming if this application is approved because of the applicant's intention to add additional numbers of low denomination egms.

THE LIKELY INCREASE IN EXPENDITURE

95. In this matter we were assisted by an estimate of expenditure provided by Mr Whitehouse of Tattersall's, together with an opinion expressed by Mr Gill of Ferrier Hodgson who was engaged on behalf of the Council.
96. In order to make the estimate, the applicant relied upon the GEOTECH Model. As we have referred to it on several previous occasions, it can be summarised thus:

“The GEOTECH Model, based on various factors such as venue attractiveness and distance from other venues, predicts the future revenue performance of an updated venue. It also predicts the proportion of the revenue that is being transferred from other venues and hence calculates the component of revenue that is new to the municipality”.

97. In this case the model has predicted that an additional \$54,000 (approximately) would be earned each week as a result of an increase of 21 egms [\$2.8m per annum]. Of this sum two-thirds would be transferred expenditure, or \$36,000 [\$1.87m per annum]. New expenditure is therefore estimated at \$18,000 or \$936,000 per annum. [All these figures have been rounded off.]
98. The suggestion that two-thirds of the additional revenue at the venue would be transferred from other venues caused a difference of opinion between Mr Whitehouse and Mr Gill, who was of the view that a transfer percentage greater than 50% was too high. Mr Gill points to studies of three other LGAs following variations in the numbers of gaming machines after successful applications to this Commission or to VCAT, for approval for new venues. He used the same studies in his analysis in the recent Bridge Inn application (*In the matter of Bridge Inn, Mernda (2009)*). For the reasons we set out in our decision in that matter we doubt that Mr Gill is correct in the analysis he makes of transfer percentage in those studies, and in the current matter, with the high number of gaming venues in close proximity to the subject venue, we consider that the transfer estimate of two-thirds is reasonable.
99. More controversially, the model also predicts that the impact on the City of Monash will be quite modest, notably \$535 increase per week or approximately \$27,000 per annum. The difference between this figure, and the estimate of the total new expenditure created by the 21 egms after taking into consideration the percentage of transfer, is affected by several matters. The first is that all of the \$660,000 revenue presently earned at the Oakleigh RSL (which is situated within Monash) will cease to be earned at that venue.

There will also be reduced expenditure at the Mountain View Hotel (which is also in Monash). The reduction in revenue at the Mountain View is not huge in percentage terms [8%] but does amount to about \$1m.

100. Another matter to be considered is the relatively high rate of patronage at the venue by residents of other LGAs, to which we have referred previously. Some 70% of patrons from the survey reside in LGAs other than Monash, thus, it is suggested, the additional revenue at the venue would be similarly drawn from other LGAs.
101. In the present case this is important because, as stated earlier, within the City of Monash there is very high expenditure already, and considerably more per adult on average than in most LGAs. What is submitted on behalf of the applicant is that although there will be an increase in expenditure of nearly \$1m if the application is granted, most of the increase in expenditure will be committed by non-residents of Monash who, as we have pointed out previously, tend to come from advantaged municipalities.
102. As the estimate provided by Mr Whitehouse, based upon the GEOTECH Model, was the subject of considerable debate at this inquiry, it is necessary to point out another matter referred to by Mr Whitehouse and which suggests that the GEOTECH prediction is unlikely to be an under-estimate. As the Commission has commented on a number of previous occasions, prior to the introduction of the GEOTECH Model, Tattersall's used other models to estimate additional expenditure in "top-up" cases. After considering a number of earlier case studies, Tattersall's reached the conclusion that the revenue earned by additional egms in these top-up cases would be approximately 38 percent. To explain this more simply, if existing egms

were earning \$1,000 per week, the additional egms would, on average, earn \$380 per week. Whilst this calculation initially suggested to some critics that systematic underestimates were being provided, the Commission notes that in fact the figures provided by Tattersall's in support of top-up applications, were analysed by the Commission 12 months after the additional egms had first been added to a venue. The estimates provided to the Commission in the previous applications [based upon the 38% adjustment figure] have proved to be remarkably accurate. If anything, there has been evidence of a slight over-estimate of expenditure.

103. A point which Mr Whitehouse very legitimately made in this case, is that the figure advanced by the GEOTECH model is that the new egms will earn roughly 73 percent of the sum derived by the existing egms – a very significant increase compared with the 38 percent previously used.
104. Finally, as he has also done on several recent occasions, in order to give the Commission still greater comfort that the figure proposed would not be exceeded, Mr Whitehouse made an upward adjustment of 10 percent. This would lead to the additional revenue at the venue increasing to a figure just over \$3m. In turn, this would lead to the result that on his calculation the increase in annual expenditure within the City of Monash would be between \$28,000 and \$148,000 (both sums are approximate).
105. Mr Gill challenges this figure also, but it must be said that his initial calculations were made before he was aware of the results of the patron survey which, as stated previously, showed that only 30 percent of surveyed patrons came from Monash. When allowance is made for the \$1.8m of expenditure being removed from Monash the Commission has decided that it

can accept the Whitehouse calculations. We conclude therefore by accepting that the new revenue at the venue will be in the range of \$1m to \$1.2m per annum and that the increase in gaming expenditure in Monash will be in the range from \$28,000 to \$140,000

THE SUBMISSION FROM THE CITY OF MONASH

106. The City of Monash filed a detailed and well prepared written submission which was presented to the Council for approval and adopted. In the recommendation which was accepted by the Council the following was included:

“That Council objects to the application from the ALH/Taverner Hotel Group Proprietary Limited to vary the number of egms from 59 to 80 on the following grounds:

- i. The Matthew Flinders Taverner is situated within a State Government regional caps area*
- ii. An increase in egms in an area of low socio-economic disadvantage is inappropriate and will have a negative social and economic impact on the community*
- iii. With the move of 20 egms from Oakleigh RSL to Matthew Flinders Taverner, the egms are more likely to generate a higher expenditure as they are to be placed in a larger and busier venue*
- iv. An independent social impact assessment does not recommend the Matthew Flinders Taverner increase in egms; this view is supported by Council”.*

107. This last point was obviously a reference to the first Coomes Report which, by that time, was available to the Council. Other points then noted in the submission were the following:

- i. That the State Government had identified Chadstone, Ashwood and Ashburton as disadvantaged and as such has established a Neighbourhood Renewal program in that area
- ii. That the area surrounding the subject venue is an area of social disadvantage and as such should be protected from an increase in a potential harmful activity
- iii. That the State Government's regional capping policy specifically aims to "*protect communities that are particularly vulnerable to the harm from problem gambling*" and that to increase the number of egms at the subject venue would conflict with the intent of the regional capping
- iv. That if this application was to be approved it would have a detrimental impact on the stability of egms across Victoria, as every hotel or club that was affected by the caps review has the potential to use this case as an example to apply for an increase in egms.

108. The submission went on to argue that the Council's responsible gambling policy stated that Council would not support any application that seeks to remove egms from one part of the municipality to another part of the municipality displaying greater social and/or economic disadvantage.

109. Not surprisingly the submission made much of the very high expenditure within Monash. It was acknowledged that Monash generally had a high SEIFA index and it was suggested that this tended to mask areas of socio-economic disadvantage in particular areas (including the areas identified by Ms Peterson and Mr Westcott). The Council made it plain that it had consulted with a number of neighbouring Councils, and with a number of

community based organisations within Monash several of whom expressed their concern about the application. The City of Stonnington expressed its concern about the application, pointing out that the subject venue was close to areas identified by that city as being disadvantaged. The City of Boroondara commented along similar lines. A brief letter was written by the CEO of the City of Whitehorse offering support for the Monash opposition to the application (but not including any other data). Letters in opposition were also attached from Gambler's Help Eastern, from Power Neighbourhood House Inc, from Mr Robert McInnes, an accountant and drug, alcohol and gambling counsellor and a member of the Monash Council Responsible Gaming Taskforce, from the Chadstone Baptist Church, from the Amaroo Neighbourhood Centre and from the Salvation Army in Camberwell. Each of these submissions tended to highlight the fact that the area in close proximity to the venue has a lower than average SEIFA index score. Whilst a number of the submissions acknowledged that egms were being transferred from within the capped area to the subject venue and thus did not result in an increase in the number of egms within the capped area, they tended to point out (correctly) that it was likely that because of the greater drawing power of the subject venue, gaming expenditure would be increased (the expert opinions to which we have referred confirm that this is the case). Mr McInnes' submission highlighted what he thought was the very low level of community donations and benefits offered by the subject venue or the ALH Group.

110. Two of the representatives of the organisations that made submissions also gave evidence. Mr Raymond Paterson of Wavecare Counselling Service gave most impressive evidence as to the work done by Wavecare, which effectively provides assistance for anyone who holds a healthcare card. Over

a relevant period of time about one-fifth of the persons presenting to Wavecare had mentioned issues associated with gambling – the service sees about 600 people each quarter and has some 12 counsellors. A representative of Gambler’s Help also attends at the service for two sessions a week.

111. The witness expressed concern at the likelihood of more people from areas which he regarded as disadvantaged accessing the venue’s egms. Not surprisingly, the results of the patron survey were put to him, and the fact that there are already sufficient egms for those living in the disadvantaged areas who wished to access them. Not unreasonably he replied that if that were the case, he couldn’t quite understand why the application was being brought. Ms Eileen Mosden is the co-ordinator at the Amaroo Neighbourhood Centre, which is situated in Amaroo Street, which runs off Waverley Road. We were informed that the service offers programs ranging from occasional childcare, parent support groups, computer classes and other services for Amaroo, which is a community centre situated in a particular low income area, in a public housing estate and within a kilometre of the subject venue. Ms Mosden who was also an extremely impressive witness has held her present role for some 25 years. She gave some further details about the neighbourhood renewal unit, a government funded approach:

“To bringing people in low income areas up a notch so to speak. Helping them to take control of what is going on in their community, looking at safety issues, looking at a wide range of issues that affect the people living in that community”.

112. Whilst she was unable to give details of the percentage of public ownership of housing in the area, she commented that it was still quite large with lots of

young families living there. Because of the diversity of the programs which Amaroo offers, she estimated that 500 people per week would go through their facilities or use the program and partly because of the large number, she commented that it wasn't possible to identify the number or percentage of these people who have a problem with gambling. She also conceded that the information that she had was drawn from anecdotal evidence.

“We get a lot of stories but mostly see perhaps the families of people that the partner or the husband has gambled away the money and they have got nothing left.”

113. Ms Mosden's principal concern was that the more machines there are, the more accessible they would be for people to gamble. Her view was that for a number of the people with whom Amaroo works, even the expenditure of \$20 on gaming machines would be greater than that person or his or her family, could afford.
114. The witness was aware that some of her clients and contacts had ceased gaming at the subject venue when the number of egms was reduced.
115. In cross-examination Ms Mosden was referred to the code of conduct at the venue and she agreed with the proposition that if the code of conduct was being adequately followed, it was impressive and would be of assistance.
116. When questioned by Mr Cohen, Counsel assisting the Commission, as to whether she thought there had been fewer people from around her area gambling at the subject venue after the machines were taken out she replied that she really couldn't say that, and didn't know, but that she believed that if people had to wait for a machine they would still go to the venue to gamble.

When asked what would be the situation if the egms were put back in she replied:

“They would rub their hands with delight”.

117. We commend the Council for its submission and for calling both of these witnesses who assisted us greatly in understanding the particular problems in the area in which they are working.

ADVANTAGES AND DISADVANTAGES OF THIS APPLICATION

118. We now set out what we consider to be the positive and negative features associated with this application.

119. We consider that the strongest indicator in favour of the application is the proposal for funds to be contributed to the Oakleigh RSL. We accept the evidence that it will have to cease its gaming activity and that if gaming is discontinued but it is in receipt of an income flow of \$4,000 per month, it will be able to continue to offer the services to veterans for the foreseeable future. We cannot be more specific about its likely life expectation but we are satisfied that the work which it will carry out during that period will be extremely valuable to the community.

120. Similarly, the contribution which is proposed to the RSL (Victoria) will, we have no doubt, be used very advantageously for the Victorian community (including within the City of Monash).

121. We are also of the view that the contribution of \$25,000 per annum for assistance in the engagement of a problem gambling counsellor can be well used and it is a matter which we take into consideration.

122. On a number of occasions we have referred to the relatively low utilisation rate of the existing egms. To some extent this can be viewed as a twin-edged sword. On the one hand it tends to negate the suggestion that the venue needs additional egms. But on the other hand, it is as Ms Brennan has pointed out on a number of occasions, hard to reconcile this fact, with the suggestion that additional egms at the subject venue will increase the number of problem gamblers. We were impressed by the evidence of Mr Schwarz and Ms Thompson. We accept that if there were patrons of the subject venue who were problem gamblers at the time that 46 egms were removed, the removal of those egms would not have stopped all those problem gamblers from gambling. We accept that some may have gone to other venues because of the greater likelihood of lower denomination egms while some, no doubt, continue to gamble at the subject venue. The point is, however, that it seems hard to suggest that there are problem gamblers in the disadvantaged areas close to the subject hotel whose problems will be made worse by the addition of further egms.
123. We are also mindful of the fact that the egms to be removed from the Oakleigh RSL will be coming from a region which, within Monash, is by no means advantaged. No doubt some of the existing patrons from that venue will continue to gamble elsewhere, although we suspect that a number of them will give up gaming if their RSL Sub-branch ceases to offer it. Also relevant in this context is that the Oakleigh RSL is one of four venues in close proximity with one another. Removal of gaming machines from this venue will reduce the density of gaming machines and venues within this particular community in Monash.

124. When considering the position of the City of Monash, it is also a positive feature of this application that if it is granted, there will be an overall reduction in the number of egms (a policy objective which is favoured by the Council) and only an extraordinarily modest increase in the volume of gaming expenditure within Monash. There will, of course, be increases in gaming expenditure in several of the adjoining municipalities but on balance we find that they are better equipped to cope with such additional expenditure.
125. Finally, it should not be overlooked that there are patrons of the subject venue for whom gaming is safe, well managed, and a pleasurable part of their lives. We do accept that the reduction in the lower denomination egms has been an inconvenience to them. Some may be travelling to other venues further away because they can access more one and two cent machines, although we acknowledge that the gaming patron survey would tend to suggest that although the numbers of such machines are reduced, they still do exist in numbers sufficient to cater for patrons at the subject venue already. Nevertheless, for these people, many of whom may have wished to use the subject venue, particularly for dining, but also for gaming as an adjunct to their leisure experience, the addition of more of these lower denomination machines would be of value.
126. The other matter to which we must refer is the fact that we are satisfied that notwithstanding the very high expenditure upon gaming at the subject venue, it does have policies to deal with problem gambling which are of a quality which would be matched at very few venues. We were particularly impressed by the evidence of Ms Thompson and the strength with which she expressed the opinion that problem gamblers are bad for themselves, for a

venue, and for those who work in it. The interventionist policies which she has introduced, and the requirement for which is now replicated in the code of conduct, are admirable. And the ALH Group is to be congratulated upon engaging the services of Mr Schwarz. We can well understand the view that it is quite possible that a person such as Mr Schwarz with his background as a gambler may have a greater effect upon other potential problem gamblers than many gambling support services can offer. Whilst we have great respect for the work being carried out at the Oakleigh RSL, we suspect that the harm minimisation strategies adopted at the subject venue would be of more value than at the sub-branch.

127. As to the disadvantages, plainly the matter which concerns the Commission most is that of the relationship between the venue and the disadvantaged areas in close proximity to it. Whilst it is true that this venue could properly be described as a destination venue for a large proportion of the people who attended, nevertheless it has a disproportionate number of patrons from the areas in Chadstone and Ashwood who, we are satisfied, are financially and socially disadvantaged. We accept the evidence of Mr Westcott and also Ms Mosden that for such people even modest expenditure upon gaming may constitute an unreasonable burden on the family budget.

GOVERNMENT POLICY

128. We have concerns about all within the City of Monash and in neighbouring areas, who are charged with the task of dealing with social problems, particularly that of problem gambling, and who are working within the context of government policy. For this reason we have been concerned as to whether the Commission should take the view that having regard to the relatively short time which has elapsed since the very significant number of egms were removed from the subject venue, the Commission should take the

view that it is premature for the Commission to contemplate any course whereby some number of egms should be returned. For the reasons we have set out below, we do not think that this can be a policy consideration which should determine the outcome of this application but nevertheless the Commission has been concerned about this issue.

129. As outlined above, the Victorian Government's "Regional Caps Policy" was one of the issues that the Commission had to consider in this application. The matter that concerned the Commission in respect of the policy was whether the Commission had a discretion to consider the policy in determining this application and if there was such a discretion, the manner and extent to which the Commission should exercise the discretion. The question of the Commission acting inconsistently with government policy was one which weighed heavily on the Commission's mind throughout the hearing.
130. During the hearing the Commission asked the parties to address this issue. Both the Applicant and the Council agreed that the Commission had a discretion to consider government policy when determining the application in accordance with s.3.4.20 of the *Gambling Regulation Act 2003*.
131. While the Applicant submitted that the Commission had a discretion to consider government policy relevant to the Commission's decision making, in this instance the Applicant was of the view that the Regional Caps Policy was not relevant to this application because by issuing the Direction on 11 December 2006, and ensuring all machines required to be removed had, in fact, been removed by the due date in December 2007, the Commission had

already implemented the Regional Caps Policy, “*thus, in this respect the policy has no work to do*”.

132. The Applicant further submitted that the Regional Caps Policy only provided a methodology related to the removal of egms from regions and did not purport to guide the distribution and allocation of egms within the capped region once the removal process had been completed.
133. The Council submitted that it was not the role of the Commission to revisit what the parliamentary committee’s findings were, or the application of those findings.
134. The Commission has determined that it does have a discretion to take government policy into account in decisions such as this. But the Regional Caps Policy does not provide clear guidance with respect to transfers of machines within a region once the initial regional caps have been implemented. In such circumstances the Commission, as an independent decision maker, must treat each case on its merits, having regard to the policy, and the principles upon which it is based.
135. In this application the Commission is of the view that, while the government policy implemented in 2007 to effect a reduction of egms in Monash (and other regions) is noted, the merits of the case, which include the ongoing financial assistance to the RSL, the reduction of gaming venues in the capped part of the City of Monash and the overall reduction in egms within the City of Monash, lead the Commission to the conclusion that it would not be appropriate in this case to refuse the application purely on the basis that it would result in a different distribution of machines within a capped region

from that which resulted from the implementation of the Government's Regional Caps Policy as articulated in 2006.

CONCLUSIONS

136. Having weighed up the positive and negative considerations which might be affected by the granting or refusal of this application, the Commission has determined that the application should be granted but on a basis which is different from that which is proposed by the applicant.
137. We have determined that the application should be approved but for an additional 16 egms rather than the 21 proposed by the applicant. This outcome, whilst it will add an additional 16 egms at the subject venue, will result in a net reduction of 20 egms in the City of Monash, including 5 from within the capped part of Monash, and the reduction of one gaming venue.
138. It is a condition of the approval that the sum of \$4,000 per month is paid by the applicant to the Oakleigh RSL so long as it continues to operate. This approval is also subject to the following conditions:
1. that the Oakleigh RSL discontinues gaming at the premises at 95-97 Drummond Street Oakleigh and that the Venue Operator's Licence and premises approval in respect of that venue are both surrendered to give effect to this decision;
 2. that the number of egms at the Mountain View Hotel be reduced by 15 and that the Venue Operator's Licence of the Australian Leisure and Hospitality Group Limited be amended to reflect the reduced number of egms at that venue;

3. That the number of egms at the Oakleigh Junction Hotel should be reduced from 47 to 46 and that the Venue Operator's Licence of the Oakleigh Junction Hotel (BMG) Pty Ltd be amended to reflect the reduction in numbers of egms at that venue.

139. The Commission notes the offer of the applicant to contribute the sum of \$25,000 for assistance towards the provision of further problem gambling services within the City of Monash. Whilst the Commission has the power to require that a condition of the amendment of the applicant's Venue Operator's Licence in respect of the Matthew Flinders Taverner be conditional upon the payment of the said sum of \$25,000, the Commission considers it more desirable that the applicant and the City of Monash should reach agreement as to how this sum should be contributed and spent. Accordingly, the Commission does not propose to require that the amendment of the Venue Operator's Licence in respect of the Matthew Flinders Taverner is conditional upon the payment of this sum, but will hear applications by the parties for directions in the event that agreement as to this subject cannot be reached within 28 days.
140. Similarly, the Commission has noted the agreement which has apparently been reached between the applicant and the ALH Group, and the Returned and Services League of Australia Victorian branch as to the payments of, respectively, \$400,000 to the Victorian branch (of which \$50,000 has already been paid) and a further \$4,000 to the Oakleigh RSL during such time as that Sub-branch continues to exist, and egms are being operated at the subject venue. The Commission may make further orders in respect of these payments if it is required to do so, although having regard to the agreements

which we are informed have already been in existence for some time, we doubt that this should be the case.

141. 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.
142. 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.
143. 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.”
144. The administrative process of the amendment to the licence will only take place if the amendment of the licence 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.

145. In reaching this decision, and throughout the conduct of the hearing, the Commission is, and has been, mindful of its obligations under section 38 of the *Charter of Human Rights and Responsibilities Act 2006* and is satisfied that it has complied with those obligations.

The preceding 145 paragraphs are a true copy of the reasons for decision herein of –

Mr I Dunn, Chair

Mr P Cohen, Executive Commissioner

Mr R Smith, Sessional Commissioner

<i>Date of Hearing:</i>	<i>4, 5, 15, 16 & 17 June 2009</i>
<i>Date of Decision:</i>	<i>31 July 2009</i>
<i>Counsel for the Applicant:</i>	<i>Ms Susan Brennan</i>
<i>Instructing Solicitors:</i>	<i>Rigby Cooke</i>
<i>Counsel for the Respondent</i>	<i>Mr John Rantino</i>
<i>Instructing Solicitors</i>	<i>Maddocks</i>
<i>Counsel Assisting the Commission:</i>	<i>Mr Bruce Cohen</i>