



Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by Castello Hotel Investments Pty Ltd for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises, The Victorian Tavern, 22 Aitken Street, Gisborne from 42 to 50 gaming machines.

Commission

Mr Bruce Thompson, Chairman

Mr Des Powell, Commissioner

Appearances

Ms Louise Hicks of Counsel for the Applicant (instructed by Williams Winter Solicitors)

Ms Brooke Hutchins as Counsel Assisting the Commission

Date of Hearing

28 May 2014

Date of Decision

30 June 2014

Decision

That the application be granted

Signed

Bruce Thompson

Chairman



REASONS FOR DECISION

INTRODUCTION

1. This is an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* (the **Act**) by Castello Hotel Investments Pty Ltd (the **Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at The Victoria Tavern, located at 22 Aitken Street Gisborne (the **Venue**) from 42 to 50 EGMs (the **Application**).
2. The relevant municipal authority is the Macedon Ranges Shire (the **Council**). The Council did not lodge a submission in respect of the Application.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the Act. The Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities.¹ For this reason the Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some and harm for others. In particular, the balance is maintained by requiring an applicant who wishes to increase the number of EGMs at a venue to satisfy the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) of the "no net detriment test" and the other matters set out in section 3.4.20(1) of the Act.²
4. The no net detriment test requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.³
5. In addition to the requirements under the Act, the Commission has an unfettered and overriding discretion to grant or refuse an application, subject to the condition stipulated in the Act that requires that the Commission not grant an application unless it is satisfied that the net economic and social impact of approval is not detrimental to the wellbeing of the municipality

¹ See s 1.1(2) of the Act.

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

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



in which the premises are located.

THE MACEDON RANGERS AND THE VICTORIAN TAVERN

6. The Shire of Macedon Ranges (the **Macedon Ranges**) is a rural Local Government Area (**LGA**) located approximately 70 kilometres north-west of Melbourne and includes the major centres of Gisborne, Kyneton, Woodend and Romsey.
7. The Macedon Ranges is comprised of three Statistical Local Areas (**SLA**);⁴ Macedon Ranges – Kyneton, Macedon Ranges – Romsey and Macedon Ranges - Balance. The Venue is located in Gisborne, within the Macedon Ranges – Balance SLA.
8. The Macedon Ranges – Balance SLA is ranked 72nd of the 79 metropolitan SLAs on the SEIFA scale of disadvantage,⁵ indicating a lack of disadvantage in the area in which the Venue is located. It is generally accepted that a majority of a venue's gaming patrons will be drawn from residences within a 5km radius of the venue. Notably, 3.2% of Statistical Area Level 1 (**SA1**)⁶ within a 5 kilometre radius of the Venue is in the first quintile of disadvantage (the most disadvantaged relative to all Victorian SA1s), while 0% is in the second quintile of disadvantage. The Commission notes that there is no other gaming venue operating within 5 kilometres of the Venue, the closest gaming venue being in Kyneton which is 33 kilometres away.
9. The Macedon Ranges is subject to a regional cap of 298 EGMs.⁷ Currently there are three gaming venues in the Macedon Ranges with approvals to operate a total of 95 EGMs. Approval of the Application will take the number of EGMs operating in the area to 103.
10. The Macedon Ranges has relatively low levels of EGMs, resulting in the following:
 - 10.1. a density of 2.85 EGMs per 1,000 adults (46% less than the rural average and 51% less than the State average);
 - 10.2. EGM expenditure for the 2012-13 financial year of \$9.15 million; and

⁴ The Statistical Local Area (SLA) is an Australian Standard Geographical Classification (ASGC) defined area which consists of one or more Collection Districts (CDs). SLAs are Local Government Areas (LGAs), or parts thereof. Where there is no incorporated body of local government, SLAs are defined to cover the unincorporated areas. SLAs cover, in aggregate, the whole of Australia without gaps or overlaps.

⁵ Socio-Economic Indexes for Areas (**SEIFA**) is a product developed by the ABS to assist in the assessment of the welfare of Australian communities. SEIFA allows the ranking of regions/areas, providing a method of determining the level of relative social and economic well-being in each region. The SEIFA scale of disadvantage ranks municipalities from least disadvantaged to most disadvantaged on a relative basis.

⁶ The SA1s have been designed as the smallest unit of release of the 2011 Census data and usually have a population of 200 to 800 persons, with an average of 400 persons.

⁷ Pursuant to s 3.4A.5(3A)(b) of the Act, the Commission determined, in accordance with the criteria specified in the Minister for Gaming's Order on 15 August 2012, the maximum permissible number of gaming machine entitlements under which gaming may be conducted in each region.



- 10.3. EGM annual expenditure per adult of \$274 (14% less than the rural average and 50% less than the State average).
11. Further, expenditure in the municipality is declining and has decreased by 19.81% in real terms⁸ over the last five years. Declining expenditure is common in regional municipalities, and it is noted that regional gambling expenditure has decreased by 22.34% over the last five years.
12. The Venue consists of bistro and dining facilities, function rooms, informal lounge area and piano bar, multiple alfresco dining areas, a children's play area, drive-through bottle shop and a separate gaming room. The Venue has a planning permit to operate 60 EGMs however it currently only operates 42. The gaming room has sufficient space to accommodate an additional 8 EGMs without the necessity for works.
13. The Venue is currently owned and operated by the Applicant, an experienced gaming and hospitality operator in Victoria, which has been involved in the industry since 1994.

THE MATERIAL BEFORE THE COMMISSION

14. The Applicant provided the Commission with the following material to assist in the assessment of the social and economic impact of the Application:
 - 14.1. Witness Statement of Mr Giuseppe Paul Giustiniano, Chief Executive Officer of the Applicant, dated 21 February 2014;
 - 14.2. Expenditure Report, prepared by Mr Richard Whitehouse of Progressive Venue Services (**PVS**), dated 17 February 2013 (the **Expenditure Report**); and
 - 14.3. Social & Economic Impact Report, prepared by Mr Nick Anderson of NBA Group Pty Ltd (**NBA**), dated 16 January 2014 (the **Impact Report**).
15. Additionally, the following material, prepared by Commission officers, was considered by the Commission:
 - 15.1. Economic and Social Impact Report dated May 2014; and
 - 15.2. Pre-Hearing Inspection and Compliance Report dated May 2014.

Mr Giuseppe Giustiniano

16. The Applicant called Mr Giuseppe Giustiniano to give evidence in support of the Application.

⁸ Indexed to CPI.



Mr Giustiniano is the current nominee on the liquor licence for the Venue and the nominee on the applicable venue operator's licence.

17. The Applicant is a family run organisation, which has owned gaming venues for various periods since 1994. The Applicant has had a strong presence in the industry for a number of years, previously owning and operating eleven venues with a sound record of compliance.
18. The Applicant currently employs 48 employees at the Venue, comprising of nine full-time employees and 38 casuals (the casual employees collectively working the equivalent of 19 full time staff). The Applicant stated that approval of the Application will result in employment of an additional two full-time employees. The majority of current staff are local residents and the Venue enjoys low levels of turnover.
19. Mr Giustiniano gave evidence that in the 2013/2013 financial year, in relation to the Venue, the Applicant provided the following cash and in-kind contributions to the local community:
 - 19.1. \$15,000 to the Council Community Funding Scheme (the proceeds of which are distributed to the community at the discretion of the Council without input by the Applicant);
 - 19.2. sponsorship in the sum of \$11,940 and vouchers with a value of \$619 to multiple local football clubs and the Venue pool competition club;
 - 19.3. donations of hampers, bottles of wine and bistro vouchers to local community groups with a value of \$1,040;
 - 19.4. donations of free room hire, chairs and proceeds of a Melbourne Cup Day event to local groups; and
 - 19.5. subsidised activities and meals for patrons at the Venue.
20. Mr Giustiniano told the Commission that if the Application is approved, the Applicant will continue to make the cash and in-kind contributions to the local community detailed in the preceding paragraph. Additionally, Mr Giustiniano told the Commission that the Applicant has committed to donating a further \$5,000 per year to the Council Community Funding Scheme, bringing this sum to \$20,000 per year.
21. The Applicant is also planning to upgrade and modernise the interior of the Venue through refurbishment works at an estimated cost of \$150,000 to \$200,000.
22. In terms of responsible service of gaming, Mr Giustiniano told the Commission that the Venue



undertakes a number of relevant practices including:-

- 22.1. The Venue adopts and enforces the PVS Code of Conduct and all staff who work in the gaming room and all Venue managers hold a Responsible Service of Gaming Certificate.
 - 22.2. The Venue subscribes to the terms of the Australian Hotels Association (Vic) Self-Exclusion Program. There are approximately 34 individuals currently listed on the Venue's register. All gaming staff members are required to review a folder containing photos of the individual's on the register prior to commencing each shift and complete a "sign-off book". A Responsible Gaming Register is also maintained.
 - 22.3. Staff and management meet twice a year with the Gamblers Help Southern Venue Support Worker, Mr Trevor Rice.
23. Based on first-hand observations and review of the Responsible Gambling Register, Mr Giustiniano told the Commission that there are lower instances of problem gambling at the Venue, compared to other venues that Applicant has previously been involved with. The patrons are mostly local residents that are known to staff and whom often come into the Venue to use a range of the facilities in addition to the gambling room, such as dining in the bistro.
 24. Mr Giustiniano told the Commission that the Applicant has been in discussions with the Council regarding the Application. The Commission was told that the Council supported the Application and a letter from the Council to the Applicant was produced to this effect. No formal submission was made by the Council to the Commission in relation to the Application.
 25. Mr Giustiniano expressed his view that the current 42 EGMs at the Venue are highly utilised. It is Mr Giustiniano's stated belief that 50 is the "optimum number" of EGMs for the Venue, telling the Commission during the hearing it would allow for employment of a dedicated gaming manager, and explaining further in his Witness Statement that the Venue's current size, location and standing in the community as the reason for this belief.

Progressive Venue Services Expenditure Report – Mr Richard Whitehouse

26. The Applicant engaged Mr Richard Whitehouse of PVS, a gaming expenditure consultant, to prepare the Expenditure Report which presents estimates of the expenditure that is likely to be generated by an additional 8 EGMs at the Venue. Mr Whitehouse gave evidence at the hearing of the Application and was cross-examined. The Commission accepts that Mr Whitehouse is qualified to give opinion on matters of gaming expenditure.



27. The Commission notes that the Expenditure Report contains a declaration of independence by Mr Whitehouse. PVS is also engaged by the Applicant to provide ongoing Responsible Gambling Service, a fact which the Commission considers should have been identified in the in the Expenditure Report in the interests of full disclosure.
28. The Expenditure Report critiques and presents the outputs of the Geotech Model which is used to estimate likely EGM expenditure in gaming venues. The Geotech Model is described as a retail gravity geo-spatial model which has previously been accepted as a guide by the Commission. Evidence was given that the version of the Geotech Model used in relation to the Application is the most reliable model to date, explaining 87% of variability in venue revenue in country areas.⁹
29. In this instance, the Geotech Model predicted that expenditure as a result of the additional machines at the Venue would be \$16,288. This figure was adjusted by Mr Whitehouse to a range of up \$196,144. Mr Whitehouse expressed the view that the actual performance of the additional EGMs will be between the two figures, most likely above the Geotech Model prediction.
30. Mr Whitehouse explained to the Commission that the lower figure of \$16,288 was produced as the Venue currently meets a large proportion of demand in the area. The higher figure in the range, being the adjusted figure of \$196,144, was explained to be adjusted to take into account past experience with a previous EGM increase in 2008 at the Venue and comparison of expenditure at other venues in the Macedon Ranges. Mr Whitehouse advised the Commission that reports of little growth are not uncommon in regional areas, supporting the concept that there is a limit to the level of demand of the gaming offer for each venue in the State.
31. Mr Whitehouse also told the Commission that the Venue is likely to see a relatively low rate of transferred expenditure, being approximately 5% (which equates to \$10,000 at its highest). This low rate of transfer is said to be attributable to the lack of competitor venues in the area.
32. As the precise details of process utilised to obtain the adjusted expenditure figure is somewhat opaque, the Commission is not satisfied that Mr Whitehouse's estimated range is a reasonable approximation, sufficient to inform its decision. Accordingly, the Commission attributes little weight to any benefit associated with increased expenditure in this Application.



NBA Group Social & Economic Impact Report – Mr Nick Anderson

33. The Applicant engaged Mr Nick Anderson of NBA to prepare the Impact Report to accompany the Application. Mr Anderson gave evidence at the hearing of the Application and was cross-examined. The Commission accepts that Mr Anderson is qualified to give expert opinion on the likely social and economic impacts of the Application.
34. In terms of the social and economic profile of the Macedon Ranges, Mr Anderson told the Commission that it is a somewhat unique area in that, although it is a rural area and has characteristics of a country town, it is located on the metropolitan fringe and accordingly is exhibiting growth characteristics not dissimilar to areas within the metropolitan urban growth boundary.
35. Mr Anderson has visited the Macedon Ranges, Gisborne and the Venue and provided the Commission with a number of first-hand observations on the area. Mr Anderson told the Commission that the existence of low density residential areas is a common feature of the Gisborne town planning. Numerous photographs were presented to the Commission showing examples of the high quality dwellings which were said to be the norm in the area. The types of dwellings being built in the area were described by Mr Anderson as being at the “premium end” compared to most rural towns.
36. The growth rate for Gisborne is just under two percent, which Mr Anderson explained to the Commission is nearly double the projected growth rate for most country towns. The Impact Report outlines that the total population of the Macedon Ranges is expected to grow from 43,241 people in 2011 to 58,944 by 2031.
37. Based on the 2011 Census data, the Macedon Ranges is ranked 9th out of 79 LGAs in Victoria on the Index of Relative Social Disadvantage; indicating that the Macedon Ranges is one of the least disadvantaged LGAs within Victoria. Within the Macedon Ranges LGA, the town of Gisborne is ranked as the seventh highest town of 19, supporting the view that the Venue is in a level of low disadvantage.
38. Mr Whitehouse told the Commission that while the area immediately surrounding the Venue is showing to be in the first quintile of disadvantage (see discussion above at paragraph 8), this occurs as a consequence of the land being used mainly for public purpose and recreation. There is very little housing in this immediate area and where the housing does commence, the area becomes categorised as being in the top quintile of disadvantage, showing low levels

⁹ The Commission notes that paragraph 16 of the Expenditure Report suggests that, although there is clearly an improvement in the Geotech Model results in metropolitan areas, with reliability increasing from 84.5% to 90.50%, in country areas there is actually a



of disadvantage. There is no public housing in the vicinity.

39. On the question of housing stress Mr Whitehouse noted that, based on the 2011 statistics, 18% of the local community has a mortgage greater than the regional average. Mr Whitehouse explained that this is not an area of concern however, as 19% of the community earn a high income which is also proportionately greater than the regional average.
40. As part of NBA's assessment of the social and economic impacts of the Application, a patron survey of the gaming room was undertaken for a seven day period. The results of the survey show that the majority of the Venue patrons (53%) are residents of Gisborne. The remaining 47% of patrons were predominately found to come from nearby townships.
41. Mr Whitehouse analysed raw data provided by the Venue on the question of utilisation of the EGMs. Peak utilisation of EGMs is considered to be 70% or greater. Mr Whitehouse found that over a 14 week sample period there were 50 hours of peak utilisation, averaging 3.5 hours per week. Mr Whitehouse expressed his opinion to the Commission that the additional EGMs will provide for the needs to patrons at peak times and cater for the projected growth of the town, the Venue and the tourist trade.

LIKELY ECONOMIC IMPACT OF APPROVAL

42. There is often a large degree of overlap between economic and social impacts of applications to operate or increase the number of EGMs at a particular venue. The Commission considers it useful for the purpose of balancing community benefits and detriments that a thorough analysis and identification of the economic and social impact on the community be undertaken.
43. The Commission notes that it is never possible to quantify with absolute certainty the amount of expenditure that will occur as a result of approval of an application. This uncertainty is apparent in the current Application, where the opinion of Mr Whitehouse is that the predicted expenditure as a consequence of additional EGMs is said to be in the range of \$16,283 to \$196,144 over the first 12 months. This prediction is made in circumstances where the existing EGMs in the venue are not being used to their full capacity, and evidence suggests that in regional areas it is not uncommon that an increase in the number of EGMs has little impact on the level of expenditure.
44. Given the uncertainties with the Geotech Model outputs, the Commission considers there is likely to be minimal, if any, economic benefit associated with the Application through an



increase in gaming expenditure in the municipality.

45. The Commission accepts the evidence provided that transfer expenditure is likely to be minimal, projected at around 5%.
46. The Commission considers that the capital works associated with the Venue will bring small economic stimulus, and thus a marginal benefit, both in the construction phase and the ongoing operation of the improved Venue.
47. The Commission accepts that the contribution the Application makes to the Community, and in particular the contributions made to the Council Community Funding Scheme, provide an economic benefit to the local residents.
48. Ultimately, the Commission considers there will be a neutral to slightly positive economic impact on the community with approval of the Application.

LIKELY SOCIAL IMPACT OF APPROVAL

49. Wherever accessibility to EGMs is increased, a risk of an increase in problem gambling is present. Problem gambling leads to a range of economic costs such as lost productivity, increased health and social service requirements and other social costs. The Commission accepts that there is a small potential for a negative social impact as a consequence of granting the Application in the form of increased problem gambling expenditure. While noting the evidence about venue scale and problem gambling, the Commission considers that this particular proposed increase does not carry the threshold risk.
50. The Commission accepts the evidence before it that the Macedon Ranges is an advantaged area and accordingly carries a lower risk of problem gambling than that seen in other more disadvantaged LGAs.
51. The Commission found Mr Giustiniano to be a reliable witness, and accepts the evidence that the Applicant operates the Venue in accordance with the appropriate standards, has a sound history of compliance and will ensure that the Applicant honours its community contribution commitments into the future.
52. The Commission considers that the forthcoming redevelopment works, while apparently intended to proceed regardless of the outcome of this Application, will provide a social benefit to the community. Further, the increase in community contributions will have a positive social benefit.
53. On balance, the Commission considers that the likely social impact of the Application will be



positive.

CONCLUSION

54. As outlined at the commencement of these Reasons, the no net detriment test in section 3.4.20(1)(c) of the Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the wellbeing of the relevant community will be either neutral or positive.¹⁰
55. After consideration of the evidence presented in the Application, the Commission is satisfied that, on balance, the net economic and social impacts of approval on the Macedon Ranges are likely to be marginally positive. The Commission is therefore satisfied the Application should be granted.

The preceding paragraphs are a true copy of the Reasons for Decision herein of Mr Bruce Thompson (Chairman) and Mr Des Powell (Commissioner).

¹⁰

Romsey (2008) 19 VR 422, 435.