



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 Tamari Holdings Pty Ltd, for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises, the Malvern Vale Club Hotel, 1321 Malvern Road, Malvern from thirty (30) to thirty-eight (38) gaming machines.

Commissioners: Miss Gail Owen, Deputy Chairman
Ms Kate Hamond, Commissioner

Appearances: Mr Peter O'Farrell as Counsel for the Applicant
(instructed by Mr Dale Curtis, Tresola Lawyers)

Ms Ruth Davies, Stonnington City Council

Mr Scott May as Counsel Assisting the Commission

Date of Hearing: 19 May 2014

Date of Decision: 16 June 2014

Decision: The application is granted.

Signed:

Miss Gail Owen
Deputy Chairman

REASONS FOR DECISION

INTRODUCTION

1. This is an application by Tamari Holdings Pty Ltd (**the Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Malvern Vale Club Hotel (**the Hotel**) located at 1321 Malvern Road, Malvern, from 30 to 38 EGMs.
2. The relevant municipal authority is the City of Stonnington (**Council**). Council made a submission addressing the social and economic impact of the application and appeared at the hearing to oppose the application.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. A venue operator may make a request to the Commission for an amendment of its licence conditions under section 3.4.18 of the Act. Section 3.4.20 of the Act lists matters to which the Commission must have regard in determining the application. Relevantly, section 3.4.20(1)(c) of the Act outlines the 'no net detriment test'. This test requires the Commission to weigh the likely positive economic and social impacts of an application against the likely negative economic and social impacts. The test will be satisfied if, following the weighing process, the net economic and social impact of approval on the well-being of the relevant community will be either neutral or positive.¹
4. The Act recognises that, notwithstanding individual rights of self-determination and gaming's recreational legitimacy, gaming on EGMs can cause harm to some communities and to some members of some communities. It is for this reason that the Act includes safeguards to ensure that an appropriate balance is struck between accommodating lawful and responsible gambling and minimising the harm caused by problem gambling.²

THE MATERIAL BEFORE THE COMMISSION

5. The Applicant filed the following documents in support of its application:

¹ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435.

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

- a completed application form to amend a venue operator's licence (vary gaming machines), dated 24 January 2014;
 - a completed application form for approval to modify a gaming machine area in an approved venue, dated 24 January 2014 (indicating the proposed layout of EGMs, if approved);
 - a social and economic impact assessment prepared by Mr Rhys Quick of Urbis Pty Ltd, dated December 2013;
 - an expert's report prepared by Mr Tim Stillwell of Moore Stephens Accountants and Advisors, dated 20 December 2013; and
 - a witness statement by Mr Andrew Brown, Director of the Applicant, dated 10 January 2014.
6. The Commission also had before it two reports prepared by Commission officers, being:
- a statistical economic and social impact report dated May 2014; and
 - a pre-hearing inspection and compliance report dated 6 May 2014.
7. Council provided the Commission with an economic and social impact submission dated 21 March 2014. The Commission also received a letter from the City of Boroondara dated 4 April 2014 supporting the City of Stonnington's submission.³

THE CITY OF STONNINGTON

8. Based on the material before the Commission:
- the Hotel is located within the Local Government Area (**LGA**) of the City of Stonnington, a metropolitan municipality located approximately 10 kilometres east of Melbourne covering an area of 26 square kilometres;

³ Boroondara City Council shares a border with the City of Stonnington and located to the north-east of the City.

- the City of Stonnington (**the City**) comprises two statistical local areas (**SLA**), Stonnington (C) – Prahran (**Prahran SLA**) and Stonnington (C) – Malvern (**Malvern SLA**). The Hotel is located within the Malvern SLA;
- in terms of social and economic disadvantage, the City is ranked as the third least disadvantaged of all 79 Victorian LGAs according to its SEIFA ranking⁴ and the Malvern SLA is ranked as the fifth least disadvantaged SLA out of 207 Victorian SLAs;
- for a metropolitan venue, it is generally accepted that the majority of the venue's gaming patrons will be drawn from residences within a 2.5 km radius of the venue. The majority of the Statistical Areas - Level 1⁵ (**SA1s**) within this radius are in the upper deciles (9th and 10th) of SEIFA disadvantage, suggesting that the patron catchment area of the Hotel experiences low levels of relative disadvantage;⁶ and
- other economic indicators suggest the City is relatively advantaged: equivalised household income in the City is 38.13% higher than the metropolitan average,⁷ unemployment in the Malvern SLA is significantly lower than the metropolitan average⁸ and the City contains a high proportion of managerial and professional workers.⁹

⁴ The Socio-Economic Indexes for Areas (SEIFA) is a product developed by the Australian Bureau of Statistics that ranks areas in Australia according to relative socio-economic advantage and disadvantage. Indicators are chosen based on education, employment, income, families and housing and are combined to produce an index score in order to rank and compare areas in Australia.

⁵ SA1 is the second smallest geographic area as defined by the Australian Statistical Geography Standard (ASGS) and are the smallest unit for the processing and release of ABS Census data. SA1s usually have a population of between 200 to 800 persons, with an average of 400.

⁶ As SEIFA is a ranking of disadvantage, a SA1 ranked in a lower decile (e.g. 1st or 2nd) suggests relative disadvantage, whereas a SA1 ranked in a higher decile suggest an absence of relative disadvantage.

⁷ The economic and social impact report prepared by Commission officers stated that the mean weekly equivalised household income (EHI) for the immediate surrounding area is \$1,047.60 as compared with the metropolitan mean EHI of \$758.44, based on Australian Bureau of Statistics data.

⁸ The economic and social impact report prepared by Commission officers stated that the unemployment rate in the Malvern SLA was 3.22% as compared with the 5.97% unemployment rate for Metropolitan Victoria.

⁹ The economic and social impact report prepared by Mr Quick indicated that 59% of the workforce is classed as "upper white collar workers" (managers/professionals) which is more than double the metropolitan average of 25% (based on data from the Australian Bureau of Statistics and Department of Education, Employment and Workplace Relations).

GAMING EXPENDITURE IN THE CITY OF STONNINGTON

9. The City is subject to a municipal limit of 825 EGMs. Currently, there are seven venues operating a total of 295 EGMs.
10. The City is generally characterised by below average and decreasing levels of gaming expenditure as compared with state averages. Based on the material before the Commission:
 - the City has an EGM density of 3.39 per 1,000 adults, the fifth lowest of all 31 metropolitan municipalities. This level of EGM density is approximately 40% less than the metropolitan average and approximately 42% less than the state average;¹⁰
 - gaming expenditure in the City for the 2012/13 financial year totalled approximately \$21.42 million, an average expenditure per adult of \$243 which is 58% less than the metropolitan average, 56% less than the state average and the fifth lowest gaming expenditure (per adult) of all metropolitan municipalities with gaming machines; and
 - trend analysis of gaming expenditure in the City indicates that gaming expenditure has decreased by 14.92% in real terms¹¹ over the past 5 years, a rate of decrease which is less than the metropolitan average (18.48%).

THE MALVERN VALE HOTEL

11. The Hotel is located on Malvern Road, Malvern, about 11 kilometres from the Melbourne CBD. The Applicant purchased the Hotel and installed EGMs in the venue in 1994. The Hotel generally trades from 8 am to 4 am (7 days a week) and employs approximately 40 people.
12. The Hotel comprises:
 - a bistro (with capacity for 120 patrons);

¹⁰ The metropolitan average being 5.55 gaming machines per 1,000 adults, and the state average being 5.80 gaming machines per 1,000 adults.

¹¹ i.e. adjusted to CPI

- a sports bar (with capacity for 50 patrons) and TAB (with capacity for 28 patrons);
- a pool room (with dining facilities and a function capacity to accommodate 56 patrons);
- an upper level function room (with capacity for 100 patrons);
- a gaming room with 30 EGMs (with capacity for 42 patrons);
- two outdoor courtyards (with capacity for 14 and 20 patrons); and
- a drive-through bottle shop.

Evidence of likely gaming expenditure – Tim Stillwell, Moore Stephens accountants and advisors

13. The Applicant engaged Mr Stillwell of Moore Stephens to provide an estimate of the gaming expenditure expected to be generated by an additional 8 EGMs at the Hotel. Mr Stillwell is an accountant with experience in both the accounting and taxation generally and in the gaming industry in particular.

14. Mr Stillwell report concluded that:

- an additional 8 EGMs at the Hotel would increase the gross gaming expenditure by between \$167,188 and \$204,340 per annum;
- of this additional expenditure, 50% is expected to be expenditure transferred from other venues in the City; and
- after transferred expenditure is taken into account, total gaming expenditure in the City is expected to rise by between \$83,594 and \$102,170 per annum.

15. Mr Stillwell told the Commission that his estimation of increased expenditure was based on the venue's 2012 net machine revenue (**NMR**) and current utilisation statistics.¹² The expected expenditure transfer rate of 50% was

¹² Mr Stillwell noted that he utilised 2012 statistics for the venue as the venue's 2013 statistics were affected by transitional issues such as the automatic teller machine bans in venues, access to monitoring systems and the availability of gaming machines.

calculated by reference to a variety of factors such as the distance from the Hotel to close competitor venues, the Monash freeway to the north of the Hotel acting as a “barrier” to patron travel, a view that the Hotel is not a destination venue and that the majority of patrons attending the Hotel appear to come from areas in close proximity to the Hotel (based on the Hotel’s bistro patron survey).

Evidence from the Applicant – Mr Andrew Brown

16. Mr Brown gave evidence about the Hotel’s current operations, the community contributions the Hotel currently makes and its responsible service of gambling (**RSG**) practices. Mr Brown is the sole director and secretary of the Applicant and has been involved in the hospitality industry for over 35 years.
17. Mr Brown told the Commission that his family purchased the Hotel in 1994 and at that time the Hotel was in a dilapidated state. The Applicant undertook major renovations in 1996 (at a cost of \$3.5 million) and again in 2007 (at cost of \$2.5 million).
18. Mr Brown explained that the Hotel has a diverse range of patrons, including university students, tradespeople, families and retirees. The Hotel serves approximately 2,000 meals per week plus 450 bar snacks.
19. Mr Brown gave evidence to the Commission that the Applicant distributes approximately \$15,000 to \$17,500 per annum to local sporting groups and provides vouchers (redeemable at the Hotel) to various community groups. Mr Brown estimated that this is made up of:
 - \$5,000 cash to the Glen Iris Junior Football Club;
 - \$2,500 cash to the Malvern Cricket Club;
 - \$3,000 cash to the St Kevin’s Old Boys Soccer Club; and
 - \$1,500 in vouchers (redeemable at the Hotel) to the Malvern Lacrosse Club.

20. Mr Brown estimated that the remainder of the \$15,000 to \$17,000 distributed to the community is made up of free use of the Hotel's function room (which is normally charged at \$100).
21. Mr Brown told the Commission that, irrespective of the outcome of the application, he anticipates the existing distributions made to community groups will be maintained.
22. Mr Brown explained to the Commission that, regardless of whether this application is approved or rejected, the Applicant would be paying more in taxation per annum (even if gaming expenditure were unchanged) due to recent State Government gaming machine taxation changes. Mr Brown stated that the additional EGMs will generate additional revenue to enable reinvestment in the Hotel's facilities.
23. Mr Brown stated that he views requirements concerning the provision of responsible service of gambling seriously. The Hotel has a RSG policy which the Hotel adheres to and training is provided to staff during the induction process. Mr Brown told the Commission that the Hotel has taken steps to ensure that staff are actively implementing RSG policies and initiatives. Mr Brown could not recall any incidents of problem gambling in the venue and said a review of the Hotel's incident register indicated that the only issues identified related to intoxicated patrons in other parts of the Hotel.
24. The Commission questioned Mr Brown on how monitoring of patrons occurs at the Hotel, the Commission noting that parts of the gaming room were not able to be observed by staff positioned at the cashier/bar area. Mr Brown agreed that one part of the gaming area is not observable from that area but said that Hotel staff frequently walk around and observe patrons in the gaming room. Additionally, the venue has security cameras monitoring the gaming room, which can be viewed by a monitor in the office/cash room. Mr Brown conceded that staff at the bar/cashier area cannot see the security monitor in the office/cash room but Mr Brown agreed that the Applicant could place a monitor in the bar/cashier area.

25. The Commission also questioned Mr Brown on whether families with children seated the bistro area had a clear view into the gaming room. Mr Brown agreed that this was a possibility.
26. The Commission questioned Mr Brown on the number of additional staff he expected would be employed if the application were approved. Mr Brown stated that he would require approximately one or two equivalent full time staff (approximately 40 to 60 hours). Mr Brown said that, generally, the Hotel's staff are locals and many are students.
27. Mr Brown told the Commission that during peak periods the venue is unable to cater for the demand for gaming machines and that patrons often leave and travel to other venues. The Commission questioned Mr Brown how he knew this to be the case. Mr Brown replied that patrons have told Hotel staff this directly.

Social and Economic Impact Assessment – Rhys Quick, Urbis Pty Ltd

28. Mr Quick gave evidence about the expected social and economic impact of approval of the application on the City. Mr Quick is an economic property consultant with experience specialising in the retail and gaming sectors.
29. Mr Quick told the Commission that a patron survey (of bistro, not gaming, patrons) indicated that patrons originate primarily from the local area.¹³ Mr Quick suspected results would be similar for gaming patrons.
30. A count of patrons located in the gaming room was conducted over a two week period in November 2013. The survey revealed that the room approached capacity (defined as over 70% of machines being used) most days, with the key peak times being Friday and Saturday evenings.
31. Mr Quick stated that the demographic characteristics of the area surrounding the Hotel suggest that it is relatively advantaged compared with metropolitan Melbourne and is characterised by generally high incomes, high levels of home ownership and low levels of unemployment. While Mr Quick acknowledged that there were some "pockets" of disadvantaged areas in the

¹³ Mr Quick stated that 80% of customers came from Malvern, East Malvern, Glen Iris and Armadale.

City, he noted that the level of disadvantage those areas experience only appears significant when compared with the relatively prosperous statistics in the City. Mr Quick considered that these identified areas, when compared with state or metropolitan averages, appear less concerning.

32. Mr Quick's report summarised the potential social and economic benefits of the application as:

- the economic and social benefits realised by increased recreational gambling expenditure;
- some small increase in government revenue stemming from taxation (although Mr Quick conceded that this is relatively low and the benefit to the local community negligible);
- the benefit of increased access for those playing EGMs in a responsible manner; and
- increased profitability which would enable the Applicant to reinvest into the Hotel's facilities or increase future community contributions.

33. Mr Quick also outlined the economic and social disbenefits, being:

- potential loss of trade from nearby retailers (although Mr Quick considered this immaterial in the context of total retail expenditure by residents in the area);
- diversion of trade from other venues (although other venues may be disadvantaged by diversion of trade, Mr Quick considered this will be a transfer of expenditure, from a community perspective, rather than a detriment);
- the extent of community opposition (however, Mr Quick noted there is no evidence of community opposition and the venue has operated with EGMs for approximately 20 years).

34. Mr Quick also considered the possible economic and social detriments associated with problem gambling. Mr Quick conceded that problem

gambling has economic costs relating to service provision, financial losses and support services, as well as social costs such as the adverse impact on people's health, jobs, finances, emotional state and relationships.

35. However, in Mr Quick's view, the change in terms of problem gambling will be negligible if the application is approved, as:

- the application is for additional machines at a small venue which has operated EGMs for some time and has established procedures and staff training in place to minimise problem gambling;
- residents in the City are generally not disadvantaged (particularly those in the vicinity of the Hotel) and the areas of relative disadvantage identified are located some distance from the venue;
- the Hotel has a number of features to limit the impact of problem gambling (the gaming room is naturally lit, is easily monitored by staff due to its small size and gaming is only a small part of the wider range of recreational facilities at the Hotel);
- the expenditure analysis indicates that the anticipated increase in gaming expenditure in the City will be only approximately 0.4 - 0.5%; and
- the surrounding commercial facilities (being car showrooms, offices and professional services) do not present an elevated risk of problem gambling as they are not high intensity retail uses such as supermarkets (which could create a risk of "convenience" gambling).

36. Mr Quick told the Commission that the inability of staff to view the entire gaming room is an issue and the Hotel needs to ensure staff circulate the gaming room to enable proper monitoring. However, Mr Quick noted the gaming room is relatively small and the existing surveillance cameras can be utilised.

37. The Commission questioned Mr Quick about the visibility of the gaming room (and EGMs) from the bistro area. Mr Quick stated that this could be improved as the glass is not opaque. However, Mr Quick considered this was not directly relevant to this application.

38. Council questioned Mr Quick on whether he considered it likely that residents located in the relatively disadvantaged areas in the City (being social housing estates) would travel to the Hotel given that a tram route runs directly to the Hotel from those areas. Mr Quick considered that there are other, larger, gaming venues much closer to those areas and it would be unlikely that residents would choose to travel to the Hotel.
39. Council questioned Mr Quick on the relatively older age profile of the City, the high number of single person households and mortgage stress and asked whether Mr Quick considered that those characteristics were predictors of problem gambling. Mr Quick disagreed that there was evidence of mortgage stress in the City, considered that the single person household indicator was likely to be due to an older resident and/or student population and noted that research into problem gambling suggested that older residents and students are less likely to experience problem gambling.
40. Council questioned Mr Quick on his conclusion that the Hotel is not a convenience shopping destination, suggesting that the venue is in a strip shopping centre with a bottle shop, milk bar, newsagent, pharmacy, cafes and other businesses in close proximity. Mr Quick considered this activity was further east down Malvern Road and that there is not a high level of pedestrian activity outside the Hotel.

THE COUNCIL'S SUBMISSION AND POSITION

41. Council did not support the application. In its submission and at the hearing, Council argued (in summary) that:
 - within the City, there are pockets of areas which contain significant disadvantage with SEIFA scores well below the City's average - these areas generally contain public housing and the prosperous statistics for the City disguises the vulnerable communities within the general catchment area of the Hotel;

- the Hotel is located in close proximity to a highly accessible strip shopping centre and it would be inappropriate to increase the availability of EGMs and increase the scope for convenience gambling at that location;
- the risk of gambling-related harm outweighs any social benefit from increased recreational opportunities and the only real benefit of the application is that some patrons at the Hotel may not have to wait a few minutes before being able to access a machine (the Applicant having stated that there will be no loss of community contributions);
- the reduction in gaming expenditure in the City is a reflection that residents of the City do not desire more machines in the area; and
- the application contradicts the Council's Gambling Policy which supports a harm minimisation approach which is best achieved by avoiding a negative impact rather than attempting to mitigate an impact after it has occurred.

FINDINGS BY THE COMMISSION

Social Impact

42. The primary social detriment relevant to this application is the possibility of an increase in problem gambling. The Commission notes that increased access to EGMs may increase the risk of problem gambling in a community.
43. On the evidence before it, the Commission considers, in this case, the risk of an increase in problem gambling will be insignificant. The SEIFA data suggests that the area surrounding the Hotel is characterised by low levels of relative disadvantage. The "pockets" of disadvantage identified by Council are located in areas relatively distant from the venue and close to larger venues likely to be more attractive to problem gamblers. These "pockets" appear more disadvantaged when compared with Stonnington's relatively prosperous statistics. When compared with the state or metropolitan averages, the areas appear less concerning.
44. The venue itself has relatively low EGM utilisation rates (except in peak periods) and relatively low net machine revenue. These indicators point to a

lower risk of an increase in problem gambling, notwithstanding the long opening hours of the venue.

45. This venue is not a new venue and problem gamblers could, if they wished, access the venue at present. Further, the Applicant has actively implemented RSG policies and procedures to mitigate potential problem gambling.
46. While there was some argument between Council and the Applicant concerning the proximity of the venue to shops and other retail premises (and therefore whether “convenience” gambling could occur), the Commission considers the Hotel not to be a venue likely to attract convenience gambling.
47. Ultimately, the Commission considers there is a negligible risk of an increase in problem gambling. However, the Commission notes that the Applicant could improve certain aspects of its operation of the venue in order to minimise any potential problem gambling.
48. Whilst the venue has security cameras in place, the Commission considers that the Applicant should relocate at least one monitor to a position which would allow Hotel staff to view surveillance footage when standing at the bar/cashier area. In addition, the Commission considers the Applicant should take steps to limit the ability of bistro patrons (including children) to view the gaming room. The Commission does not consider it necessary to impose conditions to this effect as it is confident that the Applicant will take the appropriate steps of its own volition.
49. The Commission concludes the social impact of approval of this application, based on the evidence before it, is neutral.

Economic Impact

50. The Commission notes that the economic benefits relevant to this application are the increased machine choice and reduction in machine wait times for patrons (during peak periods), as well as a small local employment benefit (estimated at between one and two full time equivalent positions). The Commission considers these benefits, although positive, are minimal.
51. The Commission notes that the Applicant made reference to potential taxation benefits should the application be approved. The Commission considers that the ‘no net detriment’ test requires it to assess detriment to the municipality

and not to the state at large. Further, on the evidence before the Commission, the additional taxation is marginal and would be extremely unlikely to make any significant difference to the municipality. As such, the Commission has afforded no weight to the arguments made by the Applicant with respect to taxation changes.

52. While the Commission accepts the evidence of Mr Stillwell and his estimation of increased gaming expenditure, the Commission considers that the resultant gaming expenditure may not be as high as forecast. To the extent that there will be increased gaming expenditure from non-problem gambling patrons, the Commission considers it a very slight economic benefit.
53. The Commission agrees with Council's argument that gaming expenditure attributed to problem gambling has a negative economic impact. However, the Commission has concluded that there is only a slight risk of increased problem gambling arising from this application and therefore any increased expenditure attributable to problem gambling will be negligible.
54. The Commission is of a view that the economic impact of this application, based on the evidence before it, is neutral.

CONCLUSION

55. The Commission has concluded that the likely social impacts of this application will be neutral and the likely economic impacts of this application will be neutral. As such, the Commission considers that the net economic and social impact of approving this application will not be detrimental to the well-being of the community of the City of Stonnington.
56. Based on the material provided to the Commission prior to and at the time of the public inquiry, the Commission is satisfied that the Applicant has the authority to make the application and that the matters listed in section 3.4.20(1)(a) and (b) of the Act are also met.

The preceding fifty-six (56) paragraphs are a true copy of the Reasons for Decision of Miss Gail Owen (Deputy Chairman) and Ms Kate Hamond (Commissioner).