



Victorian Commission for Gambling and Liquor Regulation

REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003*, by Vickers Willis Pty Ltd for amendment of its venue operator's licence to vary the number of electronic gaming machines at the approved venue, The Torquay Hotel, 36 Bell Street, Torquay, from fifteen (15) to thirty (30) gaming machines.

Commission:

Mr Bruce Thompson, Chairman
Ms Kate Hamond, Commissioner

Appearances:

Ms Sarah Porritt of Counsel on behalf of the Applicant
(instructed by Bazzani Scully Priddle Lawyers)

Ms Teresa Bisucci of Best Hooper Lawyers on behalf of the
Shire of Surf Coast Council

Mr Bronte Campbell as Counsel assisting the Commission

Date of Hearing:

23 October 2013

Decision:

That the application be granted

Signed:

Bruce Thompson
Chairman



REASONS FOR DECISION

INTRODUCTION

1. This is an application by Vickers Willis Pty Ltd (**the Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at The Torquay Hotel, 36 Bell Street, Torquay (**the Hotel**), from 15 to 30 EGMs.
2. The relevant municipal authority is the Shire of Surf Coast Council (**the Council**). The Council opposed the application and was represented at the hearing 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 *Gambling Regulation Act 2003* (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 a potentially harmful activity 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 Commission of the "no net detriment test", and the other matters set out in section 3.4.20(1) of the Act.
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.
5. Section 3.4.19 of the Act allows the Council to make a submission addressing the economic and social impact of the proposal on the well-being of the community and taking into account the impact of the proposal on surrounding municipal districts. The Commission is bound to take this submission into consideration when applying the no net detriment test. This recognises the special role of local government in representing the people of a community.²

¹ See: s 1.1(2) of the Act.

² *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] - [249].



SURF COAST SHIRE AND THE TORQUAY HOTEL

6. The Shire of Surf Coast (**Surf Coast**) is a Rural Local Government Area located approximately 100 kilometres south-west of Melbourne and includes the major centres of Torquay, Lorne and Anglesea.
7. Surf Coast is subject to a municipal limit of 184 EGMs.³ Currently, there are 4 gaming venues within the municipality with approvals to operate a total of 111 EGMs. The Hotel and the RACV Club Torquay Resort (previously, the Torquay Golf Club) are the only gaming venues in Torquay. Approval of this application will take the number of EGMs operating within Surf Coast up to 126 and will not exceed the municipal limit.
8. Surf Coast has an EGM density of 4.97 EGMs per 1,000 adults, which is 6% lower than the rural average and 14% lower than the State average. Should this application be approved, the EGM density within Surf Coast will rise by 14.08% to 5.67 EGMs per 1,000 adults. Surf Coast has an average gaming expenditure per adult of \$134, which is 58% lower than the rural average and 76% lower than the State average. Applying the Applicant's estimate of increased gaming expenditure, approval of this application will result in an increase in expenditure across the municipality of 28.61%. While this is a considerable increase in percentage terms, the Commission notes that gaming expenditure will remain well below the rural and State averages. Overall gaming expenditure within Surf Coast has decreased by 43.60% in real terms (indexed to CPI) over the past 5 years.
9. In terms of the social and economic profile of Surf Coast, the municipality is characterised by low levels of disadvantage and above average equivalised household incomes. Based on 2011 census data, the Surf Coast – East Statistical Local Area (**SLA**), where the Hotel is located, is ranked 1st out of the 84 Rural SLAs in Victoria on the SEIFA scale of disadvantage⁴, indicating that the Hotel is located in the least disadvantaged rural SLA in Victoria.
10. Notably, when broken down into a Census Collection District (**CCD**) level, there are no CCDs in the first quintile of disadvantage, and only 4% in the second quintile of disadvantage, within a 5km radius of the Hotel (where the majority of the Hotel's patrons can be expected to be drawn from).

³ Pursuant to section 3.4A.5(3A)(b) of the *Gambling Regulation Act 2003* the Victorian Commission for Gambling and Liquor Regulation 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.

⁴ Socio-Economic Indexes for Areas (**SEIFA**) is a product developed by the ABS to assist in the assessment of the welfare of Australian communities. The SEIFA Index allows the ranking of regions/areas, providing a method of determining the level of social and economic well-being in each region.



THE MATERIAL BEFORE THE COMMISSION

11. The Applicant provided the Commission with the following material to establish the economic and social benefits that approval of the application would bring to the municipality:
 - a) Social and Economic Impact Report, prepared by Ms Colleen Peterson of Ratio Consulting Pty Ltd (**Ratio**), dated 26 July 2013;
 - b) Addendum to the original Social and Economic Impact Statement, prepared by Ms Colleen Peterson of Ratio, dated 16 October 2013;
 - c) Gaming Expenditure Estimate Report prepared by Mr Richard Whitehouse of Progressive Venue Services (**PVS**);
 - d) Witness Statement of Simon Vickers-Willis, Director of Vickers-Wills Pty Ltd, dated 1 August 2013;
 - e) Witness Statement of Andrew Routley, Hotel Manager of the Torquay Hotel, dated 1 August 2013; and
 - f) Witness Statement of Leigh James Barrett, Consultant for Leigh Barrett and Associates Pty Ltd, dated July 2013.

Ms Colleen Peterson

12. The Applicant engaged Ratio Consulting Pty Ltd (**Ratio**) to prepare a social and economic impact statement to accompany the application. Ms Colleen Peterson, Director of Ratio, gave evidence at the hearing of the application. In addition to the social and economic impact statement, Ms Peterson also prepared an addendum report containing revised statistical data which was not available at the time the initial report was finalised.
13. Ms Peterson told the Commission that the Hotel is located in Torquay, a popular tourist town within the Surf Coast Shire. The Hotel is located near the southern end of Torquay, and is surrounded by commercial and residential land uses. The Hotel has dedicated function areas which are regularly booked for private and business functions, as well as recently remodelled exterior and interior spaces.
14. Ms Peterson told the Commission that Surf Coast is made up of a mixture of rural, residential and resort areas. A large portion of the municipality is State Forest and National Park and includes the popular coastal towns of Anglesea, Aireys Inlet, Fairhaven, Jan Juc, Lorne and Torquay. Tourism provides a strong economic base for the municipality.



15. In terms of social and economic disadvantage, Ms Peterson told the Commission that Surf Coast presents as a municipality with relatively low levels of disadvantage. At a municipal level, Surf Coast has a SEIFA score of 1066 which places it in the 94th percentile of Local Government Areas in Australia, indicating there is little to no relative disadvantage in the municipality based on the SEIFA scale of disadvantage.
16. In terms of the patron catchment of the venue, Ms Peterson told the Commission that, as Surf Coast is a rural municipality, it is appropriate to adopt a 5km radius from the venue as a catchment area. Ms Peterson noted that the suburbs within a 5km radius of the venue have SEIFA scores well above the median score for Australian suburbs, indicating that the areas surrounding the venue have relatively few indicators of disadvantage. Considering the low level of disadvantage in the municipality and the catchment area, Ms Peterson told the Commission that the communities of Surf Coast and Torquay are well placed to absorb the impacts of an additional 15 EGMs at the Hotel.
17. Ms Peterson told the Commission that the increase in revenue derived from an additional 15 EGMs would be used to improve the facilities of the Hotel. According to Ms Peterson, the Applicant plans to redevelop the venue to provide greater capacity in the function spaces. The redevelopment is estimated to cost in excess of \$310,000 and is contingent on the success of this application.
18. The Applicant expects that additional employment will be created as a result of the proposed changes at the Hotel. The Applicant predicts that two additional full time positions – one gaming employee and one chef – and between 8-10 casual positions, split evenly between the gaming room and the other parts of the venue, including the bar, bistro and function areas, will occur as a result of the grant of this Application. The Applicant also indicated that these positions would likely be filled by members of the local community, given the regional location of the venue.
19. Ms Peterson gave evidence that the Applicant, through the Hotel, is a prominent member of the community and provides cash and in-kind donations to various local community and sporting groups. Ms Peterson provided the following examples of contributions that the Applicant currently makes to community organisations:
 - Cash donations of \$9,000 per annum and in-kind donation of \$21,000 per annum to the Torquay Football, Netball and Cricket Club (collectively);
 - Cash donations of \$6,000 per annum and in-kind donations of \$6,000 per annum to the Torquay Life Saving Club; and



- In-kind donations of \$5,000 to local schools, kindergartens and pre-schools.
20. Ms Peterson told the Commission that the Applicant is committed to making further community contributions of \$25,000 per annum, indexed to CPI, for the life of the gaming machine entitlements, should the application be approved. These contributions would be used to assist local community organisations in addition to the regular contributions that are already received.
 21. Ms Peterson acknowledged that in any application where accessibility to EGMs is increased, there is a risk of an increase in problem gambling. Ms Peterson noted that the Applicant has engaged Leigh Barrett and Associates to develop and implement a Responsible Gaming Policies and Procedures Manual specific to the venue. In Ms Peterson's view, these measures will mitigate against the risk of an increase in problem gambling at the Hotel. Ms Peterson further noted that approval of this application would not result in the number of EGMs operating in the Surf Coast Shire breaching the regional cap of 184 EGMs.
 22. Based on an analysis of the social and economic profile of the municipality and the anticipated benefits and disbenefits of the application, Ms Peterson concluded that an additional 15 EGMs at the Hotel would have a net positive social and economic impact on the Surf Coast community.

Mr Richard Whitehouse

23. The Applicant provided the Commission with an expenditure estimate prepared by Mr Richard Whitehouse of Progressive Venue Services Australia. Mr Whitehouse's report is based on the outputs of the Geotech Model which is used to estimate likely EGM expenditure in gaming venues. The Geotech Model is a retail gravity geo-spatial model which has been presented as evidence and accepted by the Commission, with some qualifications, on numerous occasions.
24. Mr Whitehouse told the Commission that the Geotech Model predicted the annual expenditure on the 15 additional EGMs to be installed at the Hotel to be approximately \$1,396,380, of which 42% would be transferred from other gaming venues. Accordingly, should this application be approved 58% of the revenue generated, or \$807,705, would be new expenditure to the municipality. This would represent an increase in annual gaming expenditure within Surf Coast of 27%.
25. Mr Whitehouse told the Commission that the vast majority of the transferred expenditure was predicted to come from the recently completed RACV Club Torquay Resort (**RACV Club**). The RACV Club is a large tourist resort and incorporates the Torquay Golf Club which operates 40



EGMs and is the only other gaming venue in Torquay. Mr Whitehouse noted that since the completion of the RACV Club, gaming expenditure within Torquay has reduced significantly. However, Mr Whitehouse told the Commission that it was not possible to say whether this was a permanent reduction or simply a drop in expenditure which would gradually increase as the RACV Club established itself.

26. The Commission considers the estimate provided by the Geotech Model to be reasonable, noting that while the proportional increase to gaming expenditure is significant, a large portion of this is likely to be offset by the trend rate of decline in EGM expenditure in the municipality.

Mr Simon Vickers-Willis

27. Mr Vickers-Willis is a director of the Applicant and the beneficial owner of the Hotel. Mr Vickers-Willis provided a witness statement and gave evidence at the hearing of the Application.
28. Mr Vicker-Willis has owned several other hospitality and entertainment venues, though the Torquay Hotel is his first involvement with a gaming venue. Since 2000, Mr Vickers-Willis has purchased several businesses including the Anglesea Hotel, Gold Diggers Arms Hotel in Geelong, and the Salute Café in Melbourne. Mr Vickers-Willis told the Commission that he first worked at the hotel as a teenager, and has built strong community connections through his ongoing association, and eventual ownership of the Hotel.
29. Since purchasing the Hotel, Mr Vickers-Willis has invested significant capital in upgrading, modernising and maintaining the Hotel. Mr Vickers-Willis told the Commission that the Hotel has a diverse entertainment offering with a large food and beverage trade, particularly in the summer months. The venue currently consists of:
- A sports bar with fully refurbished TAB;
 - Large summer beer garden;
 - Large family bistro;
 - Two function spaces;
 - Gaming room with 15 EGMs;
 - Drive through bottle-shop;
 - Ten motel units; and
 - Large car-parking area.
30. According to Mr Vickers-Willis, the Hotel is a destination venue for both locals and tourists to the Torquay area. Mr Vickers-Willis stated that the population growth that has occurred in Torquay, as well as an increase in tourism to the area, has meant that the Hotel is utilised by a



variety of patrons.

31. Mr Vickers-Willis told the Commission that the venue is utilised by local community groups and commercial organisations as a meeting place, but is not currently large enough to cater for functions such as weddings and corporate events. Mr Vickers-Willis stated that approval for additional EGMs would allow for the current function areas to be expanded, which would allow the Hotel to cater for larger functions, and increase the utility of the premises to the community.
32. Mr Vickers-Willis also outlined the plans to rebuild the children's play area. These improvements would allow the venue to be more family-orientated. Both the improvements to the function area and children's play area are contingent on approval of the Application.
33. Mr Vickers-Willis estimated that the Applicant provides approximately \$47,000 per annum in cash and in-kind donations to local community and sporting groups. Mr Vickers-Willis also indicated that further contributions of \$25,000 per annum would be made for the life of the entitlements.
34. Mr Vickers-Willis stated that whilst gaming was an important part of the venue, it is part of a balanced entertainment offering at the Hotel. Mr Vickers-Willis told the Commission that approval of the application will increase the limited capacity of the gaming facilities at the Hotel and improve consumer choice for those patrons who choose to partake in gaming.
35. Mr Vickers-Willis does not believe the Hotel currently has any occurrences of problem gambling and he is confident that an additional 15 EGMs would not increase the risk of problem gambling at the venue.

Mr Andrew Routley

36. Mr Routley is the Manager of the Hotel and Nominee of the Applicant. Mr Routley has considerable experience within the hospitality industry at various venues in Victoria and has held the position of Manager of the Hotel for 12 years.
37. Mr Routley told the Commission that approximately 90% patrons that attended the venue were known to himself and the Hotel's staff, such is the high concentration of locals utilising the Hotel. Mr Routley supported the evidence of Mr Vickers-Willis, indicating that the gaming room is not "the priority of the business" but part of a wider entertainment offering. Mr Routley told the Commission that the gaming room often reaches capacity and there is a clear demand for additional gaming machines.



38. Mr Routley told the Commission that the Hotel has a low staff turnover with most staff at the Hotel having remained employed with the Applicant for a significant period. According to Mr Routley, all gaming room employees have been employed at the Hotel for at least 4 years, with some up to 8 years.
39. Mr Routley told the Commission that the Hotel's Responsible Gaming Policy and Procedures Manual was developed by Mr Leigh Barrett, and all gaming staff are familiar with this document and the measures that it implements. Mr Routley told the Commission that all gaming staff have up-to-date Responsible Service of Gaming certifications and yearly training sessions held with Bethany Community Support to ensure knowledge of staff is consolidated.
40. In the last 12 months, the Hotel's staff have identified four self-exclusion breaches at the Hotel and dealt with these breaches according to the Hotel's Responsible Gaming Policy and Procedures Manual and noting them in the Hotel's incident register.
41. Mr Routley does not believe that the Hotel has an issue with problem gaming and believes that he and his staff are well equipped to manage and monitor the use of an additional 15 EGMs at the venue. In summary, Mr Routley told the Commission that approval of the application would have a positive impact on the venue, and as a result, the community, by way of improved facilities, increased choice, and a broader offering available.

THE COUNCIL'S SUBMISSION AND POSITION

42. The Council submitted a Social and Economic Impact Submission prepared by Public Place, an expert planning consultancy firm. It is not necessary for the Commission to summarise this material as much the submission echoes the evidence of Ms Peterson. Notably however, the Public Place submission concluded that it was not possible to form the opinion that approval of the application would deliver a net detriment to the community of Surf Coast. In coming to this conclusion, Public Place considered:
 - The additional EGMs would not be situated in a community with a high level of disadvantage;
 - The increase of physical accessibility and convenience to problem gamblers from an additional 15 EGMs at an already approved venue is minimal;
 - An increase in gaming machine diversity is likely to result in a minor increase in the risk factors of problem gambling;
 - The limited operating hours of the venue work to mitigate against problem gambling;
 - Approval of the application will generate a modest community benefit through additional community contributions and an improved facility; and
 - The social costs of the proposal are likely to be minimal.



43. Furthermore, the material furnished by the Council in addition to the Public Place report indicates that Council officers have confirmed that the Applicant's proposal is consistent with the Council's gaming policy (The Surf Coast Shire Gaming Policy Framework 2008 and the Gaming Policy in the Planning Scheme, Clause 22.08). The Council's Minutes of Ordinary Meeting from September 2013 show that the Council was equally divided on the issue of whether or not to oppose the application (with the Mayor's casting vote prevailing). Regrettably, the minutes do not provide an explanation as to why the Council would depart from its own gaming policy.
44. Despite the conclusions of Public Place and its own officers, the Council elected to oppose the application and instructed solicitors to appear at the hearing of the application. To adopt such a position in light of considered expert evidence is curious and wholly unhelpful to the Commission's decision making process.
45. Additionally, having gone to the expense of engaging external consultants to assess the application and obtaining legal representation to oppose the application, the Council did not call any witnesses to better articulate the position of the Council.

LIKELY ECONOMIC IMPACT OF APPROVAL

46. There is often a large degree of overlap between economic and social impacts of applications to operate EGMs. 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.
47. The Commission accepts that approval of this Application is likely to result in an increase in gaming expenditure at the Hotel of approximately \$1,396,380 over the first 12 months. The Commission notes that approximately 40% of this expenditure is projected to be transferred from the RACV Club, however considers that this figure may increase should the significant reduction in expenditure at the RACV Club continue. Whatever level of transferred expenditure eventuates, the Commission is confident that this municipality is well placed to absorb the social costs of an increase in gaming expenditure.
48. Further, any economic costs are likely to be offset by the economic benefit associated with the stimulus an increase in expenditure will bring to the municipality. The Commission considers gaming expenditure (excepting that associated with problem gambling) to be legitimate consumption expenditure undertaken by a majority of users that are enjoying a recreational



activity. The Commission notes that the Productivity Commission considers this associated consumer surplus to be the largest source of benefit from gaming.⁵

49. The Commission considers an increase in employment at the venue to be a slight economic benefit. Traditionally, employment impacts are viewed largely as transfers (e.g. by the Productivity Commission), but in the case where the amount of transferred expenditure is less than that of other similar applications, the Commission considers there will be new positions created and those are of some economic benefit. Additionally, the proposed new investment in capital works at the Hotel, while moderate, will offer a minor economic benefit.
50. Accordingly, the Commission considers that there will be a positive economic impact on the communities of Surf Coast and Torquay if the application were to be approved.

LIKELY SOCIAL IMPACT OF APPROVAL

51. Wherever accessibility to EGMs is increased, there is always a risk of an increase in problem gambling, which leads to other costs such as lost productivity, increased health and social service requirements and other social costs. Overall, the Commission accepts that there is a potential for negative social cost of the application through possible increased problem gambling expenditure, however assesses this level of potential to be low.
52. Overall, the Commission is satisfied that the potential for an increase in problem gambling is minimal. The Commission considers that the Applicant is an experienced venue operator with an appropriate attitude towards harm minimisation and responsible service of gaming strategies. Further, the Commission was not presented with any evidence to demonstrate that the operation of this venue is conducive to problem gambling and has been given no reason to conclude that an additional 15 EGMs will dramatically change the operation and responsible service of gaming performance of the venue. The Commission would encourage the Applicant to continue to develop its relationship with Bethany Community Services, and increase the number of staff training sessions that Bethany Community Services conducts.
53. The social and economic profile of Torquay and Surf Coast suggests that there is little relative disadvantage in those communities. The Commission agrees with Ms Peterson that this is a municipality that is well placed to absorb the negative impacts of problem gambling (should there be an increase) and benefit from the positive impacts of the Applicant's proposal. The Commission considers an increase in community contributions of \$25,000 to be a moderate

⁵ Australian Government Productivity Commission, "Productivity Commission Inquiry Report: Gambling", Volume 1, No. 50, 26 February 2010.



social benefit and the improved function facilities at the venue will similarly be a small social benefit.

54. The Commission also considers that approval of this application will strengthen the viability of this Hotel which is iconic to the township of Torquay. While the level of this benefit is difficult to assess, there is clearly a social benefit to the community, and those who visit Torquay, of having a thriving Hotel with a diverse entertainment offering and strong community presence.
55. After considering the social benefits of the proposal, balanced against the detriments, the Commission considers that, on the balance, the likely social impact of the proposal will be positive.

CONCLUSION

56. 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.⁶
57. After consideration of the material put forward by both the Applicant and the Council, it is concluded that the social and economic impacts of the proposal are likely to be positive.
58. The Commission was provided with a number of draft conditions that the Applicant would be willing to accept should the application be approved. The Commission does not consider it necessary to impose those conditions in this case. The Commission is satisfied that the Applicant is of good character and will make good on its promises to make the additional community contributions and undertake the proposed capital works.
59. On the material that has been put before it, the Commission is satisfied of the other matters in section 3.4.20(1). The Commission is also satisfied that the Applicant understands and will continue to act in accordance with its obligations to, so far as is reasonable, take measures to prevent problem gambling. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the Application.

The preceding paragraphs are a true copy of the Reasons for Decision herein of Mr Bruce Thompson, Chairman and Ms Kate Hamond, Commissioner

⁶ Romsey (2008) 19 VR 422, 435.