



VICTORIAN CASINO & GAMING AUTHORITY

DECISION AND REASONS FOR DECISION

In the matter of an application by 10th
Bristling Woods Pty Ltd for
amendment of the conditions of a
venue operator's licence for the
Victorian Tavern, Gisborne

DECISION

Authority: Mr B. Forrest, Chairman

Dr D. Hore, Member

Ms C. Neville, Member

Date: 21 December 2001

Decision: The application to vary the conditions of a venue operator's licence by an increase in the number of gaming machines permitted in the Victorian Tavern, Gisborne from thirty to thirty-six, is approved subject to the relevant contract for the additional gaming machines being approved under section 68 of the *Gaming Machine Control Act 1991*.

Chairman

REASONS FOR DECISION

21 December 2001

**Mr B. Forrest, Chairman
Dr D. Hore, Member
Ms C. Neville, Member**

- 1 This is an inquiry by the Victorian Casino and Gaming Authority (the Authority), held pursuant to sections 111 and 113 of the *Gaming Machine Control Act 1991* (the Act).
- 2 The subject of the inquiry is an application by 10th Bristling Woods Pty Ltd (the applicant) to amend the conditions of its Venue Operator's licence for premises known as the Victorian Tavern, Gisborne in the Shire of Macedon Ranges. The current licence permits thirty gaming machines in the venue. This application is for an additional six gaming machines.
- 3 The amendment of conditions of a venue operator's licence is governed by section 27 of the Act. Section 27 in its present form is a result of amendments introduced by the *Gambling Legislation (Responsible Gambling) Act 2000* and the *Gambling Legislation (Miscellaneous Amendments) Act 2000*.
- 4 Section 27 of the Act relevantly provides:

27. Amendment of conditions

(1) The conditions of a venue operator's licence, including—

...

(b) variation of the number of gaming machines permitted in an approved venue; and

...

may be amended in accordance with this section.

...

(2A) An amendment proposed by a venue operator—

(a) must be made in or to the effect of the form approved by the Authority; and

(b) must be accompanied by the prescribed fee and any information that the Authority may request; and

- ...
- in or to the effect of the form approved by the Authority and including the information specified in the form.
- (2B) If an amendment proposed by a venue operator is to increase the number of gaming machines permitted in an approved venue, the venue operator must send to the municipal council of the municipal district in which the approved venue is located a copy of the proposed amendment within 14 days after the proposal is made.
- (2C) Within 28 days after receiving a copy of a proposed amendment referred to in sub-section (2B), the municipal council may make a submission to the Authority—
- (a) addressing the economic and social impact of the proposed amendment on the well-being of the community of the municipal district in which the approved venue is located; and
 - (b) taking into account the impact of the proposed amendment on surrounding municipal districts.
- (2D) A submission must be made in or to the effect of the form approved by the Authority and must include the information specified in the form.
- (2E) The Authority must consider a submission made under sub-section (2C).
- (3) The Authority must give the venue operator at least 28 days to make any other submissions to the Authority concerning any proposed amendment (whether proposed by the Authority or the venue operator) and must consider the submissions made.
- (3A) The venue operator may waive the right under sub-section (3) to make submissions concerning a proposed amendment by giving notice in writing signed by the venue operator to the Authority.
- (3B) Without limiting the matters which the Authority may consider in deciding whether to make a proposed amendment, the Authority must not amend a venue operator's licence unless—
- (a) the Authority is satisfied that the amendment of the licence does not conflict with a direction, if any, given under section 12; and
- ...
- (ac) if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Authority is satisfied that the net economic and social impact of the amendment will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located; and
- ...
- (3C) Sections 23 and 24 apply to an application under sub-section (2)(a) as if—

- (a) a reference to an applicant for a venue operator's licence were a reference to an applicant for amendment of the licence; and
 - (b) a reference to application were construed accordingly.
- (4) The Authority must then decide whether to make the proposed amendment, either with or without changes from that originally proposed, and must notify the venue operator of its decision.
- ...
- (6) Any amendment that the Authority decides upon takes effect when notice of the decision is given to the venue operator or on any later date that may be specified in the notice.
- 5 In considering whether to amend a venue operator's licence the Authority must be satisfied for present purposes first that the amendment sought does not conflict with any Ministerial direction given under section 12 of the Act and second that the net economic and social impact of the amendment will not be detrimental to the wellbeing of the community of the municipal district in which the approved venue is located: s27(3B)(a) and (ac). The prohibitions contained in paragraphs (ab) and (b) of section 27(3B) do not apply in the present matter. As we are satisfied that the proposed amendment does not conflict with any Ministerial direction, the remaining consideration is the economic and social impact.
- 6 The Authority has previously considered its role in relation to section 12D(1)(c) of the Act, a provision imposing a similar test to the requirement in section 27(3B)(ac). In Werribee Football Club Incorporated, decision dated 28 March 2001 the Authority said at paragraphs 15 and 16-:
- "In considering section 12D(1)(c), the work of the Authority is two-fold; firstly to make an assessment of the net economic and social impact of approval of the proposal; and secondly to determine if the impact of approval will be detrimental to the well being of the community in the municipal district where the premises are located. Unless the Authority is satisfied that the impact will not be detrimental to that community, the application must not be granted.

This task requires an evaluation of the state of the evidence and material before the Authority, having regard to the nature of the requirement to be satisfied keeping in mind the purpose and aim of the legislation which introduced section 12D. The key phrases “net economic and social impact” and “detrimental to the well being of the community” are comprised of words of common understanding to be applied intelligently and consistently without departing from their ordinary and grammatical meaning. They do not have some special meaning.”

- 7 The Act does not attempt to prescribe the criteria against which the economic and social impact is to be tested. As economic and social impacts are not exclusive of each other but interconnect in that an economic impact has a social impact and vice versa, the Authority does not attempt to draw some artificial distinction between the economic and social impacts of gambling.
- 8 The Authority had before it the Book of Documents prepared for the Inquiry including a bundle of additional documents headed “Supplementary Material” lodged shortly prior to the hearing. Oral evidence was given for the applicant by Peter Lewis a director of the applicant. He is also the nominee of the venue operator’s licence for the purposes of the Act. Oral evidence was given for the Shire of Macedon Ranges by Councillor John Connor, Ann McLennan, Community Service Manager, Simon Bretnall, Social Planner, Julie Smith, Financial Counsellor and Peter Critchley, Gambling Counsellor.
- 9 There are currently 75 gaming machines in the Shire of Macedon Ranges operating from three venues:

Venue	No. of gaming machines
Kyneton Bowling Club, Kyneton	25
Kyneton RSL, Kyneton	20
Victorian Tavern, Gisborne (the applicant)	30
Total	75

- 10 The impact assessment of the proposed six additional gaming machines prepared for the proceedings by the Office of Gambling Regulation revealed that the Shire of Macedon Ranges currently has 62 percent fewer gaming machines per 1000 adults than the country municipality average and in terms of gaming machines per 1000 adults in descending order is ranked 29th of the 30 country municipalities. Net gaming expenditure for the three venues in 2000-2001 was \$7,280,657 which is 56 percent below the statewide average. Per 1000 adults this is 4.3 percent below the country municipal average and ranks Macedon Ranges 25th highest of the 30 country municipalities with gaming machines in gaming expenditure.
- 11 The documentation accompanying the original application was prepared with the assistance of Tabcorp, the gaming operator supplying gaming machines at the venue. In the documents, estimates given of the effects of six additional gaming machines in the first twelve months were said to be:-
- net gaming expenditure \$652,620 from existing gaming venues both within and outside Macedon Ranges; 22 percent of the anticipated additional gaming revenue would be derived from Macedon Ranges residents with the remainder from surrounding municipalities, the City of Hume, the Shire of Melton and the Shire of Moorabool. It was stated that the venue attracted patrons from a wide area extending 15-20 kilometres from the venue (Schedule 5).
 - employment one additional full-time position
 - upgrade of gaming facilities \$50,000.

The number of persons using the gaming facilities each week was estimated at 250 with 30 more expected with the additional gaming machines.

- 12 Further it was said that the applicant would continue its financial support for local sporting and charitable organisations. Also, the applicant agreed to provide a meeting room to be established on the premises (estimated cost \$100,000) for use free of charge by any local organisation and to establish a charitable trust with an annual contribution of \$10,000 and for the trust to be administered by the Council of the Shire of Macedon Ranges.
- 13 Prior to the hearing the applicant's solicitor, Mr Curl amended the application. Estimates of patronage of the gaming machines and of the other facilities of the hotel were revised to the extent that patronage was practically all from within the municipality (letter 1 September 2001) with no significant number of patrons from outside the municipality. Additional net gaming expenditure was estimated at \$700,000 in the first year. Gaming machine visits were 250-300 per day and the additional gaming machines were anticipated to increase visitor numbers by 5-10 percent.
- 14 The extent of the divergence from the original estimates and the revised version raised questions in our minds as to Mr Lewis' involvement in the business, especially in the gaming area in his capacity as the nominee. Mr Lewis stated that he employs three managers but spends "about four days a week" at the hotel. He claimed the original estimates provided by Tabcorp were incorrect. At the time he "went along" with them but because he didn't agree, revised estimates were provided prior to the hearing. Despite our initial concern we accept Mr Lewis' oral evidence in accord with the amended application, as more likely than not to be the true position, and that he has a better understanding of his gaming clientele than the original material would indicate.
- 15 The Macedon Ranges Shire situated north west of Melbourne covers an area of 1749 kilometres. Total population in 2001 is 35,681 and is

expected to grow by 2010 to 38,751. The predominant age groupings of the population, 28 percent under 18 years and 26 percent in the 35-49 age group, reflect the high proportion of families. The highest population growth is occurring in the south of the Shire which is on the outskirts of the north west growth corridor of Melbourne. A feature of Macedon Ranges is the high level of home ownership: 88 percent of dwellings are owned or being purchased, 12 percent are rented. Household earnings exceed \$700 per week in 44 percent of households in the Shire as against a 31 percent average for rural municipalities in Victoria.

- 16 Gisborne is the main town in the southern end of the Shire with 12 percent of the population. Other major centres are Romsey, Woodend, and Kyneton. The northern parts of the Shire are rural areas. The major road transport link within the Shire is the Calder Highway. A V-line sprinter train runs between Melbourne and Kyneton. It is estimated that about 50 percent of the workforce commute to work in Melbourne. In the southern parts of the Shire commuters represent about 70 percent of the workforce, based on calculations made in a Macedon Ranges economic report in 1998.
- 17 The Shire of Macedon Ranges made a submission to the Authority. The Mayor, Councillor Gillings who represented the Council told the hearing that the Shire is in the process of developing a policy on gaming machines which is shortly expected to be available for public comment. Recently the Council resolved to oppose any increase in the number of gaming machines in the Shire. The concern of Council, she said, is the escalation of gaming expenditure in the Shire and its impact on the local economy and the community. The Council is concerned with the promotion of economic development, based on tourism, the

environment and lifestyle. Additional gaming machines are not part of that vision, was the thrust of the submission.

- 18 Councillor John Connor represents Black Forest ward in the Shire of Macedon Ranges. He chairs a gaming committee comprising representatives of the Shire, the three gaming venues in the Shire, a problem gambling counsellor and a community representative, for the purpose of developing guidelines for a Shire gambling policy. Mr Lewis is a member of the committee. Councillor Connor confirmed that in July 2001 Mr Lewis had offered to contribute \$10,000 annually towards a community fund. He added that in his discussions with constituents there was some general disquiet about increasing the number of gaming machines and from business and the community, a general perception that additional gaming machines would impact negatively on the social and economic framework of the Shire.
- 19 Julie Smith has worked as a financial counsellor in the Macedon Ranges area since 1995. Her duties include working with people experiencing gambling related problems. In evidence she gave an overview of her work and a generally anecdotal account of her experiences. She said that about 20 percent (or 36 persons) of the people she counselled in the previous twelve months, voluntarily identified with gambling problems relating to gaming machines. For some others she thought gambling was an issue which they were reluctant to identify or reveal.
- 20 Peter Critchley is employed by Banyule Community Health Service, a provider of problem gambling counselling, funded by the Department of Human Services. He works in the northern metropolitan suburbs and at Sunbury Community Health Centre. Some clients of the Sunbury centre reside in Macedon Ranges Shire. Mr Critchley's testimony was in substance a commentary on problem gambling generally rather than a reference to the Macedon Ranges experience. Mr Critchley did not

record data as to the numbers of persons he had seen with gambling problems in Macedon Ranges but ventured “in terms of percentages it would be small”.

- 21 Ann McLennan gave an insight into the scope and extent of community services directly provided by the Shire to the community. These include social housing (72 dwellings are owned by the Shire) for low income residents and ranging from maternal and child help to aged and disability services. There is considerable demand for emergency relief; 20-25 percent of payments were in the Gisborne area of the Shire, 40 percent in Kyneton and 30-35 percent in the Woodend area. The Commonwealth emergency relief allocation for 2000-2001 ran out in January 2001 and for the rest of the year was supplemented by assistance from church and community groups. Further, she said that persons dispensing emergency relief report gambling as one of the reasons given by persons seeking relief. Other reasons given include increased cost of living - fuel prices and GST. Data is not collected of the numbers of persons citing gambling as a reason for seeking emergency relief.
- 22 Ms McLennan remarked that Macedon Ranges is surrounded by municipalities with gaming machine density higher than the State average. In her view Macedon Ranges should be considered not in the context of the current lower ratio of gaming machines in the municipality but the “bigger picture” of the extent of commuter access to gaming machines in the metropolitan municipalities to the south of Macedon Ranges.
- 23 An indicator for the purpose of considering the economic and social impact of a proposal to increase gaming machines is the index of Relative Social and Economic Disadvantage (SEIFA index) compiled by the Australian Bureau of Statistics. The index is created by

combining a number of measures of disadvantage including levels of education, unemployment and income. A higher index score means an area is more advantaged. For country municipalities the average score is 995.48. Macedon Ranges with a score of 1061.82 is the highest in terms of comparative advantage of the thirty-two country municipal districts.

- 24 Ms McLennan hypothesised that the SEIFA index score for Macedon Ranges taken in isolation gave a “skewed picture” of the Shire and did not take proper account of the impact upon household savings rates of increased petrol prices which disproportionately affect Macedon Ranges residents. In support reference was made to a report from the National Centre for Social Economic modelling which puts Macedon Ranges closer to the average of all municipalities in terms of poverty ranking; also to a statement from the National Institute of Economic and Industry Research (NIEIR) indicating higher debt levels in Macedon Ranges than other studies would suggest.
- 25 Everyday experience would suggest that the socio-economic health of a region may change quite suddenly. For example, the collapse of a commodity price or a key industry in an area can have a serious effect on a region. The relevance of the SEIFA index at a particular time may be called into question. The evidence here does not point to circumstances as would lead to an inference that the index is not a reasonably reliable indicator of relative socio-economic disadvantage or a likelihood that the 2001 index when released will produce a different result to the current, albeit 1996 index score, for the Shire of Macedon Ranges relative to other municipalities.
- 26 While we take account of the SEIFA index as an indicator of relative disadvantage, that is not to say we disregard evidence before us that there are some areas of disadvantage within Macedon Ranges, particularly in the northern Kyneton-Woodend area, whereas the more

populous southern area is relatively more advantaged. A close reading of the whole of Chapter 6 of the NIEIR report - The Economic Impact of Gambling March 2000 does not downgrade that assessment of the region despite a trend, not confined to Macedon Ranges of increasing consumer debt.

- 27 Simon Bretnall is the author of the Shire of Macedon Ranges submission. In summary the report concludes that the proposal would have a negative economic impact on the municipality. In answer to Mr Curl, Mr Bretnall explained his role in the report-:

"I'm paid by council to do a job. They asked me to put a submission together opposing the application by the Vic Tavern which is what I did. If council had asked me to put a report together supporting the application by the Vic Tavern, I would do my best to provide supporting evidence to do that."

- 28 Where a report is made against a background of a brief to provide a predetermined outcome, it is open to the criticism that its conclusions are compromised. It can be unfair to entirely disregard a report on those grounds and we do not in this case because of the information it contains, but it is inescapable, that the weight to be given to a report is diminished when it is made in circumstances where the author is labouring under the restriction of a particular result.

- 29 The task of the Authority in weighing up the relevant considerations will be assisted by an approach which incorporates the factors for and against a proposal and where the opinions expressed (if any) are not inhibited by a desired result. These comments apply equally on occasions to the reports of 'professional experts'. From time to time tribunals have commented adversely on reports presented as the work of an independent expert as revealing, instead of objectivity, advocacy for a particular cause.

- 30 In response to an invitation from the Council of the Shire of Macedon Ranges to comment on the proposal, Hume City Council supported the Macedon Ranges position, primarily on the grounds of the proximity of Gisborne to Sunbury, the movement of residents between the two towns and the number of gaming machines in Sunbury. If the evidence of the concern of the Gisborne business community as to the extent of spending by Macedon Ranges residents in other areas particularly Sunbury and closer to Melbourne, is correct, and having regard to the location of gaming venues in Macedon Ranges, we do not regard this application as having any real impact on surrounding municipalities.
- 31 Our attention was drawn to the concern in the Gisborne community as to the diversion of consumer spending to gambling from other forms of economic activity and to the leakage of spending generally from the municipality. The second concern is a fact of economic life irrespective of gambling in that smaller centres are prone to experience difficulties in competing in economic terms with larger centres. The first, the extent of diversionary expenditure, is a complex issue not easy to quantify. It is, we think, likely that the additional gaming machines will divert some consumer spending from other forms of economic activity.
- 32 In relation to the social impacts, the applicant maintained that the recreational facilities of the community were enhanced whereas the Council emphasised a character and image the Shire sought to maintain and develop free of additional gaming machines.
- 33 The Victorian Tavern hotel is on the evidence an attractive facility for dining and socialising: (Tr. page 35, Councillor Connor). In addition to gaming facilities the hotel has a bottle shop, public bar and a 200 seat bistro. A laneway separates the public bar area from the other facilities. The hotel also provides financial support to local clubs and organisations.

- 34 In relation to the establishment of a community trust which Mr Lewis discussed with council representatives but apparently not finally resolved, we make the observation that this gesture, whether accepted or rejected by the Shire Council or takes some other form, is not a factor we take into account and is immaterial to our determination of this application.
- 35 Australians in large numbers have shown a preference for gambling. The majority of gaming machine gamblers exercise their choice without harm to themselves or others. The law recognises this: (see purpose of the Act section 1(f)). However, gaming machines bring social costs in the harm suffered by those persons (and their families) who gamble beyond their means in an uncontrolled fashion. These social costs have to be balanced against the wellbeing of the majority of gamblers.
- 36 While there are some pockets of disadvantage in the Shire notably in the Woodend - Kyneton areas, Macedon Ranges is in general terms a region of reasonable affluence. The percentage of households in the Shire on higher than average incomes (44 percent above \$700 per week) indicate a level of financial advantage well above average.
- 37 We were assisted by helpful submissions of both parties. This matter was also an example of a Council participating in the process and providing an insight into a municipal district which raw statistics cannot. For instance, when account is taken of the particular characteristics of the Shire referred to earlier, notably the proportion of the community who commute to the metropolitan area, gaming machine numbers in the Shire mask to a degree the current availability of gaming machines to the community of Macedon Ranges when comparative data may suggest otherwise.

38 On all of the evidence, material and submissions we are on balance not satisfied that the net impacts of the granting of this application will be detrimental to the wellbeing of the community. The result was, however, a close one.

39 The decision gives rise to one further matter, namely the contract between the venue operator and the gaming operator in this case, for the additional gaming machines. Following consideration of submissions from interested parties, the Authority informed the gaming operators and representatives of venue operators by letter (10 September 2001) that the proposed standard form of contract will not be approved under section 68 of the Act on the ground that certain clauses relating to the performance criteria of gaming machines contained in the form of contracts submitted do not promote a purpose of the Act, to foster responsible gambling. The decision to approve the current application will be subject to and stayed until the “relevant contract” as that term is defined in section 68(1) is submitted to and approved by the Authority under section 68(2).

40 The application will be approved in accordance with these reasons.

I certify that the 40 preceding paragraphs are a true copy of the reasons for decision herein of: -

Mr B. Forrest, Chairman

Dr D. Hore, Member

Ms C. Neville, Member

Signed: _____
Executive Assistant

Date of Hearing: 27 September 2001

Date of Decision: 21 December 2001

Solicitors for the Applicant: Mr B. Curl, Williams Winter & Higgs

Representing Shire of Macedon Ranges: Mayor C. Gillings

Counsel Assisting the Authority: Ms L. Corneliussen