

## Director-General of Licensing

### Decision Notice

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<b>Matter:</b>	Application for Increase in Gaming Machines
<b>Premises:</b>	Humpty Doo Tavern Lot 2207 – 2648 Freds Pass Road Humpty Doo NT 0836
<b>Applicant:</b>	EPSOMM Pty Ltd
<b>Nominee:</b>	Guy Dunne
<b>Submissions:</b>	Amity Community Services Incorporated
<b>Legislation:</b>	Section 41 <i>Gaming Machine Act</i>
<b>Decision of:</b>	Director-General of Licensing
<b>Date of Decision:</b>	23 November 2015

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### Background

1. On 22 June 2015, Mr Andrew Case on behalf of EPSOMM Pty Ltd (“the Applicant”) applied for an increase in the number of gaming machines authorised for use at the Humpty Doo Tavern (“the Tavern”) pursuant to section 41 of the *Gaming Machine Act* (“the Act”).
2. Regulation 3(a) of the Gaming Machine Regulations (“the Regulations”) sets the maximum number of gaming machines that may be authorised for a Category 1 licensed premise under section 41 of the Act.
3. Regulation 2(2)(a)(i) of the Regulations defines a Category 1 licensed premise as a premise for which a hotel liquor licence is in force at any particular time.
4. Under section 41(1) of the Act, a licensee may apply to have the number of gaming machines authorised for use under the license increased. The Director-General of Licensing (“Director-General”) may grant or refuse such an application and in determining the application shall have regard to Part 3, Division 5 of the Act.
5. The Applicant is the holder of a licence issued under the *Liquor Act* endorsed AUTHORITY – TAVERN (number 80316554), which is defined under section 3 of the Act as a hotel liquor licence.
6. The Applicant currently holds Gaming Machine Licence No. GM188 and is seeking to increase the number of gaming machines from its current level of ten to a proposed new number of 20 gaming machines.
7. The application was accompanied by the prescribed application fee and the prescribed levy for the ten additional gaming machines applied for.
8. The application was also accompanied by the required Community Impact Analysis (“CIA”) prepared by DWS Hospitality Specialists.

## Consideration and Reasons

9. When determining this application, the Director-General must have regard to relevant provisions of the Act and Regulations, including but not limited to the statutory objects of the Act which are:
  - (a) *to promote probity and integrity in gaming;*
  - (b) *to maintain the probity and integrity of persons engaged in gaming in the Territory;*
  - (c) *to promote fairness, integrity and efficiency in the operations of persons engaged in gaming in the Territory;*
  - (d) *to reduce any adverse social impact of gaming; and*
  - (e) *to promote a balanced contribution by the gaming industry to general community benefit and amenity.*
  
10. Additionally, pursuant to section 41(4) of the Act, the Director-General shall when determining an application for an increase in the number of gaming machines authorised for use, have regard to:
  - (a) *the increased number of gaming machines that the applicant seeks to have authorised for use under the gaming machine licence;*
  - (b) *if section 41A applies – the community impact analysis;*
  - (ba) *if section 41B applies – any submissions received under the section;*
  - (c) *the gross monthly profit of existing gaming machines operated on the premises;*
  - (d) *the hours and days when the premises are open for the sale of liquor;*
  - (e) *the size, layout and facilities of the premises together with any proposed modification or relocation of the gaming machine areas of the premises; and*
  - (f) *such other matters as the Director-General considers are relevant.*

### Increased number of gaming machines

11. The Applicant seeks to increase the number of gaming machines from its current level of ten to a proposed new number of 20 gaming machines, an increase of ten gaming machines.
12. The Applicant currently holds Gaming Machine Licence No. GM188 and is authorised to operate ten gaming machines and currently does operate ten gaming machines on the premises. That is, the Applicant is currently operating gaming machines to the limit of its current authorisation.
13. Regulation 3 of the Regulations sets the maximum number of gaming machines for a Category 1 licensed premise at 20. As the Applicant is the holder of a licence issued under the *Liquor Act* endorsed AUTHORITY – TAVERN, which is defined under section 3 of the Act as a hotel liquor licence, the premises are considered to be a Category 1 licensed premise pursuant to 2(2)(a) of the Regulations.
14. As such, the Applicant is able to apply for an increase of ten gaming machines and if granted, I am satisfied that the number of gaming machines on the premises would be within the statutory limit of 20 gaming machines.

## Community Impact Analysis

15. Pursuant to section 41A(2) of the Act, the CIA must provide details pertaining to:
- (a) *the suitability of the premises to which the application relates having regard to the size, layout and facilities of the premises;*
  - (b) *the suitability of the premises to which the application relates having regard to the primary activity conducted at the premises;*
  - (c) *the suitability of the location to which the application relates having regard to the population of the local area, the proximity of the premises to other gaming venues and the proximity of the premises to sensitive areas such as schools, shopping centres, other community congregation facilities, welfare agencies, banks and pawn brokers;*
  - (d) *the appropriateness of problem gambling risk management and responsible gambling strategies;*
  - (e) *economic impact of the proposal including contribution to the community, employment creation and significance or reliance of the venue to or on tourism.*

### Suitability of Premises – size, layout and facilities

16. Information contained throughout the CIA indicates that the current floor space of the premises is 570 square metres of which 13% of the area is used for bars, 48% is used for dining and 8% is utilised for gaming. The CIA states that the gaming area floor space will increase to 11% of available floor space utilisation with a resultant decrease in the dining area from 48% to 46%.
17. The gaming area is a discrete area within the premises and it appears that there is sufficient space to incorporate additional gaming machines if approved.

### Suitability of Premises – primary activity

18. The CIA states that the venue is a “*modern entertainment facility*” offering “*a bar and beer garden, bistro and function facilities*” whilst the gaming room currently has ten gaming machines, TAB and Keno. There is also a bottle shop as part of the premises. The CIA states that the tavern is often referred to by locals as the “*friendly tavern*”.
19. The CIA provides information regarding the Tavern’s financial performance. It states that in the year to date, 27.7% of the Tavern’s revenue is from gaming. This is an increase from 26.4% in 2013. There has also been an increase in revenue derived from food and liquor with food up from 10.7% in 2013 to 13.4% in 2015 and liquor up from 20.3% in 2013 to 23.5% in 2015. These figures indicate that the Tavern is not solely reliant on the revenue raised through the gaming component of its operations.
20. On the basis of the financial analysis provided it is apparent that the vast majority of the venue’s revenue is generated by activity other than that generated by the gaming machines and as such I am satisfied that the primary activity of the venue is not that of its gaming machines.

### Suitability of Location - population of local area, proximity to other gaming venues and proximity to sensitive areas

21. The Local Community Area (“LCA”) agreed to with Licensing NT for use in the development of the CIA incorporates the geographical area located within 5 kilometres of the Tavern.

22. Utilising statistical information obtained through the Australian Bureau of Statistics' 2011 Census Data, the CIA shows that the LCA has a population of 7 800 with 5 545 of these being adults. The CIA indicates that unemployment rates in the LCA are 2.3% in 2014 and that this rate has remained relatively steady since 2013. Further, over a quarter of the residents in the LCA have an individual income of over \$1 250 per week with 23% of the population owning their own home, 50% in the process of purchasing their own home and 17% of the population renting their home. The CIA comments that the higher instance of those in the process of purchasing their own home may be due to the high wages in the area and availability of homes for purchase. Whilst 10% of residents did not state their country of birth, statistical data indicates that 13% of those that did respond were born overseas whilst 77% indicated that they were born in Australia. 5.8% of the population identified themselves as being Aboriginal and or Torres Strait Islanders.
23. The CIA also contains information in relation to the Australian Bureau of Statistics' Socio-Economic Indexes for Areas ("SEIFA") which is a product that enables the assessment of the welfare of Australian communities based on census data relating to household income, education, employment, occupation, housing and other indicators of advantage and disadvantage. The CIA states that the SEIFA analysis shows that the LCA is an area of medium to high social advantage.
24. There are a number of ways to view the scores from the SEIFA, with one being through the decile score system where a ranking is given from 1 to 10 with 1 indicating that an area is in the bottom 10% of areas or in other words, the most disadvantaged and 10 indicating that the area is in the top 10% of areas thus being the most advantaged. The LCA decile score is 7 and based on this and the information contained within the CIA, it appears that the vast majority of the population within the LCA have a relative advantage in terms of access to material and social resources, and ability to participate in society in comparison to the overall population of the Northern Territory.
25. The CIA indicates that within the LCA, there is one venue that provides access to gaming machines, this being the Humpty Doo Hotel and a further venue on the cusp of the boundary of the LCA, being the Humpty Doo and Rural Area Golf Club. Each of these venues are currently authorised to operate ten gaming machines each.
26. The CIA further states that within the LCA and as at 2014 (using population projections of the Northern Territory Department of Treasury and Finance rather than the 2011 census data), there is a density of 51 gaming machines per 10 000 adults.
27. Should this application be approved and based on the same data set used by the CIA, the density of gaming machines would increase from 51 to 68 gaming machines per 10 000 adults. The CIA states that the machine density of the greater Darwin area is 137 gaming machines per 10 000 adults. Whilst the density in the LCA, should the application be approved would still remain significantly less than that of the greater Darwin region, it is evident that the accessibility to gaming machines by those people residing in the area will increase should the application be approved. The SEIFA decile scores which identify that the LCA area is not regarded as a low socio-economic area also need to be taken into consideration in determining whether an increase in accessibility to gaming machines within the LCA will lead to greater harm as do considerations around problem gambling risk management and responsible gambling strategies.
28. Pursuant to 41A(2)(c) of the Act, the CIA must provide details with respect to the proximity of the premises to sensitive areas such as schools, shopping centres, other community congregation facilities, welfare agencies, banks and pawn brokers. In doing so, the CIA accompanying this application has identified a number of sites including four schools and early childcare facilities, two churches, the Humpty Doo Plaza shopping area as well as the Humpty Doo Bowls Club sporting venue.

29. In addition to those sensitive areas identified in the CIA, there is also Centrelink access point and Salvation Army store nearby.

**Appropriateness of problem gambling risk management and responsible gambling strategies**

30. The CIA states that according to the 2014 report 'Gambling Harm in the Northern Territory: An Atlas of Venue Catchments' which was a report prepared for the Community Benefit Committee through the Department of Business in May 2014, that "93.9% of HDT visitors are non-problem gamblers, 3% are low risk and just 3% are moderate risk". Caution should be taken relying on these statistics however as the number of respondents to the survey used in formulating these figures was only 33 and is a very low respondent rate.
31. The CIA also sets out the policy and procedures underpinning the responsible delivery of gaming services relevant to the venue in some detail. Harm minimisation strategies and measures including exclusion provisions, cash limits, restrictions on cheque cashing and the location of Automatic Teller Machines away from the gaming room are stated to be in existence at the venue.
32. Further information was sought from the Applicant in relation to this application and as a result, a copy of the venue's Responsible Gambling Incident Register was provided. This register includes 12 separate entries relating to incidents that occurred in the gaming room at the venue for the period 15 December 2013 to 14 August 2015 inclusive. The entries predominantly refer to patron behaviour and detail the interaction between staff and patrons and include entries where problem gambling is discussed resulting in Amity brochures being provided. None of those entries raise any concerns in respect of the management of the business conducted under the Gaming Machine Licence or the manner in which the Applicant conducts and manages that component of the overall business of the premises.
33. The policies in place at the Tavern at present are compliant with the current Code of Practice for Responsible Gambling in the Northern Territory and there is no indication that an increase in the number of gaming machines at the venue would require any amendment or addition to those policies or existing procedures relating to the management and monitoring of gaming.

**Economic impact - contribution to the community, employment creation and significance/reliance of the venue to or on tourism**

34. With respect to the economic impact of the venue, the CIA states that the venue has "*shown a strong commitment to the community through in kind and cash donations*" but has limited records to support this. The CIA states that based on projections should the increase in gaming machines be approved, that the Tavern will increase its contribution to the Community Benefit Fund and through gaming tax an additional \$70 000 in the first year and increasing to \$130 000 by 2018.
35. The CIA states that the venue currently employs 6 full time staff and 14 part time or casual employees with all personnel holding Responsible Service of Alcohol qualifications and those personnel with responsibilities for gaming holding Responsible Service of Gaming certificates.
36. The CIA states that the "*venue is located on a major thoroughway for tourists and is a growing business hub*". Additionally, the CIA refers to the fact that the Tavern is located in a region with a number of mining sites which have created a strong workforce creating below average unemployment in the area. As these mining jobs tend to be well paid, the CIA claims that there is "*above average disposable income available*", with this statement being supported from the statistical data provided in the aforementioned SEIFA data.

37. The CIA reports that contact was made with 25 community members in May 2015 to establish the community's perceptions to the proposed increase in gaming machines and that eight responses were received including those from the Department of Health, Litchfield Council, the Living Water Uniting Church, the ECH Tiwi Residential Aged Care facility and the Humpty Doo Primary School. Overall, two of the eight responses supported the application, three respondents were unsure and three respondents did not support the application and indicated they believed there would be a negative effect on the community.
38. Upon reviewing these responses, I note that a common theme among the respondents is that gaming machines target vulnerable groups. I also note and with the upmost respect to those community members that did make the effort of responding to the CIA's Community Representative Survey, the number of responses received represents only 32% of the community members contacted with the remaining 68% being unavailable. Whilst it is not suggested that all community members that were unavailable are positively in support of the application, it must be accepted that their concerns if any, were not of sufficient gravity to make themselves available for elicit a response to the survey.
39. A paper based survey was also undertaken within the venue with six responses received of which five patrons were in support whilst one did not support the application stating "*I don't think you should have any more machines*".
40. Whilst the concerns expressed by the community members that did complete the survey are noted and taken into account they cannot, in my view be afforded sufficient weight to persuade me to reject the application on these responses alone.

#### Written submissions in response to the application

41. As required by section 41B of the Act, notification of the application was advertised in the Northern Territory News on 29 July 2015. Pursuant to the Act, a written submission may be made to the Director-General within 30 days of the notification. One submission was received from Amity Community Services Inc, ("Amity") with the submission being in the form of a position paper in respect of the application.
42. The submission states that Amity has been working in the area of gambling for over two decades and their programs are underpinned by a public health model that considers the impact of gambling on the entire community and on all gamblers, not just 'problem gamblers'. The model also focuses on prevention, rather than treatment alone.
43. Amity works predominately in the areas of prevention of and intervention in problem gambling areas by providing extensive training, education, community liaison and health promotion in consultation with the gambling industry. Amity provides its services throughout the Northern Territory with the aim of implementing harm minimisation strategies for safer gambling.
44. Amity does not support the application to increase the gaming machines at the Humpty Doo Tavern, or generally throughout licensed venues and clubs in the Northern Territory community. Amity is of the view, based on the their review of the balance of research on the issue of gambling outcomes, that an increase in gaming machines in the community will have an overall negative effect on the health, social and economic welfare of at least a proportion of the population of the Northern Territory.
45. Amity submits that there is a plethora of problem gambling research that demonstrates the effects of problem gambling, including adverse effects on physical and mental health and wellbeing, financial stability, relationships, employment and legal issues. Amity submits that problem gambling has been linked to risk factors for family violence and elevated levels of suicide including an increase in accessing homelessness services in the Northern Territory.

46. Amity states that research indicates that that *“During 2013-2014 the average net player loss in community venues in the Northern Territory was \$159.69 per machine per day. This has been an increase in net player loss from the previous year, where expenditure was \$141...the increase in player loss is indicative of an existing increase in harm.”*
47. Additionally, Amity refers to the Productivity Commission Inquiry Report of 2010 which is a report based into inquiries undertaken in relation to Australia’s gambling industries by the Productivity Commission which the Australian Government’s independent research and advisory body. Amity states that the report indicates that as many as 15% of people who gamble regularly on gaming machines are gambling at problematic levels.
48. The Applicant was provided an opportunity to respond to the submission by Amity. In part of that response, the Applicant notes that the Productivity Commission also stated in the same report that *“...gambling is an enjoyable pursuit for many Australians. As much as possible, policy should preserve the benefits, while targeting measures at gamblers facing significant harm or risk.”*
49. Given that Amity’s comments are of a generalised nature in response to their concerns with respect to gambling and its potential negative impacts on a wider community than that contained within the LCA, it is difficult to ascertain the aspects of their concern as they relate specifically to the venue the subject of this application other than Amity are unlikely to support any application for an increase in gaming machines, regardless of which venue may apply. I certainly acknowledge that Amity, like many organisations find allocating resources to submissions such as the one made, difficult however I am also mindful that in taking into account generalised statements in relation to the impact of gaming machines may also be considered by the Applicant as an unjust approach to the assessment of this application. As such, I note the generalised concerns raised by Amity however I am not of the view that these comments alone can be afforded sufficient weight to persuade me to reject the application before me.

### **Gross monthly profit of existing gaming machines operated on the premises**

50. Statistical information held by Licensing NT indicates that for the majority of venues with gaming machines in the Northern Territory for the 2014/15 financial year, the average gross monthly profit is less than \$6 000 per machine. For the Tavern, the CIA records that the average gross monthly profit per machine is just over \$15 000 whereas for the LCA this figure is just under \$8 000. It is evident the Tavern has a high level of metered win per machine compared to other venues within the Northern Territory, however, whilst Amity suggest that a higher metered win can lead to higher problem gambling there is insufficient evidence available to me to conclude that the nexus exists.
51. As explored earlier in this decision, on the basis of the financial analysis provided and Licensing NT data it is apparent that the majority of the venue’s revenue is generated by activity other than that generated by the gaming machines. The revenue generated from gaming is 27.7% of total revenue with the combined liquor and food revenue being 36.9% which indicate that the Tavern is not solely reliant on the revenue raised through the gaming component of its operations.
52. Should the application be approved, the cost to the Applicant of installing ten additional gaming machines will be in the order of \$750 000 comprising the application fee and prescribed levy costs together with the costs of purchasing ten additional gaming machines.
53. Outer projections for the venue contained within the CIA indicate that with additional machines, gaming revenue is anticipated to increase to 30.1% of total revenue in 2017 further increasing to 30.9% by 2019. The Financial Analysis provided within the CIA indicates that the venue is currently profitable and would still be a profitable enterprise even without any gaming machines.

### **Hours and days when the premises are open for the sale of liquor**

54. The trading hours for the Tavern are from 10.00am to 12.00 midnight for each day of the week. No trading is permitted on Good Friday and Christmas Day.
55. The trading hours are reflective of the hours applicable to most licensed premises holding a tavern authority.

### **Size, layout and facilities of the premises**

56. As discussed earlier in this decision, information contained throughout the CIA indicates that 13% of the current floor space is used for bars, 48% is used for dining, 8% is utilised for gaming. The CIA states that the gaming floor space will increase to 11% of available floor space with a resultant decrease to the dining area of 2%.
57. The gaming area is a discrete area within the premises and it appears that there is sufficient space to incorporate additional gaming machines if approved.

### **Other matters the Director-General considers relevant**

58. The Gaming and Liquor Amendment Bill of 2015 amended the Act to effectively lift the previously imposed cap on authorisations of gaming machines in licensed hotels, taverns and clubs in the Northern Territory. As well as lifting the overall cap, the amendments also provided for an increase of the number of gaming machines for hotels and taverns with existing gaming machines from ten to a maximum of 20 gaming machines. At the time of introducing the amendments, the Minister for Racing, Gaming and Licensing noted that the arbitrary Territory-wide cap was abolished in favour of a rigorous community impact assessment process for new applications and for applications seeking additional gaming machines.
59. Against that background the Applicant the subject of this decision has presented a well prepared application with strong supporting evidence indicating that this application meets the requirements of the Act in relation to an increase in the authorised number of gaming machines.
60. The comprehensive CIA prepared for the purpose of this application is analysed in some considerable detail above and raises no issues specific to the Humpty Doo Tavern that would persuade me to reject the application.
61. The harms associated with gaming machines and problem gambling are well documented and well known within the general community. I am satisfied that the Applicant in this instance has in place policies and procedures that will have the effect of minimising the harms associated with gambling generally and the use of gaming machines specifically at the venue under consideration.
62. Amity submitted a well-researched and evidence based position paper. Amity clearly does not support the application, suggesting the Northern Territory is not underserved with gaming machines at present and an increase in the number of gaming machines is a reflection of increasing gaming revenue which will, in Amity's submission, have an overall negative health, social and economic impact on the community and the Northern Territory as a whole.
63. The CIA suggests a number of community members who commented on the application via the Community Representative survey have concerns with the application believing the increase in gaming machines will have a negative effect on the community and, as a result, the majority of those organisations do not support the application.



64. Whilst those comments and submissions are properly made and no doubt indicative of the views of the organisations represented, they do not provide any specific details of prospective harms or potential adverse community outcomes directly related to the Humpty Doo Tavern premises.
65. In addition, the Applicant is known to have a good track record in venue management, both in terms of its existing liquor licence and the current gaming machine licence. As evidenced by the Applicant's submissions in support of the application, including the content of the CIA, the Applicant intends to continue to incorporate strategies aimed at reducing gaming-related harm if the application is approved.

## **Decision**

66. For the reasons set out above, and in accordance with section 41(3) of the Act I have determined to grant the application lodged by EPSOMM Pty Ltd and authorise the increase of the number of gaming machines located at the Humpty Doo Tavern from the current limit of ten gaming machines to the maximum allowable for the holder of a tavern liquor licence, namely a maximum of 20 gaming machines.
67. The additional approved ten gaming machines are required to be included in the schedule attached to the current licence in which each individual gaming machine is identified and authorised for use. The schedule will be updated upon submission by the Applicant of the details pertaining to the additional ten gaming machines.

## **Review of Decision**

68. Section 166A of the Act provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. An application under section 41 for an increase in the number of authorised gaming machines is specified in the Schedule and is a reviewable decision. Section 166C of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision. For the purpose of this decision, and in accordance with section 166B of the Act, the affected persons are the Applicant and Amity Community Services Incorporated.

**Cindy Bravos**  
**Director-General of Licensing**

23 November 2015