

Decision Notice

Matter:	Application for Increase in Gaming Machines
Premises:	Hibiscus Tavern 8 Leanyer Drive Leanyer NT 0812
Applicant:	HIBISCUS TAVERN PTY LTD
Nominee:	Mr Paul Palmer
Submissions:	Nil
Legislation:	Section 41 <i>Gaming Machine Act</i>
Decision of:	Director-General of Licensing
Date of Decision:	27 November 2015

Background

1. On 30 June 2015, Mr Paul Palmer on behalf of Hibiscus Tavern Pty Ltd (“the Applicant”) applied for an increase in the number of gaming machines authorised for use at Hibiscus 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 application was accompanied by the prescribed application fee and the prescribed levy for the ten additional gaming machines applied for. The application was also accompanied by the required Community Impact Analysis (“CIA”) prepared by DWS Hospitality Specialists.

Consideration and Reasons

6. 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.*
7. 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

8. 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. The Applicant is currently authorised to operate ten gaming machines on the premises, the maximum number permitted under its current authorisation.
9. Regulation 3 of the Regulations sets the maximum number of gaming machines for a Category 1 licensed premise at 20. The Applicant is the holder of liquor licence number 80303086, issued under the *Liquor Act* endorsed AUTHORITY – TAVERN, which is defined under section 3 of the Act as a hotel liquor licence. Consequently the premises are considered to be a Category 1 licensed premise pursuant to 2(2)(a) of the Regulations.
10. 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

11. 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

12. Information provided by DWS Hospitality Specialists indicates that the current floor space of the premises is 623 square metres in total. Of that area 56% is used for bars and dining, 36% is used for al fresco dining with 4% currently utilised for the gaming room. The CIA states that these percentages of floor space utilisation will change if the application is approved with the bar and dining area reduced to 56% of total floor space, the al fresco dining area will decrease to 34% and the gaming room area will increase to 9%, following the planned refurbishment. The CIA notes that, following refurbishment, the useable floor space of the gaming room will increase at the expense of the back of house area.
13. The floor plans show that the gaming area is a discrete area within the premises and that there is sufficient space to incorporate additional gaming machines if approved.

Suitability of Premises – primary activity

14. The CIA states that the Tavern operates predominantly as a bar with sporting and entertainment equipment, gaming facilities, an attached bottle shop and food offerings in Dolly's Restaurant and the al fresco areas. The Tavern is an established commercial hotel in the northern suburbs of Darwin which has been operating for over 30 years.
15. In 2014 the Tavern was awarded the Australian Hotels Association Award for Excellence for Best Hotel Gaming Venue and, more recently was awarded the Aristocrat Technologies Award for excellence in 2015 in the categories of Best Hotel Gaming Venue and Best Hotel without accommodation.
16. The CIA includes details of the Tavern's recent financial performance. Analysis of the Tavern's revenue indicates that in 2014 81.5% of the venue's revenue was derived from hotel operations, 15.7% derived from gaming with other activities accounting for 2.8% of the total revenue. The CIA reports that the Tavern is very well run and profitable and has achieved a profit in the past two years of trading. It is apparent from the breakdown of revenues that the profitability of the Tavern's operations is not overly reliant on revenue from gaming machine activity.
17. The CIA states that the Tavern is in a strong financial position, both in terms of trading and assets, with minimal long term liabilities. The CIA states that the Tavern has demonstrated the capacity to fund the operation of the additional gaming machines sought, including start-up costs estimated at \$750 000.

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

18. The Tavern is surrounded by residential communities to the north and west and in very close proximity to the Hibiscus Shopping Centre. There are few other bars or restaurants near the Tavern suggesting that business will not be detracted from other venues should the application for additional gaming machines be approved.
19. The Local Community Area ("LCA") for the Tavern was established using a series of smaller geographic areas known as Statistical Area Level 2 (SA2s) located within a 5 kilometre radius of the Tavern. The following suburbs comprise the LCA: Alawa, Anula, Brinkin-Nakara, Jingili, Karama, Leanyer, Lyons, Malak-Marrara, Moil, Tiwi, Wagaman, Wanguri and Wulagi.
20. The population of the LCA as of the 2011 census was estimated at 38 804 residents of which 26 725 were adults. The 13 suburbs included in the LCA comprise an area of 30.5 square kilometres with a density of 1 207 persons per square kilometre. The population density within the LCA is much higher than for the Darwin Local Government Area due to the suburbs within the LCA being predominantly residential.

21. Australian Bureau of Statistics' 2011 Census Data indicates that unemployment rates in the LCA show no significant deviations from the benchmark regions with unemployment rates for 2013/14 ranging from 3.1% to 3.3% during that period. The CIA highlights that the Brinkin-Nakara suburb has extremely low unemployment, most likely due to the presence of defence force housing, in contrast to the suburbs of Malak-Marrara and Moil which include a greater proportion of Territory owned housing.
22. Average household incomes within the CLA are largely on par with the broader Darwin benchmarks as are education levels. There is a substantially lower proportion of residents of the LCA renting properties and slightly higher instances of Territory owned properties. The LCA as a whole is marginally lower than the Darwin LCA in terms of socio economic advantage
23. The CIA includes 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 it is evident that the Tavern is situated in the advantaged side of a mixed area in terms of SEIFA ratings. SEIFA decile scores within the LCA vary significantly from 10, being the most advantaged in terms of socio economic advantage (Lyons) to a decile score of 4, representing relative disadvantage (Karama). The LCA as a whole comprises a region only marginally below the Darwin LGA average however there is a disparity between the northern and southern SA2s within the LCA.
24. There are no other gaming machine venues within one kilometre of the Tavern and two within a two kilometre radius, namely the Casuarina All Sport Club Inc. and the Tracy Village Social and Sports Club Inc. Both those venues are community clubs offering services and facilities to financial members and guests only. A further six licensed gaming machine venues are located within the LCA, all of which are to the south of the Tavern and closer to the Darwin International Airport.
25. As at April 2015, there were 193 gaming machines authorised within the LCA with the Tavern holding 5% of those and with the two community clubs accounting for 84% due to them being authorised to operate 45 gaming machines per venue. The gaming machine density for the LCA, measured against the number of approved gaming machines per 10 000 residents, stood at 64 in 2014. With no additional machines being added due to the recently removed cap, the gaming machine density fell from 71 in 2012 due to population growth within the LCA.
26. The CIA states that there are no indications of clustering of gaming within the defined LCA and that gaming machine density is 50% below that of the Greater Darwin region, largely due to the presence of the casino impacting on density in LCAs near that venue. The CIA states that even with the strong growth in gaming in the LCA and the broader benchmarks the Tavern's gaming growth has significantly outpaced the benchmarks evidencing a high demand for gaming in the venue and indicating a well-managed and popular leisure destination.
27. 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. The CIA notes that the Tavern is situated on the corner of the Hibiscus Shopping Centre and, apart from the shopping centre, there are no commercial properties within 200 metres.

28. There are three gambling sensitive sites within 200 metres of the Tavern's location being the Hibiscus Shopping Centre, Early Child Care Leanyer and the Leanyer Medical Centre. The CIA states that it is not expected that an additional ten gaming machines located at the Tavern will have a material impact of the local community or surrounding residents, including the identified sensitive sites.
29. The venue currently holds a gaming machine licence and on the basis of the information available above, I am satisfied that the venue's location continues to be suitable for the operation of gaming machines.

Appropriateness of problem gambling risk management and responsible gambling strategies

30. The CIA reports that Young Doran Markham (2014) research of problem gambling by NT residents for the purpose of the 2014 report 'Gambling Harm in the Northern Territory: An Atlas of Venue Catchments' indicated that 84% of NT residents are non-problem gamblers, 3.5% are high risk, 6% are moderate risk and 6% are low risk. The Tavern was specifically surveyed with an assessment that 80.9% of the Tavern's gaming machine clients were non-problem gamblers, 13.5 % are low risk and 1.1% are high risk.
31. The CIA assessment of that research states that overall the Tavern had higher instances of low problem gambling, equivalent moderate problem gambling and lower instances of both non-problem gambling and high risk gamblers. In terms of problem gambling, the CIA concludes that the Tavern possesses marginally higher incidences of problem gambling, most of which is concentrated at the lower end of the spectrum.
32. 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.
33. In respect of risk and harm minimisation, the CIA states that the Tavern follows the expectations of the code of practice for problem gambling to provide gambling services in a responsible manner and in line with community expectations. Practices identified in the code have been adopted by the Tavern's management to assist in harm minimisation for gamblers who may be adversely affected by their gambling. The CIA notes that Tavern management holds regular team and staff meetings regarding the responsible service of gaming and alcohol with those matters included as regular agenda items.
34. The CIA notes that, in accordance with the code of practice, the Tavern has a framework in place to address interaction with customers and the community and has established links with gambling related support services. The Tavern has in place customer complaint resolution mechanisms for recognising and addressing complaints in a manner that enables complaints to be dealt with effectively to ensure that the requirements of the code are enforced.
35. The Tavern has in place a responsible gambling incident register and ensures recording of action taken by staff in respect of enforcement of the code of conduct for responsible gambling.
36. The Tavern has adopted and implemented the code's exclusion processes and, at the time the CIA was prepared, three persons were self-excluded from the venue. The Tavern has internal rules in place stipulating that the maximum cash payout for any gaming machine win is capped at \$500 with any amount in excess being paid by cheque. Cheques from gambling wins will not be cashed at the venue until the next trading day or within 24 hours of the win.

37. Policies in place at the venue 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.
38. In respect of problem gambling risk management, the CIA concludes that the Tavern has in place strong responsible gambling practices to help minimisation of the risk of harm to patrons.

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

39. With respect to the economic impact of the venue, the CIA states that the Tavern contributes 10% of its gaming revenue to the Community Benefits Levy, having contributed in excess of \$500 000 over the previous three financial years, equating to \$51 666 per gaming machine over that period. With an increase in gaming machines that amount is expected to grow.
40. In addition, the Tavern provides support to numerous community sporting and charitable organisations. Recipients include the Leukaemia Foundation, the Heart Foundation, the Chung Wah Society and the Defence Force Soccer Team amongst several other charitable and sporting organisations. The CIA reports that Tavern is a significant contributor to the local community contributing 16% of gaming revenues in 2014.
41. The CIA predicts that the additional gaming machines applied for would facilitate the growth of community contributions and enable the venue to better meet their objectives through the promotion of sport in the community.
42. The CIA states that the venue currently employs 32 local staff, eight of whom are full time employees. It is anticipated that an additional two employees will be required should the within application be granted and that the Tavern's wages expenses will, increase by approximately 15%.

Written submissions in response to the application

43. As required by section 41B of the Act, notification of the application was advertised in the Northern Territory News on 28 August 2015. Pursuant to the Act, a written submission may be made to the Director-General within 30 days of the notification. No submissions were received within the statutory period.
44. The authors of the CIA did however conduct community consultation with targeted community representatives. Of the ten community representatives who responded to the authors of the CIA two stated there would be a positive impact, six stated that there would be a negative impact and two respondents expected no impact on the local community. Of the respondents, two were supportive of the application, six were not in support of the application and two indicated neutral support for the application.
45. The authors of the CIA also conducted a survey of patrons of the Tavern in respect of their views regarding an increase in the number of gaming machines at the venue. Responses from patrons are reported to have been supportive with those who responded making mention of the professionally run venue, the current high demand for gaming machines and the employment opportunities that would follow.

Gross monthly profit of existing gaming machines operated on the premises

46. 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 this venue, the CIA records that the average gross monthly profit per machine is just over \$10 900.
47. As noted earlier in this decision, from the financial analysis in the CIA provided it is clearly apparent that the majority of the venue's revenue is generated by hotel activities in the sale of beverages and food as opposed to revenue generated by the gaming machines which in the previous financial year amounted to only 15.7% of the Tavern's total revenue. 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.
48. The Financial Analysis provided within the CIA indicates that the venue is currently profitable and would still be a profitable enterprise even without the revenue derived from gaming machines.

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

49. The trading hours for the Tavern are from 10.00am to 10.00pm on Sundays, 10.00am to 11.59pm from Monday to Thursday and from 10.00am to 2.00am on Fridays and Saturdays. No trading is permitted on Good Friday and Christmas Day. Those hours are typical of those applicable to Taverns in the Darwin region.

Size, layout and facilities of the premises

50. As discussed earlier in this decision, information contained throughout the CIA indicates that 9% of the current floor space will be used for gaming if the application is approved leaving 56% of floor space utilized for bar and dining and 34% used for alfresco dining.
51. The ratio of floor space allocation set out in the preceding paragraph is reasonable and commensurate with that of a tavern offering gaming machine activity.

Other matters the Director-General considers relevant

52. 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 in 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.
53. 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.
54. The comprehensive CIA prepared for the purpose of this application is analysed in some detail above and raises no issues specific to the Hibiscus Tavern that would persuade me to reject the application.

55. 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.
56. The CIA suggests non-government agencies who responded 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.
57. 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 venue.
58. In addition, as evidenced by the Applicant's submissions in support of the application, including the content of the CIA, the Applicant intends to maintain strategies aimed at reducing gaming-related harm if the application is approved.

Decision

59. 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 Hibiscus Tavern Pty Ltd and authorise the increase of the number of gaming machines located at the Hibiscus 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.
60. The additional approved ten gaming machines are required to be included in the schedule attached to the gaming machine 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

61. 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. As no submissions were received in respect of this application there are no affected persons as defined by section 166B of the Act, apart from the Applicant.



Cindy Bravos
Director-General of Licensing

27 November 2015