

## Director-General of Licensing

### Decision Notice

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<b>Matter:</b>	Application for Gaming Machine Licence
<b>Premises:</b>	Berry Springs Tavern 795 Cox Peninsula Road Berry Springs NT 0838
<b>Applicant:</b>	Sloaney Pty Ltd (ABN 45 133 901 872)
<b>Nominee:</b>	Mr Ian Sloan
<b>Submissions:</b>	Nil
<b>Legislation:</b>	Section 24 <i>Gaming Machine Act</i>
<b>Decision of:</b>	Director-General of Licensing
<b>Date of Decision:</b>	24 November 2015

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### Background

1. On 24 June 2015, Mr Ian Sloan on behalf of Sloaney Pty Ltd ("the Applicant") applied for a gaming machine licence at the Berry Springs Tavern ("the Tavern") pursuant to section 24 of the *Gaming Machine Act* ("the Act").
2. Under section 24(1)(b) of the Act, a liquor licensee may apply for a gaming machine licence. 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 2 of the Act.
3. The Applicant is seeking authorisation of ten gaming machines for use under the licence.
4. The application was accompanied by the prescribed application fee. Pursuant to section 24(3)(q)(ii) of the Act, the application must also be accompanied by the prescribed levy for each gaming machine that the applicant seeks to have authorised for use under the licence. However, pursuant to regulation 31B(2) of the Regulations, the levy is nil if the total number of gaming machines that would be authorised for use under the applicant's licence if the application were granted would not exceed the pre-July 2015 maximum number, which for a tavern licenced premise was ten.
5. The application was also accompanied by the required Community Impact Analysis ("CIA").

### 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, section 25(3) of the Act prescribes the matters that the Director-General must consider when determining an application for a gaming machine licence. Relevant to this application those matters are:
- (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;*
  - (g) *if the applicant is a body corporate – the business reputation and financial stability of the body corporate and the general reputation and character of the secretary and executive officers of the body corporate;*
  - (i) *whether the applicant is a fit and proper person to hold a licence;*
  - (j) *if a person is referred to in the affidavit under section 44 – whether that person is a fit and proper person to be an associate of a licensee;*
  - (k) *if the Director-General considers it appropriate – whether any other associate of the applicant is a fit and proper person to be an associate of a licensee; and*
  - (l) *any other matter that the Director-General considers necessary.*
8. In respect of this application, section 25(13) of the Act sets out the matters the Director-General must take into account in determining the number of gaming machines authorised for use under a licence as follows:
- (a) *the number of gaming machines sought in the application made under section 24;*
  - (c) *the hours and days when the premises are open for the sale of liquor;*
  - (e) *the size, layout and facilities of the premises to which the application relates;*
  - (f) *the size and layout of the proposed gaming machine areas;*
  - (g) *the anticipated level of gaming on the premises; and*
  - (h) *such other matters as the Director-General considers are relevant.*

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

9. Information contained in the application shows that the total floor space of the premises, including the external verandas, is approximately 950 square metres the majority of which is used for bars and dining areas. The proposed gaming area comprises approximately 34 square metres which represents less than 4% of the total floor space.

10. The plans submitted by the Applicant show that the gaming area is a discrete area within the premises. Due to the configuration of the floor plan direct line of sight is not possible from the bar / service area. However, it is proposed to install CCTV equipment in the gaming room so as to provide constant and suitable monitoring of activities within that area.

**Suitability of Premises – primary activity**

11. The Tavern is a relatively new business having commenced trading in November 2014. The tavern is medium sized premise located some 50 kilometres from the Darwin CBD and catering to the rural population, day trippers from Darwin and tourists visiting the region. The Tavern comprises large indoor and outdoor dining areas, a take away liquor outlet and offers entertainment via live music, trivia nights, pool competitions, KENO and TAB facilities.
12. The liquor licence authorises the premises to trade in the sale of liquor for on-premise consumption of alcohol from 10.00am to 1.00am 7 days per week. The bottle shop is authorised to conduct take away sales of alcohol for the hours usually associated with a take away licence.
13. The CIA indicates that the Tavern serves between 1 100 and 1 200 main meals per week with that number increasing as the relatively new premise establishes its clientele in the rural community of Berry Springs and the surrounding districts. Sunday trading attracts a diversity of clients including day trippers from Darwin and locals and tourists returning from fishing trips or visits to the areas tourist attractions.
14. The CIA provides information regarding the Tavern's financial performance in its first full financial year of trading since opening, as at 30 June 2015. The business has traded profitably during the previous financial year. The Tavern's revenue is mainly derived from the sale of food and beverages for on-premise consumption. but that it also attracts a high off-premise revenue. The Tavern does not currently offer gaming machines indicating that the venue will not rely entirely on the income from gaming activity to remain commercially viable.

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

15. The Local Community Area ("LCA"), agreed by the Applicant and Licensing NT for use in the development of the CIA, is Weddell and incorporates the rural communities of Berry Springs, Southport, Blackmore, Tumbling Waters, Darwin River, Fly Creek, Acacia Hills and a number of smaller communities.
16. According to the CIA Berry Springs has a rapidly growing population with the Tavern located in the rural district centre with the immediate neighbourhood comprising mainly commercial business premises. Berry Springs has long been regarded as the gateway to many of the tourist and recreational facilities and attractions in the surrounding areas. Major attractions in the district include the Berry Springs Nature Park, Territory Wildlife Park and Tumbling Waters as well as popular fishing spots including Dundee, Wagait Beach and Channel Point.
17. The 2011 census recorded a population of 736 for Berry Springs and 563 for the neighbouring Livingstone area. The total population of the Weddell LCA was 3 647 in 2011 comprising 2 559 residents over the age of 19 years. The Weddell LCA falls within the Litchfield local government area which has experienced population growth of 165 in the three years prior to the 2011 census. The population of Berry Springs increased by 53% in the same period.

18. The area comprises a large proportion of undeveloped areas which has been flagged for future development. Residents of Berry Springs have a combined household income estimated at \$1 359 per week with 77% of residents owning their own home. In the 2011 census 5.3% of the population of Berry Springs identified themselves as being Aboriginal and or Torres Strait Islanders. For the Weddell LCA 9% of total population identified as being of Aboriginal or Torres Strait descent.
19. The Australian Bureau of Statistics' Socio-Economic Indexes for Areas ("SEIFA") indicates that the LCA is an area of relative social advantage. Berry Springs with a decile score of 8 is very much on the advantaged side of the scale in comparison to other SEIFA data across the Territory. Surrounding townships and communities are rated as having a decile of between 7 and 9, again towards the higher end of the scale in terms of socio economic advantage.
20. There are two gaming venues within the Weddell LCA and none within the Berry Springs township and immediate surrounds. As a result it is not possible to assess a meaningful comparison of the gaming revenue generated by other gaming venues within the immediate location of the Berry Springs Tavern. The nearest licensed premise with gaming machines is some 12 kilometres from the Tavern. Clearly, there is no proliferation of gaming machine licences in the immediate or reasonably proximate surroundings of the Berry Springs Tavern.
21. Section 25(1)(c) of the Act requires the CIA to assess the proximity of the premises to sensitive areas such as schools, shopping centres, other community congregation facilities, welfare agencies, banks and pawn brokers. As noted, the Tavern is located in the community service area and is predominantly surrounded by commercial premises. The Berry Springs Primary School is located 3.5 kilometres from the subject site. Following notification by the Applicant of the proposal to apply for a gaming machine licence the school council indicated that it had no feedback or concerns regarding the application. No other sensitive areas are identified in the immediate vicinity of the premises which is unsurprising given the rural nature of the area.

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

22. The CIA provides analysis of gambling related harm through the assessment of associated risks based on the 2014 report 'Gambling Harm in the Northern Territory: An Atlas of Venue Catchments'. This assessment necessarily includes consideration of harms associated with gaming machine venues somewhat distant from the subject premises but still within the Litchfield Shire's rural areas. The analysis indicates that 88% of gaming machine patrons are in the non-problem classification with 1% falling within the high risk category.
23. The CIA indicates that the Applicant takes its social responsibilities seriously in terms of problem gambling and risk minimisation. The Applicant has presented a well-documented and comprehensive Responsible Gambling Manual which will underpin the harm reduction initiatives and procedures. The Manual contains specific and appropriate strategies to deal with problem gamblers.
24. The responsible gambling strategies identified in the CIA and the submitted Responsible Gambling Manual for the premise are compliant with the current Code of Practice for Responsible Gambling in the Northern Territory as well as the relevant legislation

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

25. The CIA states that the venue has in the past assisted, and will continue to assist, sporting and charitable organisations in the Berry Springs district through donation and sponsorship. The Applicant states that the venue currently employs 33 staff comprising seven full time employees, two apprentices and 14 casual staff with the majority of staff coming from within the LCA. The Applicant anticipates that up to three additional full time staff may be required should the application for a gaming machine licence be approved.
26. The venue has established a coordinated bottle recycling process with 100% of proceeds being donated to the local school. The venue also provides a Justice of the Peace service from the local community twice per month. Local sporting organisations currently conduct fund raising activities within the premises.
27. The CIA estimates that the gross profit from gaming machine activity in the first 12 months of operation will be in the order of \$300 000, based necessarily on comparison with the closest existing gaming venues being the Litchfield and Noonamah Taverns.
28. Consultations have occurred, through the CIA process with a variety of persons and organisations to gauge the general attitude to this application. Responses received generally indicate that whilst there is some dislike of gaming machines generally, there is no strong opposition to this venue in particular being granted authorisation to install gaming machines.

**Business reputation and financial stability of the applicant body corporate and its officers**

29. The Berry Springs Tavern commenced trading in November 2014. As a result the assessment of business reputation of Sloaney Pty Ltd is only able to be measured against its performance for that relatively short period. Not surprisingly the company made a small loss in the 2013/14 financial year due to the fact the Tavern did not commence trading until that financial year had concluded. The company did however enjoy a reasonable profit for the 2014/15 financial year as evidenced by the financial statement for that period lodged with the application.
30. The directors of Sloaney Pty Ltd are Mr Ian Sloan and Mrs Leah Sloan who have submitted a statement of assets prepared by their accountant. That statement indicates that directors' personal and business assets significantly exceed liabilities.
31. Taking account of the fact that business conducted at the Tavern is relatively new, I am satisfied that the business reputation and financial stability of the company and its directors are sound.

**Fitness and propriety of the applicant and persons able to influence the conduct of the business**

32. Mr and Mrs Sloan are the sole directors of Sloaney Pty Ltd and nominated as the only persons able to influence the conduct of the business under the existing liquor licence and for the gaming licence should that be granted.
33. Mrs Sloan is the holder of an Aviation Security Identification Card which is required for her role with a major Australian airline and which is required to be renewed annually. The issue of the Identification Card is subject to a more rigorous criminal history check than the usual Police criminal history check normally associated with an application of this nature. The National Police Certificate obtained in respect of Mr Sloan records no disclosable court outcomes.

34. Mr and Mrs Sloan have significant expertise and experience in the hospitality industry in the Northern Territory including owning and operating the Virginia Tavern on the outskirts since purchasing the lease in 2006. Mr Sloan also has significant experience as operations manager for a number of licensed premises in the Northern Territory.
35. I am satisfied that Sloaney Pty Ltd is an appropriate entity to hold a gaming machine licence. I am also satisfied that Mr and Mrs Sloan are fit and proper persons to manage the business and affairs of a corporation holding a gaming machine licence.

### **Written submissions in response to the application**

36. As required by section 24A of the Act, the application was advertised in the Northern Territory News on 31 July 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 during the relevant period.
37. The Applicant met with representatives of Amity Community Services Inc., on 4 and 17 June 2015 to discuss the application and harm amelioration issues. The Applicant invited Amity to view the premises and provide an assessment of compliance with the code of conduct for gambling activity and also arranged for Amity to deliver training for staff specific to gambling related risks.

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

38. The trading hours for on-premise consumption of alcohol are from 10.00am to 1.00am seven days per week. The sale of take away alcohol is authorised from 10.00am to 10.00pm from Monday to Friday and 9.00am to 10.00pm on Saturdays and Sundays with no trading on Good Friday or Christmas Day.
39. The trading hours are reflective of the hours applicable to most licensed premises holding a tavern authority and allowing for late night trading. However, the 1.00 pm closure is one hour less than normal i.e. the majority of taverns in the NT are authorised to trade until 2.00 am.

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

40. The proposed layout of the premises indicates that the gaming room comprises less than 4% of the total area of the premises, including the external veranda dining areas. That ratio is considered acceptable and commensurate with the main focus of the business being the sale of meals and alcohol. Given the total area of the premises there is currently sufficient space to accommodate the location of ten gaming machines should the application be approved.
41. 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. 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.
42. In terms of the requirements of the Act, 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. The Applicant has also presented a well-documented Responsible Gambling Manual and has held discussions with Amity in respect of the minimisation of gambling related harm.

43. The comprehensive CIA prepared for the purpose of this application raises no issues specific to the Berry Springs Tavern that would support the rejection of the application. 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.
44. In addition, the Applicant is known to have a good track record in venue management, both in terms of its existing liquor licence and experience in management positions with a number of licensed premises. As evidenced by the Applicant's submissions in support of the application, including the content of the CIA, the Applicant intends to incorporate strategies aimed at reducing gaming-related harm if the application is approved. It must also be noted that there were no submissions lodged with the Director-General opposing the grant of a gaming machine licence or reflecting in a negative way on the bona fides of the Applicant.

### Number of gaming machines

45. The Applicant does not currently hold a gaming machine licence and, under this application, has applied for a licence authorising the use of ten gaming machines.
46. 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.
47. As such, the Applicant is able to apply for authority for a maximum of 20 gaming machines. I am satisfied that the number of gaming machines applied for falls below the statutory limit of 20 gaming machines.

### Decision

48. For the reasons set out above, and in accordance with section 25 of the Act I have determined to grant the application lodged by Sloaney Pty Ltd for a gaming machine licence authorising the use of ten gaming machines to be located at the Berry Springs Tavern.
49. The ten gaming machines authorised by this decision will be included in the schedule attached to the licence in which each individual gaming machine is identified and authorised for use. The schedule will be prepared upon submission by the Applicant of the details pertaining to the ten gaming machines once purchased.

### Review of Decision

50. 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. A decision under section 25 of the Act for the grant of a gaming machine licence and a determination of the number of authorised gaming machines under section 25(12) of the Act are specified in the Schedule and are reviewable decisions. 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. Noting that no submissions were received by the Director-General in respect of this application there are no affected persons eligible to seek a review of this decision by NTCAT, apart from the Applicant.



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

24 November 2015