



## A/Deputy Director-General (Operations)

### Decision Notice

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<b>Matter:</b>	Application for Gaming Machine Licence
<b>Premises:</b>	Wisdom Bar & Cafe Mitchell Street Darwin NT 0801
<b>Applicant:</b>	AFS Realty & Business Brokers Pty Ltd
<b>Nominee:</b>	Mr Kevin Stephens
<b>Submissions:</b>	Nil
<b>Legislation:</b>	Section 24 <i>Gaming Machine Act</i>
<b>Decision of:</b>	A/Deputy Director-General (Operations)
<b>Date of Decision:</b>	22 August 2016

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### Background

1. On 3 June 2016, Mr Todd McCourt and Mr Matthew McCourt, Authorised Executive Officer of AFS Realty & Business Brokers Pty Ltd ("the Applicant") applied for a gaming machine licence at Wisdom Bar & Cafe ("the venue") 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. Regulation 3(a) of the *Gaming Machine Regulations* ("the Regulations") prescribes the maximum number of gaming machines that may be authorised for Category 1 licensed premises to 20 gaming machines.
4. The Applicant is the holder of a licence issued under the *Liquor Act* endorsed AUTHORITY – TAVERN (number 80317565), which defined under section 3 of the Act as a hotel liquor licence.
5. The Applicant is seeking authorisation for 10 gaming machines for use under the licence.
6. The application was accompanied by the prescribed application fee and there is no levy payable as it is below the maximum allowable under this type of liquor licence.
7. The application was also accompanied by the required Community Impact Analysis ("CIA").

## Consideration and Reasons

8. 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.*
  
9. 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.*
  
10. 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**

11. Information contained in the application submits the current licenses area comprises the pool area of 35%, outdoor area 58%, corridor 2% and spare space 5%. There is currently no provision for a gaming room. In the event this application is approved the gaming area will comprise the corridor and spare space (7%). The remaining areas will not be altered.

**Suitability of Premises – primary activity**

12. The CIA states there is a mix of facilities at the venue including bars and alfresco dining, along with function bookings upon request. There is also a dance floor, stage and DJ booth. Food is served throughout the day and evening and the premises trades between 10:00hrs and 02:00hrs seven days per week.
13. The CIA provides information regarding the venue's financial performances. In 2012 net revenue was \$5.2M, 2013 - \$5.4M, 2014 - \$5.7M and 2015 - \$5.6M. This realised net profits of between \$380K and \$540K. The organisation also has some accommodation revenues however most all revenues are through the sale of food and beverages.
14. The Applicant submits by 2020 gaming will account for 6% of revenue, food and beverages 85% and other revenue 9%.

**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, includes Darwin City, Fannie Bay, The Gardens, Larrakeyah and Stuart Park.
16. The 2011 census recorded a population of approximately 14,791 in the LCA, of which 12,654 are were adults. This information is almost five years old and there has been considerable growth in the area, particularly Darwin City and Stuart Park areas with multi-level construction of apartment blocks and similar. There has also been a surge in FIFO and other trades persons associated with major infrastructure and gas developments possibly contributing to a higher adult ration.
17. The LCA is a comparatively youthful area, typical of middle or upper income working areas. The LCA lists the 18-29 age bracket as 27% of the population. This age group has a higher participation rate for gaming machines and demand for gaming products.
18. The LCA has a high population density with 1,409 people per square kilometre, compared to the Darwin LGA of 654.
19. Identifying as Indigenous was 4.4% of the LCA residents which is lower than the Northern Territory wide figure of 25.7%. This is arguably due to the inner city nature of the LCA compared to the more rural nature of the wider Northern Territory. It may also be attributed to the higher cost of living in the inner city or CBD area; this also includes a lower number of public housing complexes in the LCA.
20. The proportion of Indigenous residents is significantly lower and research demonstrates indigenous populations are more likely to be pathological gamblers compared to non-Indigenous as per the Productivity Commission Inquiry Report 2010. It may therefore be argued this lower profile of Indigenous lowers the risk associated with problem gambling in the catchment area.

21. Statistical information obtained from this data shows that the LCA has a lower proportion of people with higher level qualifications such as bachelor degrees, graduate qualifications or post graduate degrees when compared to the Northern Territory benchmark. The education profile of the LCA is consistent with the age demographics of the LCA coupled with the majority of workers employed as managers and professionals (41%), clerical and sales (34%) followed by tradespersons (14%) and mixture of the remaining.
22. Household incomes for the LCA can be classed in the fifth highest of the eight income brackets provided. The higher household income may indicate dual income households, regardless they may be considered more resilient as to income.
23. In the LCA 28% of the residents reported as being non-Australia, the majority being from the United Kingdom and Asia with 12% not stating their country of origin.
24. The Australian Bureau of Statistics' Socio-Economic Indexes for Areas ("SEIFA") indicates that the LCA is an area of relative social advantage with low unemployment (2.4%).
25. There are 14 gaming venues in the area. They are, The Buff Club, Darwin Bowls and Social Club, Darwin RSL Services and Social Club, Darwin Trailer Boat Club, Ducks Nuts Bar & Grill, Globies Tavern, Monsoons, Quality Hotel Frontier Darwin, Rorkes Beer Wine and Food, Shenanigans Irish Pub, Squires Tavern, The Cavenagh, The Deck Bar, The Darwin Hotel and Lizard Bar. There has been two premises close that held gaming machine licenses, those being the Darwin Sailing Club and The Fox Ale House. This list does not of course include the SkyCity Casino machines.
26. 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 centre of the main late trading entertainment district of Mitchell Street and is predominantly surrounded by commercial premises, shopping and other licensed premises. There are some sensitive areas identified in the immediate vicinity of the premises, those being the Police station, OK Money, the Red Shield hostel, a medical centre and supermarkets. It should be noted these have all existed in this area for many years.

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

27. 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.
28. 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.
29. The responsible gambling strategies identified in the CIA and the submitted Responsible Gambling Manual for the premises is compliant with the current Code of Practice for Responsible Gambling in the Northern Territory as well as the relevant legislation.
30. The CIA reports 32 community representatives were contacted to ascertain their views on the impact of this application within the LCA. Eight responses were received, five of which believe a negative impact would result from this licence. The organisations responding were

Darwin Regional School Sport, Darwin Aboriginal and Islander Women's Shelter, Aboriginal Areas Protection, Aboriginal Employment Strategy, Mission Australia Early Learning, Darwin's Christ Church Cathedral, Palmerston Recreation Centre – YMCA and Dr Grace of Arafura Psychology.

31. Upon reviewing these responses, I note that a common theme among the respondents is that gaming machines target vulnerable groups.
32. A patron survey was also undertaken by the venue. Six patrons provided written comments all of which were favourable.
33. Whilst the concerns expressed by those organisations that did complete the Community Representative Feedback 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.

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

34. The CIA states that the venue currently employs 26 staff with in a mixture of permanent and casual/part-time. It does not make any projections into the future as to significant increases in the employees in the event the application is approved. Given the application is for only 10 machines it is not expected there would be a significant increase in employment resulting.
35. The Applicant is well patronised by local residents as well as tourists and visitors, it is in a prime location with significant foot traffic past the door.
36. Proposed revenues for gaming at this time may be purely speculative however statistics suggest at present similar premises with 10 machines are returning a gross monthly profit of \$6,467 per machine.

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

37. The premises have been trading for several years and the financial reports provided demonstrate a strong business with consistent profits.
38. The directors of the proposed licensee are Mr Matthew McCourt and Mr Todd McCourt, both of who have provided their personal financials, and bona fides in support of this application as well as a statement of assets prepared by their accountant. That statement indicates that directors' personal and business assets significantly exceed liabilities.
39. Taking account of the history of the premises, 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**

40. Messers McCourt as the sole directors of AFS Realty & Business Brokers Pty Ltd are 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.
41. Both are known to the department having being granted the liquor licence previously.
42. Both have demonstrated significant experience in the operation of licensed premises in the Northern Territory.

43. I am satisfied that AFS Realty & Business Brokers Pty Ltd is an appropriate entity to hold a gaming machine licence. I am also satisfied that Mr Matthew McCourt and Mr Todd McCourt 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**

44. As required by section 24A of the Act, the application was advertised in the Northern Territory News on 1 July 2016. 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.
45. Despite this a general submission has been made by Amity Community Services Inc. (Amity) against the granting of such a licence or the increase of gaming machines in the Northern Territory. 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.
46. 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.
47. Amity does not support an application to grant gaming machines at the venue, or generally throughout licensed venues and clubs in the Northern Territory community. Amity is of the view, based on 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.
48. 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.
49. Amity states that research further indicates that 27% of the adult population in the Northern Territory participate in the use of gaming machines and problem gamblers spend on average \$30 000 per annum. During 2012-13, Amity state that the average net loss by players in community venues (pubs & clubs) in the Northern Territory was \$141 per machine, per day equating to approximately \$50 000 per machine per year.
50. Amity submits that Darwin has a general population of 81 670, including persons below 18 years of age, with 1 191 gaming machines located in the hotels, clubs and the casino which equates to 14.6 gaming machines per 1 000 head of population. Amity states that in 2014, the Australasian Gaming Council indicated that the national average for gaming machines was 11 machines per 1 000 adults indicating a much higher gaming machine density in Darwin compared to the national average. Amity suggests there is a plethora of evidence that demonstrates communities experiencing widespread social and economic problems are those communities with a higher concentration of convenience gambling.
51. Amity also advise that as their primary focus is on service delivery, they do not have the resources to analyse client data specifically in relation to the venue and are therefore unable to comment on the number of individuals that have been counselled by Amity in relation to gambling related issues in the last 12 months.

52. 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 a gaming machine licence, regardless of which venue may apply.
53. 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.

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

54. The trading hours for of on-premise consumption of alcohol are from 10:00hrs to 02:00hrs seven days per week. There is no provision for the sale of takeaway liquor.

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

55. The venue has indicated that it will make minor modifications to create a gaming machine area with the need to increase the total licensed area. This will require some minor changes to the existing licensed area.
56. 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.
57. 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 contingencies in place in respect of the minimisation of gambling related harm.
58. The comprehensive CIA prepared for the purpose of this application raises no issues specific 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.
59. In addition, the Applicant is known to have a good track record in venue management, in terms of its existing liquor licence. 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

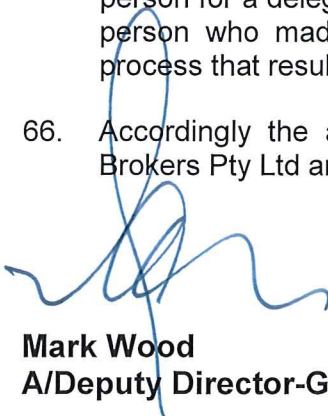
60. The Applicant does not currently hold a gaming machine licence and, under this application, has applied for a licence authorising the use of ten gaming machines.
61. Regulation 3 of the Regulations sets the maximum number of gaming machines for a Category 1 licensed premise at 20. As the Applicant 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.
62. 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

63. For the reasons set out above, and in accordance with section 25 of the Act I have determined to grant the application lodged by AFS Reality & Business Brokers Pty Ltd for a gaming machine licence authorising the use of ten gaming machines to be located at Wisdom Bar & Café.
64. 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

65. Section 8 of the *Licensing (Director-General) Act* prescribes a delegate decision is a decision, under any Act, of the Director-General that is made by a delegate of the Director-General. The Director-General delegated the determination of applications made under Section 25 of the *Gaming Machine Act* by instrument to the person from time to time holding, acting in or performing the duties of the position in the Department of Business specified in Schedule 2 of that instrument. This decision was made by a person referred to in that schedule. Section 10 of the *Licensing (Director-General) Act* provides that an affected person for a delegate decision may apply to the Director-General for a review of the decision. This application for review must be made within 28 days after written notice of the delegate decision is given to the affected person, or within any additional time that the Director-General allows. Section 9 of the *Licensing (Director-General) Act* prescribes an affected person for a delegate decision to be the applicant for the increase in gaming machines and a person who made a submission, complaint or objection (however described) during the process that resulted in the decision being made.
66. Accordingly the affected persons in relation to this matter are AFS Realty & Business Brokers Pty Ltd and Amity Community Services Incorporated.



**Mark Wood**  
A/Deputy Director-General (Operations)

22 August 2016