



A/ Deputy Director-General (Operations)

Decision Notice

Matter:	Application for Increase in Gaming Machines
Premises:	Virginia Tavern 30 Virginia Road Virginia NT 0822
Applicant:	OMAD (NT) Pty Ltd
Dual Nominees:	Mr Damian O'Brien
Submissions:	Amity Community Services Incorporated
Legislation:	Section 41 <i>Gaming Machine Act</i>
Decision of:	A/Deputy Director-General (Operations)
Date of Decision:	23 August 2016

Background

1. On 3 May 2016, Mr Damian O'Brien, Nominee of the Virginia Tavern ("the Applicant") applied for an increase in the number of gaming machines authorised for use at the Virginia Tavern ("the premises") 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 Category 1 licensed premises as premises 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 80317472), which is defined under section 3 of the Act as a hotel liquor licence.
6. The Applicant currently holds Gaming Machine Licence No. GM244 and is seeking to increase the number of gaming machines from its current level of ten to 20 gaming machines.
7. The application was accompanied by the prescribed application fee and the prescribed levy for the additional gaming machines.
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 20 gaming machines, an increase of ten gaming machines.
12. The Applicant currently holds Gaming Machine Licence No. GM244.
13. Regulation 3 of the Regulations sets the maximum number of gaming machines for Category 1 licensed premises 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 club liquor licence, the premises are considered to be Category 1 licensed premises pursuant to 2(2)(b) 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;*

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- (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 within the CIA indicates that the current gaming area occupies 10% of the total floor space. The CIA states if approved the additional gaming machines will result in the gaming area being 12% of the overall footprint of the premises. The Applicant is leasing the vacant adjoining tenancy and converting this into the gaming area for all 20 machines.
- 17. The overall premises are the subject of a substantial plan for re-development. This is yet to be finalised and lodged with the department for approval. The additional machines are part of this overall concept.

Suitability of Premises – primary activity

- 18. The CIA states that there is a mix of facilities at the venue including a Bar, restaurant, outdoor dining, gaming machines as well as KENO and TAB.
- 19. The CIA provides information regarding the venue's financial performance. In 2014 the total revenue was \$2.5M with a net profit of \$420K. This has slightly risen in 2015 with total revenue in excess of \$2.8M returning a slightly lower \$320K. The reports suggest annually gaming is approximately 33% of revenue and the remainder is effectively split equally between food and beverage sales.
- 20. The CIA predicts gaming will increase and account for approximately 39% of revenue by 2019 with gross revenue expected to reach \$3.9M.

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

- 20. The Local Community Area ("LCA") agreed to with Licensing NT for use in the development of a CIA includes the following areas: Virginia, Howard springs, Bakewell, Palmerston South, Rosebery and Bellamack.
- 21. Information obtained from the 2011 Census Data shows the LCA area has a population of about 14 093 with 10 400 being adults. This information is almost 5 years old and there has been considerable growth in the area, particularly the Palmerston South area and other surrounding suburbs. Suburbs such as Zuccoli in the Palmerston South area, and closer to the Virginia Tavern were not established at the time of the last census.
- 23. The LCA has a population density of 70 people per square kilometre, compared to the Darwin LGA of 654. It must be noted that population density varies greatly in the different pockets of the LCA with areas such as Palmerston South having a much higher ratio than that of the outer rural area of the LCA.
- 24. It is submitted 6.6% of LCA's residents were identified as being Indigenous (Aboriginal and/or Torres Strait Islander).

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25. The proportion of indigenous residents in the LCA is nearly four times less than that of the overall Northern Territory. Research shows that the Indigenous population are more likely to be pathological gamblers compared to non-Indigenous people (refer The Productivity Commission Inquiry Report 2010). The LCA's lower Indigenous profile could lower the risk associated with problem gambling in the catchment area but it is well noted that the indigenous population does move within the LGA for various family and cultural reasons and can also be affected by seasonal weather patterns.
26. 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.
27. Weekly household incomes for the LCA may be classed as the 5th highest of the seven income brackets provided.
28. 24% of the LCA residents reported as being non-Australian, the majority of these being from Asia, the United Kingdom and New Zealand. However 10% of the population did not state their country of origin.
29. The Australian Bureau of Statistics' Socio-Economic Indexes for Areas ("SEIFA") 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 SEIFA analysis indicates that the LCA is an area of relative social advantage as compared with the Litchfield LCA.
30. 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.
31. The overall SEIFA score for the LCA was 1 053 below that of Greater Darwin which was 1,044, and below Litchfield LCA which was 1 032. This indicates the LCA is in an area of relative social advantage.
32. The area also has an unemployment rate of 1.7%, which is lower than the Litchfield rate of 2.6% and the Northern Territory at 5.1%.
33. Within the LCA there is one other gaming venue, that being the Howard Springs Tavern. The Howard Springs Tavern was recently approved to increase their gaming machines from ten to 20; if this application is approved there will be a total of 40 machines in the LCA.
34. Another consideration to take into account is that whilst the gaming machine density may remain stable at the moment should this and other similar applications be approved, the patron source for this venue and others in this area is not restricted to just residents of the LCA.
35. An application is also presently being advertised for a gaming machine licence at the Flynn Tavern in Bellamack. Nearby in Palmerston there are gaming machines

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at The Hub, Arch Rivals, Cazaly's, Palmerston Golf Club and Palmerston Tavern which are all just outside of the LCA.

36. 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 this case, it is submitted by the CIA there is one such area, that being the Virginia Childcare Centre which is approximately 600m south of the venue.
37. In the wider LCA there is a mix of housing and small commercial areas and Caravan Park. There is no organisation or individual within the LCA that specialises in gambling issues.
38. It should be noted that the venue has existed on this site for many years without causing any apparent harm to the businesses or locality.
39. 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

40. The CIA quotes 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, submits that 84% of residents within the Northern Territory present as non-problem gamblers, with the remaining being within the scale of risk.
42. Due to a low response rate of 34 from a catchment of 548 respondents, the CIA states specific figures relating to this Applicant are not available. Whilst this does not assist in the assessment of the application, it is noted a number of previous CIA's submitted to the Director-General suggest a cautious approach be taken in relying on figures provided due to the low level of respondents.
43. The CIA also sets out the policy and procedures underpinning the responsible delivery of gaming services relevant to the venue. Harm minimisation strategies and measures including exclusion provisions, cash limits, restrictions on cheque chasing and the location of the automatic teller machine away from the gaming room are in existence in the premises. These are also requirements that must be met to ensure the premises comply with gaming machine audits conducted by Licensing NT officers.
44. 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. There are three people recorded as having self-excluded, with one current. The Applicant states all incidents are recorded however they do not experience many.
45. There are few entries and the lack of entries could raise concerns that incidents are not being properly recorded, alternatively it may simply be that there has been so few incidents to record. It is submitted the management of the business conducted under the Gaming Machine Licence and the manner in which the Applicant conducts and manages the overall business of the premises may cause there to be few, if any incidents or concern in relation to gaming on the premises.

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46. The policies in place at the venue at present are compliant with the *NT Code of Practice for Responsible Gambling (2016)* 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

47. The CIA states the venue currently employs 20 staff, all local residents. It is anticipated the premises will continue to increase their staffing levels in accordance with the increase in revenues and patronage they have been experiencing each year. They expect there will be two persons employed specifically in relation to the gaming machines if the licence is approved.
48. The CIA reports eight organisations were contacted to ascertain their views on the potential impact of the application within the LCA. All eight organisations responded with two being supportive, two neutral and four against the increase in gaming machines.
49. The community organisations that did not respond are listed in the CIA.
50. 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.
51. A patron survey was undertaken by the venue with six patrons making comments. All were supportive of the application.

Written submissions in response to the application

52. As required by section 41B of the Act, notification of the application was advertised in the Northern Territory News on 27 May 2016. Pursuant to the Act, a written submission may be made to the Director-General within 30 days of the notification.
53. No submissions were received as a result of the public advertising. Despite this the author is aware of a general submission that has been received from Amity Community Services Inc ("Amity"), for other applications.
54. That 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.
55. 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.
56. As there was no specific submission in relation to this application by Amity, their opposition to increasing gaming machines can only be general in nature and afforded the appropriate weight in consideration of this matter. Amity has clearly expressed their view is, that an increase in gaming machines in the Northern Territory will have an overall negative effect on the health, social and economic welfare of at least a proportion of the overall population.
57. 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

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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.

58. 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.
59. 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.
60. Clearly Amity's comments are general in nature with respect to their concerns about gambling and its potential negative impacts on a wider community. Further, they have made no specific submissions in relation to this application or the premises. It may however be accepted 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

61. 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 \$5,950 per machine. The Virginia Tavern records that the average gross monthly profit per machine is \$8,498, which is above the Northern Territory average of \$6,467 per machine.
62. In the event this application is approved, the outer projections for 2016, the year in which the 10 additional gaming machines would be installed, is the cost to the Applicant of the additional machines will be approximately \$768K.
63. The financial analysis provided with the CIA indicates the Applicant is in a strong financial position and is capable of financing the purchase of additional machines.

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

64. The trading hours for the premises are 10:00hrs to 23:59hrs seven days per week with no trading on Good Friday or Christmas Day.

Size, layout and facilities of the premises

65. The venue is leasing the adjacent tenancy to expand the overall footprint of the licensed premises and it is in this area that the gaming machines will all be moved, including the existing ten machines. This area will be separate room with its own entry and exit.

Other matters the Director-General considers relevant

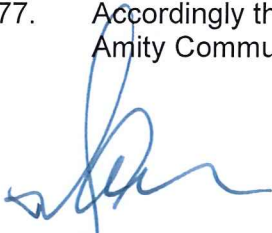
67. The Gaming and Liquor Amendment Bill of 2015 amended the Act to effectively lift the previously imposed cap on authorisations of gaming machines in licensed hotels, taverns and clubs in the Northern Territory. As well as lifting the overall cap, the amendments also provided for an increase of the number of gaming machines for hotels and taverns with existing gaming machines from 10 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.
68. 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.
69. The comprehensive CIA prepared for the purpose of this application has been analysed in considerable detail and no issues arise which would preclude the approval of this application.
70. 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.
71. Whilst noting no specific objections were lodged Amity has submitted previously a well-researched and evidence based position paper. Amity clearly does not support any applications, 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.
72. The Applicant has evidenced their previous adherence to gaming laws and regulation, suggesting an adherence to the requirements.
73. There has been no adverse comments or reports received from Licensing NT departmental personnel in relation to the operation of these premises.

Decision

74. For the reasons set out above, and in accordance with section 41(3) of the Act I have determined to grant the application lodged OMAD (NT) Pty Ltd and authorise the increase of the number of gaming machines located at the Virginia Tavern from the current limit of ten gaming machines to 20 machines. This will not take the Applicant over the statutory limit of 20 machines for a hotel liquor licensee.
75. 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

76. 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 41 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.
77. Accordingly the affected persons in relation to this matter are OMAD (NT) Pty Ltd and Amity Community Services Incorporated.



Mark Wood
A/Deputy Director-General (Operations)

23 August 2016