

## A/ Deputy Director-General (Operations)

### Decision Notice

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<b>Matter:</b>	Application for Gaming Machine Licence
<b>Premises:</b>	The Tap on Mitchell 56 Mitchell Street Darwin NT 0800
<b>Applicant:</b>	Crocosaurus Cove Pty Ltd
<b>Nominee:</b>	Ms Aneeta Clark
<b>Submissions:</b>	Amity Community Services Incorporated
<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 30 May 2016, Mr Michael Burns and Ms Tanya Gamble, Authorised Executive Officers of Crocosaurus Cove Pty Ltd, ("the Applicant") applied for a gaming machine licence for premises known as The Tap on Mitchell ("the Tavern") pursuant to section 24 of the *Gaming Machine Act* ("the Act").
2. Under section 24(1)(b) of the Act, the holder of a hotel liquor licence 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") sets the maximum number of gaming machines that may be authorised for Category 1 licensed premises under section 41 of the Act. In this case that equates to 20 gaming machines.
4. Regulation 2(2)(a) of the Regulations defines Category 1 licensed premises as premises for which a hotel liquor licence is in force at any particular time. The definition of a hotel liquor licence contained within section 3 of the Act includes a tavern authority.
5. The Applicant is the holder of a licence issued under the *Liquor Act* endorsed AUTHORITY – TAVERN (number 80818038), which is defined under section 3 of the Act as a hotel liquor licence.
6. The application was accompanied by the prescribed application fee and levy as the Applicant is seeking 20 gaming machines. Pursuant to section 24(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 Gaming Machine Regulations ("the Regulations"), the levy is nil if the total number of gaming machines that would be authorised for use under the Applicant's licence does not exceed the pre-July 2015 maximum number, which for premises holding a hotel liquor licence was ten.

7. The application was also accompanied by the required Community Impact Analysis ("CIA") prepared by DWS Hospitality Specialists.

## 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 and the CIA shows the current premises comprises the alfresco dining area and bar which is 86% and the new footpath extension being 14% of the footprint. There is no current provision for a gaming room however the Applicant has also sought to alter the premises by converting an adjacent tenancy into the gaming room, expanding the overall footprint of the premises. It is calculated the additional footprint will be 17% of the overall premises if approved.
12. The tenancy was previously the Tommo's Pies shop and is undergoing renovations to convert it into a gaming room.

**Suitability of Premises – primary activity**

13. The CIA states there is a mix of facilities at the venue including one bar and alfresco dining area. The venue offers breakfast from 06:00hrs each day and liquor trade commences at 10:00hrs through until 02:00hrs each day.

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

14. The Tavern is located in the Darwin CBD within the centre of what is considered the central entertainment district of Mitchell Street and is surrounded by a number of other licensed premises, including Shenannigans, Opium and the like.
15. The Local Community Area (LCA) agreed to with licensing NT for use in the development of the CIA includes the following areas: Darwin City, Fannie Bay – The Gardens, Larrakeyah and Stuart Park.
16. Information from the 2011 Census Data shows the LCA area has a population of about 14,791 with 12,654 of the residents being adults. This information is however five years old and there has been considerable growth in the area, particularly in the Darwin City and Stuart park areas with construction of multi-level apartment blocks and the like. It is reasonable to accept with the growth and increase of transient workforces with projects such as Inpex, the transient population's length of stay has increased numbers in the LCA.
17. The LCA is a comparatively youthful area with the age bracket of 18-29 making up 27% of the LCA population. It is submitted this group are more likely to frequent taverns and hotels. 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. It should be noted that population density varies greatly within this LCA with some having much lower density, such as Fannie Bay 835 compared to Stuart Park at 2,343.
19. The CIA reports that a significantly higher proportion of residents within the LCA are renting compared to the Metropolitan Darwin and Local Government Area averages. The LCA also includes lower proportions of homes being purchased outright and homes in the process of being purchased than the Metropolitan average. The Indigenous population in the LCA is 4.4%, well below the Metropolitan average of 9.2%, with the exception of the Gardens which includes 19.9% Indigenous residents.

20. The CIA states that unemployment within the City of Darwin Local Government Area sits below the Territory and Metropolitan averages of 4.0% and 3.1% respectively. The Darwin City area, within which the venue is located, had an unemployment rate of 4% in the December 2014 quarter, on par with the Territory average and slightly higher than the Metropolitan averages. The suburbs of Fannie Bay, Larrakeyah and Woolner-Bayview have unemployment rates in the order of 1.0% to 1.5%, well below the benchmark averages.
21. The Australian Bureau of Statistics' Socio-Economic Indexes for Areas ("SEIFA") indicates that the Darwin Local Government Area sits well above the median for all Northern Territory local government areas. The suburbs within a five kilometre radius of the Tavern have SEIFA scores significantly above the SEIFA score for the Northern Territory overall. The Narrows is an exception which sits in the sixth decile, which is still on the positive side in terms of relative social advantage. The CIA concludes that the likely patron catchment area shows few signs of significant social disadvantage with the majority of suburbs within the LCA showing decile scores of seven to ten. The Gardens shows some characteristics associated with problem gambling, however the CIA states that overall it is considered that this is minor risk with the assessed areas having existing access to gaming machines at venues that are substantially closer than the Tavern.
22. The CIA refers to data indicating that the likely patron catchment area experiences lower level of housing stress for mortgages when compared to the Metropolitan average. Housing stress as it relates to rental payments is generally higher within the LCA in comparison to Metropolitan Darwin and the Darwin Local Government area.
23. Section 25(3)(c) of the Act requires the Director-General to consider the proximity of the premises to sensitive areas such as schools, shopping centres, other community congregation facilities, welfare agencies, banks and pawn brokers. There are several sensitive uses in proximity to the Tavern including Life Without Barriers and the Salvation Army Red Shield Hostel. The CIA states that whilst these service facilities are within walking distance of the Tavern they are also located in much closer proximity to five other gaming machine venues in the CBD. The CIA concludes in this respect that the addition of ten gaming machines at the Tavern is unlikely to represent an unreasonable risk to users of those facilities and services.
24. The CIA notes that there are currently 16 gaming machine venues within the LCA with a total of 199 gaming machines. This does not include the SkyCity Casino which operates a further 788 machines.
25. The CIA reports the machine density, measured by the number of approved machines per 10,000 adult residents, for the LCA was 141 machines per 10,000 adults in 2015

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

26. The CIA states that according to the 2014 report 'Gambling Harm in the Northern Territory: An Atlas of Venue Catchments' which was a report prepared for the Community Benefit Fund Committee, through the Department of Business in May 2014, that 84% of residents within the Northern Territory present as non-problem gamblers.
27. The Tap on Mitchell, being a new licence application is not considered in the report referred to in the previous paragraph. This may not assist in the assessment of this application, I note previous decisions have suggested a cautious approach be taken to the lack of specific data.



28. Of significance, the CIA 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 the automatic teller machine away from the gaming room are stated to be incorporated in the venues policies. These are also compliance requirements.
29. The CIA provides a comprehensive detail to the Applicant's proposed policies around the responsible delivery of machine gaming.

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

30. The CIA includes an estimate of the gross profit expected to be generated from gaming machine activity in the first 12 months of operation, based necessarily on a comparative assessment of like venues in the Darwin CBD as the Tavern has no history of gaming machine related revenue. Based on the Business Plan prepared for the venue, and the Tavern's projected income for the first year of trade, gaming revenue is expected to account for approximately 12% of the projected net revenue. That percentage is commensurate with the revenue of similar venues in proximity to the Tavern.
31. The Applicant currently employs 38 staff, mostly on a casual basis. It is anticipated and additional four personnel will be employed in the event this application is approved.
32. The CIA reports that the Applicant has provided in 2014 – 2015 year just over \$6K in cash and kind support for local organisations. It is envisaged this will naturally increase with the provision of gaming machines, notwithstanding any contributions that will flow to the CBF.
33. The CIA presents a compelling argument that the Tavern will enhance and benefit from tourism and tourist visitation to the venue. The Tavern is located centrally in the Darwin main entertainment area and enjoys a high level of foot traffic from local residents and visitors or tourists to the area. Given the alfresco nature of the premises it is highly visible and attracts a wide variety of customers from early morning and throughout the day.

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

34. The Tap on Mitchell was constructed and opened in 2006 as an alfresco dining venue. It is promoted as a relaxed outdoor venue without bands or a nightclub atmosphere.
35. Given there is no historical gaming data for this Applicant, it is not possible at this stage to determine the likely ratio of revenue from gaming activity in comparison to revenue streams from other services offered by the Tavern, including revenues from food and beverage sales.
36. The Applicant has however submitted financial reports attesting to the financial stability of the venue and their ability to fund the renovations and installation of gaming machines.
37. On the basis of the materials provided and the known history of the venue, I am satisfied that the applicant corporation was financially stable at the time of making the application for a gaming machine licence.

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

38. Mr Burns and Ms Gamble as directors of Crocosaurus Cove 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 machine licence, should that be granted.
39. At relevant parties have been assessed as fit and proper persons to hold a liquor licence. It necessarily follows they must also be fit and proper to hold a gaming machine licence.

40. The Applicant has significant experience in the hotel and entertainment industry having previously been involved in the management and operation of a number of licensed premises.

**Written submissions in response to the application**

41. As required by section 24A of the Act, the application was advertised in the Northern Territory News on 17 June 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.
42. Whilst no specific submissions were received Amity Community Services Inc has provided a general submission for all current applications whether they be for a new licence or an increase in gaming machine numbers.
43. The author of the CIA has also undertaken consultation with a number of community groups and organisations to gain an understanding of their support or opposition for the application and the prevalence of problem gambling where applicable. In total there were 23 organisations contacted with eight responses being received.
44. Over the comments received were negative and suggested there is already a proliferation of machines; any more would increase the harm to the community or the likelihood of negative impacts.
45. A comprehensive list of organisations approached is contained in the CIA including those who did not respond.
46. A patron survey was also undertaken at the venue with 4 responses being received. The responses were limited in nature and of little guidance however one may be described as supportive and another negative.

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

47. The liquor licence authorises the premises to trade in the sale of liquor for on-premise consumption of alcohol from 10:00hrs to 02:00hrs the following day, 7 days per week with no trading on Good Friday or Christmas day.

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

48. The premises currently has no gaming room and has leased an adjacent tenancy which is being converted into the room. There will be little change to the exiting area, just the addition of the new room.
49. 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.
50. 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 in relation to grant of authorisation to operate gaming machines at the Tavern. The Applicant has also presented a well-documented Responsible Gambling Manual and provided details of harm minimisation practices and procedures that will be implemented at the venue.



51. The comprehensive CIA prepared for the purpose of this application raises no issues specific to the 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.
52. 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 other licensed premises. As evidenced by the Applicant's submissions 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**

53. The Applicant does not currently hold a gaming machine licence and, under this application, has applied for a licence authorising the use of 20 gaming machines.
54. 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(a) of the Regulations.
55. 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.

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

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. 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.
57. 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.
58. The comprehensive CIA prepared for the purpose of this application has been analysed in considerable detail. No issues arise which would preclude the approval of this application.
59. 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.

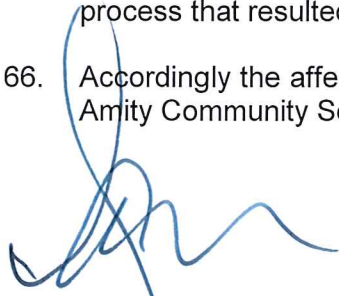
60. Whilst noting no specific objections were lodged Amity has submitted previously a well-researched and evidence based position paper. Amity clearly does not support any applications, suggesting the Northern Territory is not underserved with gaming machines at present and an increase in the number 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.
61. The Applicant has evidenced their previous adherence to gaming laws and regulation, suggesting an adherence to the requirements.
62. There has been no adverse comments or reports received from Licensing NT departmental personnel in relation to the operation of these premises.

## **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 Crocosaurus Cove Pty Ltd for a gaming machine licence authorising the use of 20 gaming machines to be located at The Tap on Mitchell.
64. The 20 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 Crocosaurus Cove Pty Ltd and Amity Community Services Incorporated.



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

22 August 2016