



Director-General of Licensing

Decision Notice

Matter:	Application for Gaming Machine Licence
Premises:	Rorkes Beer Wine Food 22 Smith Street Darwin NT 0800
Applicant:	Monkey Business Holdings Pty Ltd (ACN 160 986 274)
Nominee:	Mr Mitchell McNamee
Submissions:	Nil
Legislation:	Section 24 <i>Gaming Machine Act</i>
Decision of:	Director-General of Licensing
Date of Decision:	7 December 2015

Background

1. On 7 July 2015, Mr Mitchell McNamee, Director of Monkey Business Holdings Pty Ltd, ("the Applicant") applied for a gaming machine licence for premises known as Rorkes Beer Wine Food ("the Tavern") pursuant to section 24 of the *Gaming Machine Act* ("the Act"). The Tavern is a relatively new venue having only commenced trading in September 2015.
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. The application was accompanied by the prescribed application fee. 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.
4. The application was also accompanied by the required Community Impact Analysis ("CIA") prepared by Ms Colleen Peterson, a qualified town planner and Managing Director of Ratio Consultants Pty Ltd. It should be noted that the CIA was prepared in July 2015, prior to the opening of the Tavern.
5. The Applicant initially advised Licensing NT that he was seeking authorisation for 20 gaming machines and the application was advertised accordingly. However the Applicant did not pay the prescribed levy for the ten gaming machines above the previously prescribed maximum number of ten. In addition, the CIA lodged by the Applicant refers to the application being for ten gaming machines. As a consequence, and despite the notice published in the newspaper, this application is treated as being for the authorisation of ten gaming machines only.

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 and the CIA shows that the gaming room will be located on the ground floor of the premises and will occupy an area of 16.8 square metres of the overall floor space of approximately 1 000 square metres. This represents less than 2% of the available floor space, which does not reflect a significant proportion of the total available floor space of the venue.
10. The plans submitted by the Applicant show that, due to the configuration of the floor plan, direct line of sight is not possible from the bar/service area to the gaming room as required by regulation 8(a) of the Regulations. 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. Patrons will not be able to access the gaming room without first accessing the general public areas of the venue, nor will the gaming room be visible to passing pedestrian traffic.
11. The facilities offered by the Tavern are addressed elsewhere in this decision notice.

Suitability of Premises – primary activity

12. The Tavern is a relatively new business having commenced trading in September 2015. The Tavern is relatively large sized premise by Darwin standards with a total patron capacity of 690. On the ground floor the venue includes a bar and dining room with seating for 269 patrons, a wine cellar offering private tastings, an outdoor deck area and a gaming room where the gaming machines are proposed to be located if the application is approved. The first floor includes another bar and additional dining space with capacity to seat 200 patrons indoors and a further 80 patrons on the outdoor deck area.
13. The Tavern is promoted as a “gastropub” and targets the 21 to 45 year age bracket. The CIA states that the Tavern was purpose built to include gaming as a minor element of the overall offer available at the venue with the prime focus being on the dining and bar facilities. The main business aim of the Tavern is to provide a high standard of food and drinks in a first class environment.
14. The CIA states that the “point of difference” for the Tavern within the Darwin CBD entertainment marketplace will be an offering that breaks away from the youth oriented focus of the existing licenced venues.

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

15. The Tavern is located in the Darwin CBD within the “civic precinct”, in close proximity to the City of Darwin municipal offices, Parliament House and the Supreme Court building. It is also located nearby to a range of commercial and Territory government uses. The Tavern sits at one end of the Darwin Mall and is close to the Mitchell Street entertainment precinct. Immediately west of the Tavern is the tourist precinct including the Visitor Information Centre and the pick-up and drop-off point for tourist busses servicing the cruise ship market directly opposite the venue. The venue is also within easy walking distance of the Darwin Waterfront Precinct.
16. The nearest residentially zoned land is 1.1 kilometres from the Tavern with numerous other high rise residential apartment dwellings located throughout the CBD. The CIA reports that there are no particular barriers with regards to access to the site, with a good road network linking the Tavern to the surrounding neighbourhood.

17. For the purpose of assessing the impact of the proposal on the local community the author of the CIA has reviewed the potential impact on suburbs within a 5 kilometre radius of the Tavern namely the suburbs of Darwin City, Larrakeyah, Stuart Park, The Gardens, Bayview, Parap, Woolner, Fannie Bay and The Narrows. The primary patron catchment for the Tavern, defined as the Local Community Area ("LCA"), includes the suburbs of Darwin City, Larrakeyah, Stuart Park and The Gardens.
18. The CIA states that the four suburbs that comprise the LCA are generally located within a 2.5 kilometre radius of the venue and have been compared with the Greater Darwin Capital City Statistical Area which is effectively Metropolitan Darwin.
19. The 2011 census recorded a total population for the LCA of 20 748 comprising 17 294 adults. According to the CIA there is a modest population growth forecast for the LCA however it is not a significant factor in the assessment of the social and economic impact of the proposal given the high end focus of the venue. A review of the age distribution of the LCA shows a relatively young population with 15.4% of residents under 20 years of age and a further 61.1% aged between 20 and 49 years.
20. The CIA assessed the household income for the LCA and states that the results reveal a mixed profile in terms of household income less than \$20,800 per annum with Larrakeyah and Stuart Park below the benchmark average of 7% and Darwin City just above the average. The Gardens has a substantially higher ratio of residents earning below \$20,800 per annum at 10.8%. Disposable income for residents within the LCA is generally above that of Metropolitan Darwin and the Local Government Area averages, with the exception of Darwin City which falls 1.2% below the benchmarks.
21. 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 8.4%, well below the Metropolitan average of 9.2%, with the exception of the Gardens which includes 19.9% Indigenous residents.
22. 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.
23. 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.
24. 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.

25. 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.
26. The CIA notes that there are currently ten gaming machine venues within the Darwin CBD with a total of 120 gaming machines. That number includes two venues that were not operating gaming machines at the time the CIA was prepared. A further venue has closed its business since the CIA was finalised in July 2015 resulting in an overall reduction of 30 gaming machines within the LCA. That reduction will be reversed with a number of venues within the Darwin CBD having recently obtained approval to increase the number of gaming machines and others in the process of seeking approval for additional gaming machines. The CIA also noted that there are another six gaming machine venues outside the LCA but within a five kilometre radius of the Tavern. Those venues account for an additional 59 gaming machines.
27. The CIA reports that the number of gaming machines within a five kilometre radius of the Tavern equates to 10.3 gaming machines per 10 000 head of population within the LCA with that figure increasing to 10.9 if the within application is approved.
28. The CIA states that based on total expenditure derived from gaming machines in the 2013-14 financial year, expenditure per adult was \$541.93 and that, given the estimate of 47% of gaming expenditure coming from interstate or overseas visitors, it is estimated that the expenditure per local adult on gaming machines in the LCA is in the order of \$287.00 per annum.

Appropriateness of problem gambling risk management and responsible gambling strategies

29. The CIA notes that the management of the Tavern accept their responsibility to ensure responsible gaming at the venue and operate a number of practices consistent with the principles of harm minimisation. Mr Mitchell McNamee, the manager under the liquor licence, has been appointed as the Responsible Gambling Coordinator and all duty managers/supervisors act as nominated Responsible Gambling Officers during their shifts.
30. All staff at the Tavern will be provided with the venue's Responsible Gambling Manual and responsible gambling workshops will be conducted annually for both senior and front of house staff. Management will provide information to assist clients to make informed and responsible decisions about their gambling activity and support services that are available to clients who may have gambling related problems. All Tavern staff will be required to view the photographs of customers who have self-excluded from gaming at the premises. A clock will be prominently located in the gaming room to enable clients to be aware of the passage of time whilst gambling.
31. Of significance, the CIA states that management of the Tavern will commission an annual independent evaluation of its compliance with and commitment to its in-house Responsible Gambling Manual.

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

32. 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 in the short period since opening. 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 15% of the projected net revenue. That percentage is commensurate with the revenue of similar venues in proximity to the Tavern.
33. The CIA reports that the Applicant proposes to donate to local community and sporting groups following the first 12 months of commencement of gaming machine activity, with a view to increase the amount donated annually dependent on gaming revenue. Specifically, the Applicant intends to contribute \$15 000 yearly towards a Community Support Fund with the aim of inviting local community and sporting groups to apply for financial support. The CIA states that likely recipients could include Darwin Surf Lifesaving Club, Camp Quality and Darwin Rotary amongst other similar organisations. In addition the Applicant intends to allow approved community organisations to conduct fund raising activities and special events in the venue to assist entities such as the Salvation Army, Red Cross, the Heart Foundation and other like-minded charitable bodies.
34. 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 immediately opposite the main bus pick-up and drop-off point for tourism operators servicing the cruise ship industry and is also very close to the Darwin Bus Terminal. The CIA notes that the Tavern is well positioned between the Darwin Waterfront Precinct and the Smith Street Mall to attract cruise ship passengers and other tourists visiting the Darwin CBD.

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

35. Rorkes Beer Wine food commenced trading in September 2015. As a result a comparative assessment of business reputation and trading performance of Monkey Business Holdings Pty Ltd is not possible. Nor is it 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 a report prepared by Mr Greg Thompson of Thompsons Australia, International Accountant and Strategic Business Advisors. In his report Mr Thompson advised:
 - Financial resources are currently available and in place to complete the development stage based on information provided; and
 - Working capital support is available and in place to allow the business to operate and meet its liabilities and other business obligations as and when they fall due based on the operational parameters underlying the financial feasibility analysis.
37. The asset and liability statement provided by Mr Thompson as of November 2015 indicates that Mr McNamee, the Director of Monkey Business Holdings Pty Ltd, holds business and personal assets significantly greater than the current liability of the applicant company.
38. On the basis of the materials provided by Mr Thompson I am satisfied that the applicant corporation was financially stable at the time of making the application for a gaming machine licence. Taking account of the assessment of borrowings against assets I am satisfied the Applicant has sufficient financial resources to purchase, install and conduct business under a gaming machine licence.

39. The Applicant has also commissioned a Business Plan in respect of the Installation of 10 Electronic Gaming Machines, prepared by Michael Clyne of Wensleysea Pty Ltd. Mr Clyne holds a Bachelor of Economics and has over 20 years experience in the gaming industry. The Business Plan includes an analysis of the performance of similar venues in the Darwin CBD where gaming machines are available.
40. The projected revenue from the gaming machines has been assessed by Mr Clyne through comparisons of like venues and consideration of gaming revenue growth and usage at those premises applying a 10% discount due to the "new" venue factor. Those projections indicate that gaming machine activity will produce reasonable revenue returns however the venue will not be overly reliant on gaming revenue in order to continue operating.
41. Taking account of the fact that the Tavern has been trading for less than three months, I am satisfied that the business reputation and financial stability of the company and its director is sound.

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

42. Mr McNamee is the sole director of Monkey Business Holdings Pty Ltd and nominated as the only person able to influence the conduct of the business under the existing liquor licence and for the gaming machine licence, should that be granted.
43. At the time of the grant of the liquor licence in September 2015 Mr McNamee was assessed and being a fit and proper person to hold a liquor licence. As such he also meets the criteria in that regard being a person fit and proper to hold a gaming machine licence.
44. Mr McNamee has significant experience in the hotel and entertainment industry having previously been involved in the management and operation of licensed premises both in Darwin and interstate. Mr McNamee's National Police Certificate reveals no disclosable court outcomes.

Written submissions in response to the application

45. As required by section 24A of the Act, the application was advertised in the Northern Territory News on 12 August 2015. Pursuant to the Act, a written submission may be made to the Director-General within 30 days of the notification, namely by 11 September 2015. No submissions were received during the relevant period.
46. The author of the CIA has 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. Examples of the organisations contacted include Amity Community Services, Summerville Community Services, St Vincent De Paul and the Salvation Army to name a few. A representative of the City of Darwin responded advising that Council does not have a policy position relating to gaming machines or the impacts of gaming in the community, though it does have a clear policy position regarding alcohol and has invested considerably in strategies to address the impacts of alcohol on society.
47. In respect of responses from charitable and religious organisations raising issues of problem gambling generally, and problem gambling by people of limited economic means specifically, the CIA notes that the Applicant has prepared and will adopt a Responsible Gambling Manual that will provide best practice with regard to the provision of responsible gambling. The CIA also emphasises that the gaming room will be under constant CCTV surveillance to ensure that patrons are using the gaming machines responsibly.

48. The CIA also notes that the Tavern's target market is persons with higher disposable income, not those on low incomes, and that the higher prices at the venue are likely to deter vulnerable persons from attending the Tavern taking account of the ease of access to more affordable venues.
49. In terms of negative community impact and the potential harms arising from problem gambling, the CIA concludes that it is unlikely that the introduction of ten gaming machines at the Tavern will attract disadvantaged persons to the venue. The author of the CIA states that having reviewed the details of the proposal, the main potential for adverse social impacts is the potential for an increase in problem gambling. The author states that the social disbenefits with gambling are outweighed in this instance by the benefits, including increased access to gaming for locals and tourists who participate without harming themselves or others.

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

50. The liquor licence authorises the premises to trade in the sale of liquor for on-premise consumption of alcohol from 10.00am to 2.00am the following day, 7 days per week. The liquor licence also stipulates that meals must be available between midday and 2.00pm and between 6.00pm and 9.30pm. The trading hours are reflective of the hours applicable to most licensed premises holding a tavern authority licence in the Darwin CBD and allowing for late night trading, that is beyond midnight.

Size, layout and facilities of the premises

51. The ratio of the floor space of the gaming room in comparison to the overall floor space of the premises is considered above in this decision notice and, at less than 2% of total available floor space, the area allocated to the gaming room does not raise any issues of concern.
52. The Gaming and Liquor Amendment Bill of 2015 amended the Act to effectively lift the previously imposed cap on authorisations of gaming machines in licensed hotels, taverns and clubs in the Northern Territory. At the time of introducing the amendments, the Minister for Racing, Gaming and Licensing noted that the arbitrary Territory-wide cap was abolished in favour of a rigorous community impact assessment process for new applications and for applications seeking additional gaming machines.
53. 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.
54. 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.
55. 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

56. 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.
57. 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.
58. 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

59. For the reasons set out above, and in accordance with section 25 of the Act I have determined to grant the application lodged by Monkey Business Holdings Pty Ltd for a gaming machine licence authorising the use of ten gaming machines to be located at Rorkes Beer Wine Food.
60. 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

61. Section 166A of the Act provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. 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

7 December 2015