

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Town & Country Tavern
Licensee:	Town & Country Tavern Pty Ltd
Licence Number:	80317647
Proceeding:	Review of the Decision by the Licensing Commission in Relation to the Application for a Gaming Machine Licence by Town & Country Tavern Pty Ltd
Heard Before:	Mrs J M Large Ms H Kilgariff Mr P Fitzsimons
Date of Hearing:	25 June 2008
Appearances:	Mr A Harris for the Licensee Mr D Crowe for the Licensee Mr P Timney, Counsel Assisting the Commission
Attendance at the Hearing:	Mr M Deane, Solicitor Mr G Booth, Director Mr C Oldfield, Director Mr T Weeks, Director Mr V Oldfield, Director Mr P Darveniza, Consultant

Background

1. On 8 May 2007 Town & Country Tavern Pty Ltd, Licensee of the Town & Country Tavern ("the Tavern"), made an application under Section 24 of the *Gaming Machine Act* ("the Act") for approval for a Gaming Machine Licence for ten (10) machines at the Tavern. The application met all the requirements of Sections 24 and 24A of the Act and included a detailed Community Impact Analysis & Business Management Plan in accordance with Section 41A of the Act.
2. On 10 July 2007, in line with Section 24A(2)(d) of the Act, Ms S J Davies lodged a written submission objecting to the application. The main areas of objection were that the Community Impact Analysis was flawed in that it presented an inaccurate picture of the social characteristics of Alice Springs and of the population immediately impacted by the application; that the application presented incomplete and sometimes inaccurate information about community impact and the risks that gaming machines will intrude on the character of Todd Mall pedestrian precinct. The applicant provided a response to the objections for the Licensing Commission's consideration on 23 July 2007.
3. At a Hearing on 18 September 2007 the Licensing Commission undertook a site viewing of the premises and heard oral evidence from Mr Booth, the Nominee and co-owner of the Town & Country Tavern, Mr P Koenig, a representative of the consultancy firm, Darveniza Barron Wood and Associates who had compiled the Community Impact Analysis and Ms Davies, the objector.

4. On 6 November 2007 the Licensing Commission published its decision to deny the application for a Gaming Licence for the Town & Country Tavern. In reaching the decision to refuse to grant the licence the Commission noted it had regard to the following matters:
- *“The installation of ten (10) gaming machines would make the premises crowded and accordingly, alter the primary activity conducted at the premises, namely, drinking at the bar and eating at the restaurant;*
 - *The Commission was not persuaded that the installation of the ten (10) gaming machines would enhance the tourism prospects of the area to such a degree that it would outweigh the negative impact the gaming machines might have;*
 - *The Commission accepted the submissions of Ms Davies that the installation of the gaming machines may alter the type of patrons who enter the Tavern and that in turn may have a negative impact upon the immediate surrounding area;*
 - *The Commission is of the view that the long term impact of the gaming machines may place a further burden upon the social services within Alice Springs;*
 - *In the Commission’s analysis the proximity of the Tavern to sensitive areas such the Uniting Church and the meeting area, see Section 25(3 (C)). It was perhaps this issue that the Commission found most persuasive in denying the Application.*
 - *Overall the Commission was simply not persuaded that the risk of significantly negative impact upon the surrounding area was outweighed by the Applicant’s argument that the gaming machines would enhance tourism in the area.”*
5. An application for a review of the Licensing Commission’s decision, pursuant to Section 28 of the *Northern Territory Licensing Commission Act*, was lodged on 3 December 2007. The main grounds for seeking the review were that the Commission had failed to sufficiently take into account or give adequate weight to information provided in the Community Impact Assessment or the evidence given by the Nominee and co-owner of the Town & Country Tavern and had made its determination on the risks and harm associated with the installation of the gaming machines at the premises on opinion only and without proper evidence being presented. Specific comment was provided on each of the points outlined in the Commission’s Reasons for Decision as follows:
- The finding that the machines would make the premises crowded is simply against the evidence and concerns about overcrowding were never raised by the Commission or the objector with the applicant or its witnesses.
 - The provision of a further tourist amenity (gaming) in any proper assessment would only enhance that tourist facility. The Commission should have given weight to the fact that many of the town’s visitors stay in hotels and motels proximate to the Central Business District and within or adjacent to the Mall Tourist Precinct.
 - The allegation that the type of patron using the Tavern may change is pure conjecture and no evidence was produced as to what is the “type” of patron who may utilize a gaming machine. The operation of gaming machines is a legal recreational pursuit and to make a determination that such patrons are likely to cause negative impact on the tourist area is offensive, discriminatory and unsubstantiated by any fact presented to the Commission.
 - No evidence was provided to support the finding that the impact of the gaming machines at the Town & Country Tavern would cause the stretching of social services in the Alice Springs Community. Whilst this is the opinion of the objector it was not substantiated by any particular charitable or social group organisation or by the Alice Springs Town Council.

- Whilst it is acknowledged that the Flynn Memorial Uniting Church and the grassed Meeting Place are in close proximity to the Town & Country Tavern. The proposal is that the gaming machines will not be visible from the street and there will be no advertising outside the premises”.

The Hearing

6. At the commencement of the review hearing on 25 June 2008 Mr A Harris, QC, for the Applicant, submitted that the Licensing Commission, in its decision of 6 November 2007, made an error in law in that they did not take the immediate actions required under Section 25(7) of the Act prior to determining to refuse to grant the licence. Section 25(7) states:

(7) Where the Commission, on consideration of an application under this Section, considers that it should not be granted or proposes to determine the number of gaming machines to be authorised for the use under the licence be less than the number requested in the application –

- a. *the Commission shall defer making a decision in respect of the application or a determination in respect of the number of gaming machines to be authorised for use; and*
- b. *the Director shall give written notice to the applicant and invite the applicant to submit, within such times as is specified in the notice, such additional information or material in support of the application or for the number of gaming machines requested in the application as the applicant thinks fit.*

(8) Any additional information or material submitted under sub Section (6) or (7) shall be considered in making the decision or determination.

7. After examining the previous Commission’s “Reasons For Decision”, the “Transcript of Proceedings on Tuesday 15 September 2007” and receiving advice from Mr Timney, Counsel Assisting the Commission, the Commission on Review agreed that an error had been made.
8. It was put to Mr Harris that the Review Panel was prepared to adjourn the review proceedings to allow the Commission at first instance to comply with the requirements of Section 25(7). That would, however, have entailed abandoning the Review Hearing and arranging for an alternative date for the parties to re-convene. Mr Harris responded to the effect that the preference for his client would be for the Review Hearing to proceed and subject to his client being afforded the opportunity to respond to the findings of the Commission that at first instance should have been raised under Section 25(7), namely, the matters set out in paragraph 4 above.
9. The Commission noted Mr Harris’ submissions on behalf of The Tavern and determined that the most constructive way to proceed would be to continue with the review of the Commission’s Decision, of 6 November 2007, under Section 29 of the *Northern Territory Licensing Commission Act* which states:

“29. Conduct and determination of review

The Commission must conduct a review in a manner that is fair and expeditious and must give proper consideration to the issues.”

with the Commission on Review taking into consideration any additional information or material submitted under Section 25(8) of the Act on behalf of the Tavern. The proposed course of action was agreed by all parties at the commencement of the Hearing.

10. Mr Harris on behalf of the applicant outlined the improvements that the Licensee intended to make which would allay the Commission's concerns about over crowding and alteration of the primary activities of the Tavern:
- a revised floor plan for the Town & Country Tavern which incorporates ten (10) gaming machine was tendered (Exhibit 1). It showed the proposed installation of a high, solid screen partition dividing the main bar area and the gaming machine area to the left of the three (3) structure poles opposite the bar and at the rear of the premises. Round tables, comparable to the current round barrel furniture in the Tavern, would be constructed around the poles. The gaming area would be monitored by CTV cameras. This would extend the drinking and eating area in the vicinity of the existing bar, alleviate the perception of crowding in the bar area and allow a similar level of primary activity to be conducted.
 - To ensure that the gaming area did not impinge upon the primary activities of the Tavern it was proposed to tint the glass which divides the Beer Garden from the gaming machines and the applicant agreed that there would be no street side advertising of the gaming machines or signage on the walls of the premises and the noise generated by the gaming machines would be lowered.
 - The proposal by the Alice Springs Council to upgrade the Mall and encourage owners of premises fronting the Mall to develop or increase the al fresco areas in the Mall will offer the Tavern the opportunity to expand its al fresco dining area. A plan of the al fresco dining area was tendered. (Exhibit 3)
11. Further, Mr Harris strongly maintained that an examination of the future budget for the premises should be undertaken before reaching a determination on whether the proposal will alter the primary activities of the premises and tendered a Budget 2008 (Exhibit 2) and the Profit and Loss Statement June 2006 – June 2007 (Exhibit 5) for the Tavern.
12. In relation to the previous Commission's findings about tourism and the negative impact the gaming machines might have upon the surrounding area, Mr Harris drew attention to the Information on tourism provided by the applicant in the Community Impact Analysis and stressed the lack detail outlined by the objector or the Commission in its decision as to the negative risks associated with gaming machines. He went on to state that in accepting Ms Davies' submissions that the installation of the gaming machines may alter the type of patrons who enter the Tavern and that in turn may have a negative impact upon the immediate surrounding area the Commission relied on the opinion and conjecture of the objector only, without being provided with or obtaining any substantiated facts in support of that opinion and conjecture..
13. Mr Harris pointed out that there had been no objection from any stakeholders regarding the impact and future burden on the social services within Alice Springs, in fact, Alice Springs is a community that has demonstrated that it is able to provide gambling facilities for the residents and visitors without any serious problems
14. On the finding by the Commission that the proximity of the Tavern to sensitive areas such as the Uniting Church and the meeting area was the most persuasive reason for denying the application for gaming machines, Mr Harris noted that the Commission gave no details of the analysis upon which it reached its finding. He asked the Commission on Review to note that whilst the back of the Uniting Church is across the Mall from the Tavern the entrance to the church is further away on a side road and there has been a variation in the occupancy of the building adjacent to the church which has resulted in changes to the activities on the grassy area, known as the Meeting Place, outside the building. He asserted that the Commission was wrong in reaching its finding that the installation of the gaming machines in the Tavern would have an adverse impact on the Church and Meeting Place.

Consideration of the Issues

15. The Commission on Review has examined all the documentation that was before the previous Commission. In addition, it has taken into account the written submission by the applicant which was received on 3 December 2007 providing the grounds for the Review and the information put forward at the Hearing.
16. The proposed new floor plan for the Tavern allows sufficient room for the gaming machines, seating or standing space for drinkers opposite the bar and a passageway for staff to deliver food from the kitchen to the patrons. The area, which currently seats twelve (12) patrons at low tables, is to be replaced by three (3) high round tables for nine (9) patrons, if sitting, and possibly twelve (12) patrons if some are standing.
17. An analysis of the future Budget figures and 2007 Profit and Loss Statement show that there are some unusual allocations in the future Budget, Despite these anomalies, which may be explainable by one-off variations between years, the overall figures show that, for the current activities of the Tavern, there is an anticipated financial increase sufficient to cover the previous deficits and the net income from the gaming machines activity will allow a profit in future years. It was also noted that, in addition to the mandatory Community Benefit Levy, the figures showed an annual donation by the Licensee to community organisations.
18. The proposal to expand the al fresco dining area of the Tavern is not directly pertinent to this Review as it will need to be the subject of a separate application for a variation to the liquor licence. However, it is noted that the Alice Springs Council has approved plans and funding to provide a raised area, in front of premises, which include the Town & Country Tavern, that operate on the Mall. This will allow better wheelchair access to these premises and the width of the raised area is such that al fresco areas can be developed or expanded whilst still permitting pedestrian and vehicular access to the Mall.
19. The Commission on Review considers that the proposed floor plan provides the best location for the gaming machines. It does alleviate concerns about overcrowding in the Tavern and allows sufficient space for the current level of the primary activities of drinking and eating to continue. Whilst the financial figures presented by the applicant support the assertion that there will be no alteration in the primary activities of the Tavern they are estimates only. However, taking both the floor plan and the Budget estimates together the Commission on Review has reached the conclusion that the installation of the gaming machines will not alter the primary activities of the Tavern.
20. Having undertaken a site inspection the Commission on Review is strongly of the view that, given:
 - the ambiance of the Tavern;
 - its primary activities;
 - the location and complete segregation of the gaming machines at the rear of the premises;
 - the non advertising of the presence of the gaming machines; and
 - the undertaking of the Licensee regarding lowering of the noise generated by the machines;

the installation of ten (10) gaming machines at the Town & Country Tavern is unlikely to cause any increase in the tourists utilising the Tavern or give a boost to tourism in Alice Springs and, conversely, it was difficult to envisage what the negative impact the machines would have on tourism.

21. Similarly, the evidence that there would be an alteration in the type of patrons entering the Tavern which in turn will cause negative risks on the immediate surrounding area is difficult

to find. Ms Davies in her testimony at the previous hearing states that she was concerned that the patronage of the Tavern would alter as it would become:

“less attractive to people who don’t want to be exposed to poker machines”.

She did not elaborate on the type of patrons that would enter the premises to use the gaming machines or detail the impact on the immediate surrounding area or question Mr Booth’s testimony at that Hearing that the normal gaming machines player was:

“...mostly quiet. They’re probably more the age group the high 30s to the 50 mark, the older generation. They sit there quietly, they play the machine, they have a beer and they’re no hassles whatsoever”.

22. Without further information it is very difficult for the Commission on Review to support the concept that there will be any alteration in the type of persons entering the Tavern causing risks to the surrounding areas. In addition, the proposed new screen and the lowering of the noise from the machines would limit exposure and they would not intrude on other patrons in the Tavern or outside the premises. The Commission noted that the liquor licence for the Tavern currently includes a Special Condition regarding noise emanating from the premises and that the undertaking by the applicant was to lower the noise emanations from the gaming machines in respect of the enjoyment and use of the premises by patrons who were not utilising the gaming machines.
23. The previous Commission’s view that the long term impact of the gaming machines may place an additional burden upon the social services in Alice Springs is queried by the applicant. The objector maintained that:

“The costs of gaming machines are externalised onto society as a whole and in this town – Alice Springs is having a lot of trouble dealing with the social problems that already exist here. The services are over-stretched”

In the written submission by the applicant for this review it was stated :

“Alice Springs is a Community that has demonstrated that it is able to provide gambling facilities for its residents and visitors without any serious problems.”

Mr Harris maintained that the comments, of the objector, had been elevated from personal opinion to an expert opinion without any back-up evidence being provided by the social services stakeholders and, therefore, the conclusion reached by the Commission was flawed.

24. The Commission on Review finds that, without evidence and statistics from the social services agencies in Alice Springs, it was impossible to reach any conclusion on the burden placed upon these services.
25. The final and *“most persuasive”* reason given by the Commission in denying the application for gaming machines was the proximity of the Tavern to sensitive areas such as the Uniting Church. The Commission reached the overall conclusion that it was:

“not persuaded that the risk of significantly negative impact upon the surrounding area was outweighed by the Applicant’s argument that the gaming machines would enhance tourism in the area.”

26. Section 25(3)(c) of the Act requires the Commission to make an assessment of the suitability of the location to which the application relates having regard to proximity of the premises to sensitive areas such as schools, shopping centres, and other community congregation facilities. The Uniting Church and the grassed meeting area between the Church and the Tavern clearly fall within that assessment. In response to this, Mr Harris argued that the Commission had not presented details of any risk analysis it had undertaken to back up its conclusion and, because of the revised floor plan, the reduced noise and the lack of advertising, the gaming machines were unlikely to affect members of

the church or people at the meeting area. The Commission on Review has weighed up both arguments and decided that on the balance of probability the applicant's submission had merit.

27. Whilst the revised floor plan and renovations proposed by the Licensee clearly alleviates the problems of overcrowding and maintains the current primary activities the impact of any associated risk is more difficult to assess as it is a judgement call.
28. A benefit versus risk analysis indicates that the benefits will mainly accrue to the owners of the Tavern in that there will be an additional service offered which is expected to result in a financial profit for the premises. Current patrons will have the benefit of the additional service, the Government has some benefit from the receipt of the Community Benefits Levy but given the type of premises and the segregation of the machines in the premises the attraction and benefits for tourists and tourism are adjudged to be minimal.
29. There are risks involved with any gambling. They relate to an addiction to gambling and problem gamblers. The negative consequences of problem gambling may include:
 - The customer suffering excessive financial losses relative to his or her means;
 - Adverse personal effects on the gambler, his or her family and friends;
 - Adverse effects on employers and work performance; and
 - Other costs, which are borne by the community.
30. When considering the risks involved in the installation of ten (10) machines at the Tavern the Commission on Review received no verifiable evidence of any increased burden upon social services in Alice Springs or details to support a finding that there would be a different type of person entering the premises which would in turn have a negative impact upon the surrounding area. We are satisfied that the segregation of the gaming to the back of the premises, the enclosure of the area with a high partition and the tinting of the glass entrance to the beer garden, together with the policy of no advertising of gaming on the street or the outside of the premises and the lowering of noise emanating from the machines will isolate the area to within the Tavern and lessen any risk of significant negative impact on tourism or on persons in the sensitive areas in proximity of the Tavern.
31. There will continue to be a percentage of patrons using the gaming machines who are problem gamblers and this will involve some risk. The applicant submitted its proposed Responsible Gaming Policy Document at the previous Hearing. This includes a policy of monitoring and advising patrons who may have difficulty controlling their personal level of expenditure on gaming and particularly gaming machines. The strict implementation of this policy should assist in minimising any risk of problem gambling.
32. In its overall assessment of the risk the Commission on Review has reached the conclusion that, given the number of machines, their location and segregation within the Tavern, in this particular instance, the risk to the general public and the community is low and manageable.

Decision

33. The previous decision by the Licensing Commission to deny a licence is revoked and the application, by Town & Country Tavern Pty Ltd, for a Gaming Machine Licence for ten (10) machines at the Town & Country Tavern is approved with the following conditions:
 - There will be no advertising of the gaming area and machines at the Town & Country Tavern either on the street or the outside walls of the premises; and
 - The noise emanating from the gaming machines will be modified to ensure that it does not intrude on the primary activities of the Tavern or the public outside.

Mrs J M Large
Presiding Member

15 July 2008