

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	MBARGO AT PARAP
LICENSEE:	Pubco Pty Ltd
APPLICATION:	For a Gaming Machine Licence
COMMISSION MEMBERS:	Mrs J M Large Mr P Costigan Mr J Brears
DATE OF DECISION:	14 March 2007

- 1) Mr Terence George Dowling and Mr Daniel James Dowling, sole Directors of NT Pubco Pty Ltd have lodged an Application for a Gaming Machine Licence for the premises to be known as Mbargo at Parap.
- 2) Notice of the application was published in the NT News on 11 and 12 August 2006 and in support of their application the Directors of NT Pubco Pty Ltd have provided the following documentation:
 - resolution of Minute of proceedings to make application for a gaming licence;
 - affidavits on disclosure of influential or beneficial parties by each of the Directors in accordance with the requirements of section 44 of the *Gaming Machine Act* (the Act);
 - Community Impact Analysis Report in accordance with section 41A of the *Gaming Machine Act*.
- 3) Although, the Act does not specifically cater for objections to such an application, submissions may be lodged under sections 24A and 41A, within thirty (30) days of the date of the advertisement of the application, with the Director of Licensing. Nine (9) submissions, opposing the grant of a gaming machine licence, were received, within the required time frame and the applicant supplied a response to these submissions.

- 4) The Act does not provide for a public hearing into an application for a gaming machine licence. However, Section 25(3) directs the Commission to consider the application and anything accompanying it together with the results of investigations made by the Director of Licensing under Section 25(1) and any submissions received. In addition, under Section 25(3)(1) the Commission may take into consideration any other matter that the Commission considers necessary.

CONSIDERATION OF THE ISSUES

- 5) At its meeting on 20 February 2007 the Commission considered all the documentation provided by the applicant, the Director's report, submissions received opposing the grant of a licence and the applicant's response to these submissions. Also, the Commission had before it legal advice from the Counsel Assisting the Commission and the response from the applicant's agent on whether the "primary activity" of the business meets the requirements of section 24 (b) and the definitions of a hotel liquor licence in the Act.
- 6) The Commission noted that:
 - the application meets all the probity, disclosure and provision of financial details required under the Act;
 - the submissions received, opposing the grant of a licence, outline a community concern that more gambling opportunities will impact negatively on the neighbourhood's amenity and social fabric;
 - based on the community opposition to another gaming venue in the Parap /Fannie Bay areas the Director of Licensing has recommended that the application be refused; and
 - persuasive legal argument on the primary activities of the business has been provided by both the Counsel Assisting the Commission and by the agent of the applicant.
- 7) Subsequent to the receipt of all the above documentation and submissions the Commission was required to consider an application for the transfer, variation and substitution of a liquor licence at the Mbargo at Parap premises. The Commission has determined that the liquor licence to be granted for the proposed premises Mbargo at Parap will be an Authority – On Licence.

8) Under section 24 (1) of the *Gaming Machine Act* :

“(1) An application for a gaming machine licence may be made by –

(a) a body corporate that holds a club licence;

(b) the holder of a hotel liquor licence;

(c) the holder of a prescribed liquor licence”

9) Under the definitions contained in the *Gaming Machine Act* :

“club liquor licence” means a licence granted under the Liquor Act to a body corporate –

(a) where the primary activity conducted on or at the premises specified in the licence is the sale and consumption of liquor on or at those premises by members and guests of the body corporate”

(b) that is endorsed with the words “AUTHORITY - CLUB”

“hotel liquor licence” means a licence granted under the Liquor Act –

(a) where the primary activity conducted on or at the premises specified in the licence is the sale and consumption of liquor on or at those premises, and

(b) that is endorsed with the words “AUTHORITY – PUBLIC HOTEL” or “AUTHORITY – TAVERN”.

The liquor licence held by Mbargo does not satisfy either of these definitions. In addition, Mbargo does not hold a licence that is prescribed for the purposes of Section 24(1)(c) of the Act, being licences held by named roadhouses in the Northern Territory.

10) The liquor licence granted for the premises Mbargo at Parap is neither a club licence, an hotel licence or a prescribed liquor licence but rather an On Licence. This means that, for these premises, the applicant does not hold a licence that complies with Section 24(1) of the *Gaming Machine Act* with the result that the applicant is precluded from applying for a Gaming Machine licence for Mbargo at Parap. On that basis the application must be refused.

DECISION

- 11) The Commission has determined that a Gaming Machine Licence should not be granted to NT Pubco Pty Ltd for premises to be known as Mbargo at Parap as the liquor licence held by the Licensee for that premises, namely an Authority – On Licence, is not a licence of a type enabling the licensee to apply for or to be granted a Gaming Machine Licence under the *Gaming Machine Act*.

Mrs J M Large
PRESIDING MEMBER