

Director-General of Licensing

Decision Notice

MATTER:	Cancellation of Liquor and Gaming Machine Licences
PREMISES:	Katherine Sports & Recreation Club
LICENSEE:	Katherine Sports & Recreation Club Inc.
NOMINEE:	Ms Megan Coutts
LEGISLATION:	Section 47 of the <i>Liquor Act</i> , Section 48 of the <i>Gaming Machine Act</i>
DECISION OF:	Director-General of Licensing
DATE OF DECISION:	6 October 2016

BACKGROUND

1. On 18 December 2015 the Katherine Sports & Recreation Club ceased trading as the association had come to the decision they could no longer guarantee the premises would be trading in a solvent capacity.
2. The Katherine Sports & Recreation Club Inc. holds Liquor Licence, 81401019 and Gaming Machine Licence GM126.
3. The licensee commenced winding up of the premises and incorporated association. All assets of the licensee were sold to the Katherine Golf Club save for the gaming machines, which were returned to the licensed supplier Ainsworth in satisfaction of the debt owed for recently replaced machines.
4. The licensee sought to surrender both licences to the Director-General and a report was prepared in relation to this matter.
5. On 23 December 2015 it was determined the surrender of the licences was not accepted. The basis for the refusal to accept the surrenders was that the transfer of any remaining jackpot money from the gaming machine's Linked Jackpot System had yet to be confirmed and paid into the Community Benefit Fund.
6. It was expected all remaining monies would be realised and dispersed accordingly by early 2016 at which time the surrenders may be accepted.

CURRENT SITUATION

7. The licensee surrendered possession of the premises to the landlord, being the Northern Territory Government upon discharge of an historic mortgage with the ANZ Bank in March 2016.
8. On 14 September 2016 the Katherine Sports & Recreation Club Inc. was formally dissolved by publication in Government Gazette No. G37 pursuant to Section 65(5) of the *Associations Act*.

ASSESSMENT OF MATTER

9. The premises have not been operational since 18 December 2015 and the licensee has divested themselves of all assets with which they may conduct the business of the licensee.
10. The *Liquor Act* prescribes the following in relation to the conduct of the business of a licensee;

47 Acting licensee

(1) If a licensee is, or is expected to be, unable for any reason to conduct the business of the licensee during any period of time, the licensee must:

(a) appoint a person to act as the licensee to conduct the licensee's business during that period; and

(b) give written notice to the Director-General of the full name, address and occupation of the person within 3 days after the date of the appointment.

...

(4) Unless the Director-General otherwise determines, a person appointed under subsection (1) or (2) must not act as a licensee for more than 42 days during any period of 12 months that the licence is in force.

(5) Where:

(a) a licensee's inability to conduct the business of a licensee is, or is expected to be, permanent; and

(b) an application for transfer of the licence of that licensee is not made in accordance with section 41 within the period referred to in subsection (4) of this section,

the Director-General must cancel that licence at the expiration of that period, unless arrangements which are satisfactory to the Director-General are made during that period to conduct the business of the licensee.

11. Given the licensee has divested themselves of all assets, has been formally dissolved as an incorporated association and surrendered possession of the physical premises, it may be accepted the licensee's inability to conduct the business of a licensee is permanent.
12. There has been no application to transfer the liquor licence, nor has there been any arrangements proposed for approval to conduct the business of the licensee.
13. Accordingly the liquor licence must be cancelled pursuant to Section 47(5).

14. The *Gaming Machine Act* prescribes the following in relation to cancellation of a gaming machine licence in certain circumstances;

48 Cancellation or suspension of gaming machine licences in certain circumstances

If the liquor licence for premises licensed under this Act is:

- (a) cancelled, transferred or surrendered, the gaming machine licence for the premises is cancelled;

...

CONSIDERATION CRITERIA

15. In considering this matter I must satisfy myself that the licensee is unable to conduct the business of a licensee on a permanent basis, and there has been no application to transfer the licence.
16. Further, that no other arrangements have been made to my satisfaction to conduct the business of the liquor licensee.

SUMMARY

17. The licensee ceased trading in December 2015 and the incorporated association which held the liquor licence was dissolved on 14 September 2016.
18. The licensee has not conducted the business of the licensee since December 2015 and it is accepted this will not change. The liquor licence has not been transferred to another licensee.
19. Accordingly, I am afforded no discretion in the matter and must cancel the liquor licence pursuant to Section 47(5) of the *Liquor Act*.
20. In the circumstance of a cancellation of a liquor licence the *Gaming Machine Act* mandates the cancellation of the corresponding gaming machine licence.

DECISION

21. I am satisfied on the evidence available that the licensee is unable to conduct to the business of the liquor licence, accordingly I must cancel Liquor Licence 81401019, for the Katherine Sports & Recreation Club, Katherine Sports & Recreation Club Inc as the licensee.
22. By effect of Section 47(5) of the *Liquor Act*, Liquor Licence 81401019 is cancelled as of the date of this decision.
23. A corollary effect of the aforementioned cancellation of Liquor Licence 81401019 is that Gaming Machine Licence, GM126 is cancelled pursuant to Section 48 of the *Gaming Machine Act* also as at the date of this decision.

REVIEW OF DECISION

24. Section 120ZA of the *Liquor Act* provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. The cancellation of a liquor licence pursuant to Section 47(5) of the *Liquor Act* is NOT specified in the Schedule and is therefore NOT a reviewable decision.
25. Section 166A of the *Gaming Machine Act* provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. The cancellation of a gaming machine licence pursuant to Section 48 of the *Gaming Machine Act* is NOT specified in the Schedule and is therefore NOT a reviewable decision.



Cindy Bravos
Director-General of Licensing

6 October 2016