

Manager Compliance Operations South

Decision Notice

MATTER:	Cancellation of Liquor Licence
PREMISES:	Katherine River lodge
LICENSEE:	Katherine River Lodge Pty Ltd
NOMINEE:	Mr Philip Jazyschyn
LEGISLATION:	Section 47 of the <i>Liquor Act</i>
DECISION OF:	Manager Compliance Operations South
DATE OF DECISION:	7 October 2016

BACKGROUND

1. On 11 June 2015 the premises known as Katherine River Lodge ceased trading whilst the licensee sought to lease the premises to a third party.
2. Katherine River Lodge Pty Ltd is the licensee of the premises and holds Liquor Licence, 80204523 – Private Hotel.
3. The licensee has not been successful in securing other parties to lease or otherwise trade at the premises and a letter was sent to the Mr Philip Jazyschyn, a director of the licensee advising of the intention of the Director-General to cancel the liquor licence.
4. The letter was sent by email and dated 24 March 2016. It advised the licensee of the requirements of section 47(5) of the *Liquor Act* (the Act), providing the licensee with 90 days in which the licence must be transferred or otherwise used to conduct the business of the licensee.

CURRENT SITUATION

5. The licensee responded to the correspondence on 29 March 2016 advising they were actively seeking other parties, and acknowledging in the event they were unsuccessful the licence would be cancelled:

"If nobody takes it on in the next 90days I understand that the licence will expire."

6. No application has been received from any party seeking the transfer of the liquor licence and the premises remains closed. All stock and most furnishings have been removed from the premises.

ASSESSMENT OF MATTER

7. The premises have not been operational since 11 June 2015 and the licensee has not been successful in securing a third party to lease or operate the premises.
8. 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.

9. In the circumstances of this matter it may be accepted on the information provided, and the acknowledgement of Mr Jazyschyn on 29 March 2016 that the inability is permanent.
10. 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.
11. Accordingly the liquor licence must be cancelled pursuant to Section 47(5).

CONSIDERATION CRITERIA

12. 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.
13. Further, that no other arrangements have been made to my satisfaction to conduct the business of the liquor licensee.

SUMMARY

14. The licensee ceased trading on or about 11 June 2015 and the licensee has not conducted the business of the licensee since that date, it is accepted this will not change. The liquor licence has not been transferred to another licensee.
15. Accordingly, I am afforded no discretion in the matter and must cancel the liquor licence pursuant to Section 47(5) of the *Liquor Act*.

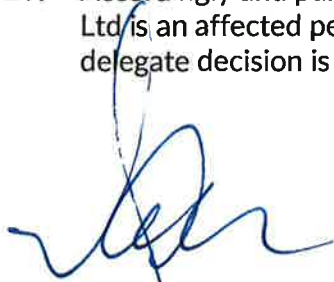
DECISION

16. I am satisfied on the evidence available that the licensee is unable to conduct the business of the liquor licence, accordingly I must cancel Liquor Licence 80204523, for the Katherine River Lodge, Katherine River Lodge Pty Ltd as the licensee.
17. By effect of Section 47(5) of the *Liquor Act*, Liquor Licence 80204523 is cancelled as of the date of this decision.

REVIEW OF DECISION

18. 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 matters under Section 47(5) of the *Liquor 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 person declared under the Act under which the delegate decision is made to be an affected person for the decision.
19. The *Liquor Act* does not provide for a review of a decision to cancel a licence under section 47(5) of the Act when made by the Director-General. Despite this by application of section 120ZB of the Act, as the decision is a delegate decision there is an overriding right to seek a review of a delegate decision.

20. Accordingly and pursuant to section 9(a) of the Act, the licensee Katherine River Lodge Pty Ltd is an affected person as they are "...the person...declared under the Act under which the delegate decision is made to be an affected person for the decision".



Mark Wood
Manager Compliance Operations South

Date: 7 October 2016