

Director-General of Licensing

Decision Notice

MATTER:	Review of Delegate Decision – Refusal to Issue Special Licence
APPLICANT:	Morandini Investments Pty Ltd trading as Sage Resort Darwin
LEGISLATION:	Part VI of the <i>Liquor Act</i> and Part 3 of the <i>Licensing (Director-General) Act</i>
DECISION OF:	Director-General of Licensing
DATE OF DECISION:	8 December 2016

BACKGROUND

1. On 29 November 2016, Mr Samuel Ballard on behalf Morandini Investments Pty Ltd trading as Sage Resort Darwin lodged an application for the grant of a special liquor licence for the premises known as Sage Resort Darwin located at 622 Lee Point Road, Lee Point in the Northern Territory.
2. By decision dated 1 December 2016, a delegate of the Director-General of Licensing (the Director-General) refused to issue the special licence on the grounds that the premise for which the special licence was sought remains under construction and relevant certifications including those related to fire safety have not been issued.

CURRENT SITUATION

3. On 5 December 2016, Mr Giovanni Morandini on behalf of Morandini Investments Pty Ltd sought a review of the decision of the delegate to refuse to issue the special licence. The grounds on which Morandini Investments Pty Ltd seeks the review are that not holding a special licence will impact on their business, given that they have a number of functions booked for the weekend ahead. The applicant states that, "*as a new venue looking to grow our business this would create a negative impact and reduce our local support.*" The applicant has requested that the special licence be issued until the end of January 2017 whilst they "*complete the final steps required to gain a full licence.*"
4. Part 3 of the *Licensing (Director-General) Act* provides for the review of delegate decisions by the Director-General. Section 14 of that Act provides that in conducting a review of a delegate decision, the Director-General must take into account any matter that the Act under which the delegate decision was made requires the Director-General to take into account in reviewing the decision.
5. After reviewing the delegate decision, the Director-General must affirm the decision, vary the decision or set aside the decision and substitute a new decision.

CONSIDERATION OF THE ISSUES

6. On 23 June 2016, I issued liquor licence number 80819200 to Morandini Investments Pty Ltd for the Sage Resort Darwin at 622 Lee Point Road, Lee Point in the Northern Territory.
7. The licence was issued immediately following publication of my decision, however, was subject to a condition that the sale of liquor was not permitted until notification had been received from the NT Fire and Rescue Service confirming that the premises comply with the *Fire and Emergency Act* and associated Regulations. Upon receiving this advice, I will provide my approval in writing to authorise the commencement of the sale of liquor.
8. Whilst not a condition of the licence, in my Decision Notice dated 23 June 2016 issued pursuant to 29(2) of the Act, I also determined that the Licensee must also present evidence satisfying me that the premises have been satisfactorily constructed and the appropriate approvals including the issue of a certificate of occupancy pursuant to the *Building Act* had been obtained by the Licensee.
9. The requirement for both a valid certificate of occupancy and notification of compliance with the *Fire and Emergency Act* and associated Regulations is to satisfy me that the structures to be used within the licensed premises are compliant with applicable building codes and other laws, thus indicating that they are in a condition suitable for occupancy and as such do not pose a public safety issue.
10. To date, I have not received notification that the premises comply with the *Fire and Emergency Act* and associated Regulations nor that a certificate of occupancy pursuant to the *Building Act* has been issued. As such, I am not currently satisfied that the premises do not pose a risk to public safety and as a result Liquor Licence 80819200 does not currently authorise the sale of liquor by the Licensee.
11. The delegate decision subject of this review was to refuse to grant a special licence for the premises known as Sage Resort Darwin located at 622 Lee Point Road, Lee Point in the Northern Territory. The grounds for the delegate decision as detailed in the Delegate of the Director-General of Licensing Decision Notice dated 1 December 2016 were that the premise for which the special liquor licence was sought remains under construction and relevant certifications including those related to fire safety have not been issued.
12. A special licence is defined in the Act as one which is issued under Part VI of the Act. Pursuant to section 57 of the Act, a special licence authorises the holder to sell liquor:
 - (a) during the period or periods; and
 - (b) on or at the premises; and
 - (c) subject to the conditions, specified in the licence.
13. Section 58(1) of the Act details that an application for the grant of a special licence shall be :
 - (a) lodged with the Director-General no later than 28 days before the date or the first date in respect of which the application is made; and
 - (b) made in the approved form; and
 - (c) accompanied by the prescribed fee.
14. Section 58(2), however allows at the discretion of the Director-General to accept an application that does not comply with the provisions of subsection (1).

15. After considering the application, pursuant to section 59(1), the Director-General must issue the special licence subject to any conditions the Director-General thinks fit or refuse to issue the special licence.
16. When considering a licence, the Act prescribes specific matters which the decision maker must consider in the assessment of the application, however, the same is not so when considering special licences. Whilst this may be the case, pursuant to section 3(3) of the Act, a person exercising a power or performing a function under the Act must have regard to the objects of the Act and must exercise the power and perform the function in a way that is consistent with those objects.
17. In this respect, consideration of a special licence must take into account the primary object of the Act which is to regulate the sale, provision, promotion and consumption of liquor:
 - (a) so as to minimise the harm associated with the consumption of liquor; and
 - (b) in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.
18. As indicated earlier in this decision, on 29 November 2016, Mr Samuel Ballard on behalf Morandini Investments Pty Ltd trading as Sage Resort Darwin lodged an application for the grant of a special liquor licence for the premises known as Sage Resort Darwin located at 622 Lee Point Road, Lee Point in the Northern Territory.
19. Whilst the application form itself is lacking in detail, email correspondence between Licensing NT officers and Mr Ballard indicate that the special licence applied for was of a similar nature as to two previous special licences applied for and issued with respect to Sage Resort Darwin. As referred to in the Delegate of the Director-General of Licensing Decision Notice dated 1 December 2016, these special licences were issued on 1 July 2016 and again on 2 September 2016.
20. It is not my intention to examine the circumstances or correctness of the delegate decisions that were made to issue these special licences, however it would appear that they were issued so that the Sage Resort Darwin could trade whilst it continued to work towards gaining the necessary certificate of occupancy and compliance with the *Fire and Emergency Act* and associated Regulations so that the licence I issued on 23 June 2016 could become operational.
21. Inquiries undertaken by Licensing NT officers during consideration of the special licence application confirmed that a certificate of occupancy had not been issued for Sage Resort Darwin nor had compliance with the *Fire and Emergency Act* and associated Regulations been obtained from the NT Fire and Rescue Service. This is still the case at the time of writing this decision.
22. As previously mentioned, the requirement for both a valid certificate of occupancy and notification of compliance with the *Fire and Emergency Act* and associated Regulations is to ensure that the structures to be used within the licensed premises are compliant with applicable building codes and other laws, thus indicating that they are in a condition suitable for occupancy and as such do not pose a public safety issue.
23. In taking into account the public interest in the sale, provision, promotion and consumption of liquor, I am not satisfied that without both a certificate of occupancy and compliance approval from NT Fire and Rescue Service that the safety, health and welfare of a person who may use the premises if it were to be issued a special licence is not at risk.

24. This correlates with my earlier decision to not allow the licence I issued on 23 June 2016 for the premises to become operational until both a certificate of occupancy and a compliance approval from NT Fire and Rescue Service are obtained.

DECISION

25. On the basis of the matters set out above, and in accordance with section 14(2)(a) of the *Licensing (Director-General) Act*, I have determined to affirm the decision of the delegate dated 1 December 2016 to refuse to issue the special licence pursuant to section 59(2)(b) of the *Liquor Act*.

REVIEW OF DECISION

26. Section 120ZA 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 to refuse to issue a special licence pursuant to section 59 of the Act is specified in the Schedule and is a reviewable decision.
27. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision. For the purpose of this decision, and in accordance with section 120ZB of the Act, the affected persons are the applicant, Morandini Investments Pty Ltd.



Cindy Bravos
Director-General of Licensing

8 December 2016