

Review of Decision of Delegate of the Director of Liquor Licensing Decision Notice

MATTER:	Review of decision by delegate to refuse acceptance of an application
APPLICANT:	Little Cashy Pty Ltd and Dunstall Pty Ltd
LICENSED PREMISES:	Landmark@Gateway R08, 1 Roystonea Avenue PALMERSTON CITY NT 0830
LEGISLATION:	<i>Liquor Act 2019</i> - Part 3 and 4
DECISION OF:	Senior Director Liquor
DATE OF DECISION:	12 April 2022

DECISION

1. As a delegate of the Director of Liquor Licensing, with reference to section 29(3)(c) of the *Liquor Act 2019*, I set aside the decision of the delegate made 17 March 2022 to refuse to accept an application from the licensee, Little Cashy Pty Ltd and Dunstall Pty Ltd, for a liquor licence with a special event authority for Friday, 15 April 2022 (Good Friday).
2. In setting aside the decision I substitute a new decision to accept the application in pursuance of section 56(1)(b) of the Act.

BACKGROUND

3. An application was received from the licensee seeking a liquor licence with a special event authority for Friday, 15 April 2022 for the hours of 21:01 to 23:59 hours.
4. The application was made on the basis the licensee was able to trade until 21:00 hours and wished additional hours to allow for patrons to watch the various sporting matches played on that evening. Those matches invariably do not finish until later in the evening.
5. Aside from the additional hours it was noted the application was deficient and made in an incorrect manner, in that the stated applicant was not the licensee and had no standing to make such an application.

6. The defect notwithstanding, the delegate refused to accept the application on the basis the *Liquor Regulations 2019* (the Regulations) provided prescribed hours of trade on Good Friday and that additional hours, through a special event authority would be contrary to the intent of the Act.
7. A decision notice was provided in accordance with the requirements.
8. For the avoidance of doubt, no decision was made in relation to the substantive application.
9. On 31 March 2022 the licensee lodged an application with the Director for a review of the decision.
10. On 31 March 2022 the Director declared a conflict in relation to this matter.

CURRENT SITUATION

11. Section 27 of the Act allows a person to seek a review of a delegate's decision by the Director.
12. The decision to refuse to accept the application was made by a delegate and therefore able to be reviewed by the Director.
13. The Director has declared a conflict in this matter and therefore it would be inappropriate for him to undertake the review.
14. Such a position is rare and to date has not been encountered.
15. Several senior personnel within Licensing NT have delegations to make decisions in relation to the granting of a special event authority, this includes the Senior Director Liquor.
16. It necessarily follows that in this role I am likewise a delegate and ordinarily a decision to review another delegate's decision would be *ultra vires*.
17. This action otherwise barred notwithstanding, a review must be undertaken and noting the timeframe, must be done as a matter of urgency so that the substantive application may be considered, if the refusal is overturned.

CONSIDERATION CRITERIA

18. I considering this review the *Doctrine of Necessity* is relied upon to allow for a delegate to review another delegate's decision.
19. The doctrine is a well established legal principle conferring a power, in the absence of another person otherwise able to consider a matter, on a person who would otherwise not be able to.

20. It necessarily follows by effect of this doctrine the review is being taken undertaken, for all intents and purposes by the Director.
21. I have considered the circumstances, the materials that were provided and the previous approvals for such a licence, and am satisfied the application may be accepted.
22. For the avoidance of doubt, as written earlier this review is narrow and only refers to the acceptance of the application, not the substantive application.

REVIEW OF DECISION

23. Section 29(1)(b) of the *Liquor Commission Act 2018* prohibits a review by the Commission of a decision of a delegate of the Director that is reviewable by the Director under the *Liquor Act 2019*.
24. Accordingly this review may not be subsequently reviewed by the Commission, nor the Northern Territory Civil and Administrative Appeals Tribunal, noting the inherent jurisdiction of the Supreme Court of the Northern Territory.

A Allen

Andrea Allen
Senior Director Liquor
Delegate of the Director of Liquor Licensing

12 April 2022