

# Delegate of the Director of Liquor Licensing

## Decision Notice

---

<b>MATTER:</b>	Complaint pursuant to section 160 of the <i>Liquor Act 2019</i>
<b>LICENSEE:</b>	Alice Springs 24 Hour Pty Ltd
<b>PREMISES:</b>	Formerly known as Ibis Styles Alice Springs Oasis
<b>LICENCE:</b>	80102591
<b>LEGISLATION:</b>	Part 7, Division 3 of the <i>Liquor Act 2019</i>
<b>DECISION OF:</b>	Southern Region Manager – Licensing & Compliance
<b>DATE OF DECISION:</b>	6 September 2024

---

### DECISION

1. For the reasons set out below as a delegate of the Director of Liquor Licensing (the Director), I upheld a complaint against the licensee, Alice Springs 24 Hour Pty Ltd (the licensee) that from on or about 31 August 2019 the licensee's licensed premises have not been used for the sale, supply, service or consumption of liquor.
2. Upon completion of the investigation into the complaint, I am satisfied that the following action should be taken:
  - a. pursuant to section 163(1)(a)(i) of the *Liquor Act 2019* (the Act) take no further action in relation to the complaint as I am satisfied there are no grounds to justify taking further action; and
  - b. accept the surrender of the licence by the licensee pursuant to section 66 of Act on the basis I am satisfied no persons other than the licensee have an interest in the licence.

### REASONS

#### Background

3. Alice Springs 24 Hour Pty Ltd (the licensee) is the holder of liquor licence 80102591 (the licence) for premises formerly known as "Ibis Styles Alice Springs Oasis", situated at Gap Road, Alice Springs (the premises). The nominee is Mr Peter Foster who is also the Director of the licensee.

4. On 26 July 2019 a delegate of the then Director-General of Licensing approved a transfer of the licence from Garrett Hospitality Regional Hotels Pty Ltd to Alice Springs 24 Hour Pty Ltd conditional upon settlement of the sale.
5. On 22 November 2019 a Certificate of Transfer of the licence was issued to Alice Springs 24 Hour Pty Ltd upon confirmation of the settlement of the sale of the business.
6. This licensee has not traded under this licence since its acquisition.
7. In November 2020 Mr Foster met with me to discuss his plans for renovations at the premises, and his intention to commence trade "...maybe in 6 to 12 months time".
8. At that time this submission was accepted, and no action was taken in relation to the licence.
9. On 10 February 2021 following an email from Licensing NT regarding the payment of the annual licence fee, Mr Foster submitted he "...will be reopening after the repairs and renovation at the property have been completed latter (sic) on this year".
10. On 11 August 2021 the Director of Liquor Licensing (the Director) approved a request by Mr Foster to not take action against the licence on the basis of the materials provided, which included reference to the ongoing works at the premises.
11. This approval was limited to 31 December 2021, with a direction to advise the Director if the date was likely to be extended.
12. On 17 January 2024 further correspondence was sent to Mr Foster in relation to the premises and his intentions as a result of having received no further materials or contact since December 2022.
13. Mr Foster claimed he had completed the major building works however had ceased final fit out on the basis of escalating crime in Alice Springs, and that it would be unsafe for him to recommence trade at this time.
14. A further claim was made by Mr Foster he had approval to continue without trade on the basis he "...had a number of meetings with Licensing staff on Alice Springs 3 years ago".
15. Whilst it is correct he has met with officers from this office, including this author, he is with respect mistaken in relation to any blanket continuing approval.

## THE COMPLAINT

16. On 26 August 2024 a complaint was lodged with the Director pursuant to section 160 of the Act, the grounds for the complaint being pursuant to subsection 160(1)(g)(i) of the Act in that the licensee's licensed premises are no longer being used for the sale, supply, service or consumption of liquor.
17. The complaint was in the approved form and specified the grounds for the complaint, was signed and lodged with the Director in compliance with the requirements of section 160(2) of the Act.
18. A delegate of the Director accepted the complaint within the 14-day prescribed period, and the licensee was given a notice of the substance of the complaint in compliance with section 162(1) of the Act within the prescribed period and invited them to provide a response to the complaint.
19. On 2 September 2024 Mr Foster responded to the complaint stating he had advised he would not be reopening:

“...until the high crime rate in Alice Springs is reduce (sic). I have a duty of care to my staff and my customers. The NT Government has continually failed, to provide a safe environment for the residence (sic), tourists and business in Alice Springs.

This year the crime has not been reduced but has increased, therefore I am instructing you to cancel my Liquor Licence from tomorrow, Tuesday 3 September 2024.”
20. It cannot be disputed the premises are no longer being used for the sale or supply of liquor as contemplated by the grounds referred to in section 160(1)(g) of the Act and have not been used for a period of five years.

## COMPLIANCE HISTORY

21. The licensee has not been the subject of disciplinary action previously, notwithstanding he has not operated since acquiring the licence.

## ACTION AFTER INVESTIGATION

22. On completion of the investigation, as a delegate of the Director I may do any of the following:
- Take no further action if satisfied that there are no grounds or evidence to justify taking further action, or the matter does not warrant taking further action;
  - Give the licensee a formal warning in relation to the complaint;
  - Mediate the complaint;
  - Issue an infringement notice in relation to the complaint;
  - Enter into an enforceable undertaking with the licensee; or
  - Refer the matter to the Commission for disciplinary action.
23. Three complaints of this nature have only recently been lodged, with all being referred to the Liquor Commission for hearing and disciplinary action. The Commission cancelling the two most recent licences for commercial operators, with the first in time being a community-based organisation who has been provided a 12-month grace period to recommence trade.
24. In that matter the Commission has placed an automatic expiration on the licence if the licensee does not recommence trade at the original premises, or others as approved within 12 months of the date of the decision.
25. Ordinarily this matter would for parity be referred to the Commission for disciplinary action, the disposition sought being cancellation of the licence. The distinction in this matter is the licensee's surrender of the licence.
26. It is long accepted any decision to take disciplinary action is also dependent on whether it is appropriate to take the proposed action in the circumstances.
27. Although the surrender of the licence is a discretely different matter, I am of the opinion it has a significant bearing on this matter and have subsequently formed the opinion there are no grounds or evidence to justify taking any further action in relation to the complaint itself.
28. Mindful of the surrender of the licence, it would be improper to effectively impose two penalties on the licensee, and there is no public interest and serve no purpose pursuing the matter or this licensee.
29. A licensee may surrender their licence or an authority, the process of which is prescribed by section 66 of the Act.
30. The Director must accept the surrender of a licence if satisfied that the licensee has given all persons who have an interest in the licence at least 14 days' notice of their intention to surrender the licence.

31. Having met over the years with Mr Foster in relation to the premises and having the benefit of access to the Licensing NT databases in relation to the licence, I am satisfied there are no persons other than the licensee who hold an interest in the licence.
32. With reference to section 66(3) of the Act I therefore must accept the surrender of the licence.
33. A Certificate of Surrender has been issued of even date to confirm the surrender.
34. Within 14 days of making this decision the Act requires the complainant, licensee and the Commission to be given a copy of the notice.

## REVIEW OF DECISION

35. As a decision of a delegate of the Director, this notice must state the decision and reasons for it, as well as advise an affected person of their right to seek a review of the decision and the manner in which it may be done.
36. Section 27 of the Act provides for a licensee or the complainant to seek a review of the decision within 28 days after the written notice is given to the person, and the application must be in the approved form and state the grounds for the review, and the facts relied upon to establish the grounds.
37. Accordingly, the affected persons in relation to this decision are Alice Springs 24 Hour Pty Ltd and the complainant.



**Mark Wood**  
**Southern Region Manager – Licensing & Compliance**  
Delegate of the Director of Liquor Licensing

6 September 2024