

Delegate of the Director-General

Decision Notice

MATTER:	Cancellation of Liquor Licence
PREMISES:	Fox Ale House
LICENSEE:	Nundor Pty Ltd
NOMINEE:	Ms Tiani McCourt
LEGISLATION:	Section 47 of the <i>Liquor Act</i>
DECISION OF:	Delegate of the Director-General
DATE OF DECISION:	11 October 2016

BACKGROUND

1. The premises known as Fox Ale House, 85 Mitchell Street Darwin, ceased trading on 7 September 2012.
2. The premises have subsequently been demolished and are awaiting redevelopment.

CURRENT SITUATION

3. No application has been received from any party seeking the transfer of the liquor licence and as written earlier the premises no longer exist.
4. A letter was sent to the licensee on 5 July 2016 referring to the requirements under Section 47(5) of the *Liquor Act* (the Act). The letter provided the licensee with a period of 90 days in which time evidence must be provided as to the licensee conducting the business of the licence, or an application for the transfer of the licence must be received.
5. No response has been received from the licensee.

ASSESSMENT OF MATTER

6. The premises have not been operational since September 2012 and the licensee has not responded to attempts to contact them.
7. Further, the premises no longer exist and the block is awaiting re-development.

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 and in the absence of any response from Nundor Pty Ltd to the contrary, it may be accepted on the information provided the inability of the licensee to conduct the business of the licence 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. The licensee has provided no submissions in relation to this matter and the premises no longer exist.

SUMMARY

14. The licensee has not traded since September 2012 and has been demolished. The licensee has not conducted the business of the licensee since that date, and it is accepted this will not change. The liquor licence has not been transferred to another licensee.

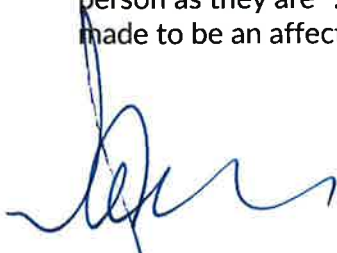
15. Accordingly, I am afforded no discretion in the matter and must cancel the liquor licence pursuant to Section 47(5) of the *Liquor Act*.

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 80316631, for the Fox Ale House, 85 Mitchell Street Darwin, Nundor Pty Ltd as the licensee.
17. By effect of Section 47(5) of the *Liquor Act*, Liquor Licence 80316631 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 Attorney-General and Justice 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 Nundor 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
Delegate of the Director-General

Date: 11 October 2016