

## Manager Compliance Operations South

### Decision Notice

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<b>MATTER:</b>	Cancellation of Liquor Licence
<b>PREMISES:</b>	Ah Toy's Store
<b>LICENSEE:</b>	J Ah Toy Pty Ltd
<b>NOMINEE:</b>	Mr Edward Cheong Ah Toy
<b>LEGISLATION:</b>	Section 47 of the <i>Liquor Act</i>
<b>DECISION OF:</b>	Manager Compliance Operations South
<b>DATE OF DECISION:</b>	10 October 2016

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### BACKGROUND

1. The premises known as Ah Toy's Store, 35 Main Terrace Pine Creek, ceased trading when the lessee and then licensee, T&H NT Pty Ltd surrendered the lease back to the lessor, Mr Ah Toy.
2. This was confirmed to have happened in April 2015 by Ms Helen Reed, a director of T&H NT Pty Ltd when contacted by compliance personnel in Katherine in February 2016.
3. Consultation was then commenced with Mr Ah Toy who previously held the licence prior to leasing it to T&H NT Pty Ltd. As a result of these consultations the licence was transferred back to J Ah Toy Pty Ltd so that Mr Ah Toy might be able to transfer the licence to another party.
4. During these discussions it was made clear by Mr Ah Toy that he had no intention of conducting the business of the licensee himself.
5. J Ah Toy Pty Ltd is the licensee of the premises and holds Liquor Licence, 80901791 – Store.
6. This author met with Mr Ah Toy at the premises on 21 March 2016 to discuss the matter of transferring the licence and the cancellation. On 29 March 2016 Mr Ah Toy was sent a letter providing a period of 90 days in which the licence must be transferred to another party or the business of the licensee otherwise conducted.
7. The licensee has not been successful in securing other parties to lease or otherwise trade at the premises, the premises remains closed.

## CURRENT SITUATION

8. No application has been received from any party seeking the transfer of the liquor licence and the premises remains closed.
9. It was confirmed with Mr Ah Toy by telephone on 10 October 2016 that the premises remains closed and there are no plans to re-commence trading at the premises at this time. Mr Ah Toy is aware that in the event the licence is cancelled it does not preclude a subsequent application for a new licence.

## ASSESSMENT OF MATTER

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

12. In the circumstances of this matter it may be accepted on the information provided, and the discussions with Mr Ah Toy in March 2016 that the inability is permanent.
13. 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.
14. Accordingly the liquor licence must be cancelled pursuant to Section 47(5).

## CONSIDERATION CRITERIA

15. 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.
16. Further, that no other arrangements have been made to my satisfaction to conduct the business of the liquor licensee.

## SUMMARY

17. The licensee ceased trading on or about April 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.
18. 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

19. 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 80901791, for Ah Toy's Store, 35 Main Terrace Pine Creek, J Ah Toy Pty Ltd as the licensee.
20. By effect of Section 47(5) of the *Liquor Act*, Liquor Licence 80901791 is cancelled as of the date of this decision.

## REVIEW OF DECISION

21. 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.

22. 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.
23. Accordingly and pursuant to section 9(a) of the Act, the licensee J Ah Toy 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: 10 October 2016