

Delegate of the Director-General of Licensing

Decision Notice

MATTER:	Conduct of the Business of a Licensee
PREMISES:	Turnt Bar Restaurant
LICENSEE:	Istanbul Kebab Pty Ltd
NOMINEE:	Mrs Nilufer Kavouklis
LEGISLATION:	Section 47(5) of the <i>Liquor Act</i>
DECISION OF:	Delegate of the Director-General of Licensing
DATE OF DECISION:	2 November 2016

BACKGROUND

1. Istanbul Kebab Pty Ltd, trading as Turnt Bar Restaurant and previously known as Istanbul Café, was issued liquor licence 80518182 – “AUTHORITY – RESTAURANT” on 14 May 2010.
2. The licensee operated the premises at the Country Women’s Association Building, 12 Knuckey Street, Darwin under a lease agreement with the Country Women’s Association.
3. The licensee subsequently ceased trading and sub-let the premises to a third party operating as Eco Café. This third party did not seek a liquor licence and did not sell liquor.
4. Café Eco operated from 15 February 2016 and ceased trading at the premises on or about 30 October 2016.

CURRENT SITUATION

5. Discussions commenced with the licensee in March 2016 as it was noted the premises were being operated by a third party and not the licensee.
6. Correspondence was sent to the nominee of the premises stating that the premises were “non-operational” and that the licensee should seek the permission of the Director-General to “suspend” the licence. Senior Compliance Officer Gooch advised any such suspension of the licence may only be for a period of 90 days.
7. It was further advised that the licensee needed to consider their options in relation to the conduct of the business of the licensee, and at the expiration of 90 days there would be an application to the Director-General of Licensing to cancel the liquor licence.
8. The licensee was given until 11 March 2016 to respond.
9. No activity appears to have resulted from this initial correspondence.

10. On 5 July 2016 a subsequent letter was sent to the licensee under the hand of Mr Malcolm Richardson as Delegate of the Director-General of Licensing.
11. The letter detailed that it was considered that the licensee was not conducting the business of the licensee and had not done so for a substantial period of time. The licensee was advised of the provisions of Section 47 of the *Liquor Act* (the Act) in relation to the conduct of the business of the licensee.
12. The 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.

...

(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.

13. The licensee, with reference to Section 47 and the discretionary provisions of Section 127 of the Act as to time, was given a period of 90 days "...from the date of this notification within which time you must recommence trading, or alternately, lodge a submission detailing other arrangements for consideration by the Director-General".
14. The licensee was advised in the absence of trade or other arrangements as approved by the Director-General, cancellation action in relation to the licence would be commenced.
15. On 3 October 2016 a letter was received dated 30 September 2016 from Mr Paul Maher, of Paul Maher Solicitors advising he had been instructed by the licensee to respond to the letter from Mr Richardson of 5 July 2016. Mr Maher submitted the licensee had been actively negotiating with "...potential purchasers" of the business.
16. Mr Maher further requested the licensee required until the end of October to complete negotiations for the purchase of the business, seeking a "...further extension until Tuesday 1 November 2016 to enable these steps to be effected".
17. On 3 October 2016 this author responded to the request under delegations provided by the Director-General of Licensing, approving the request for further time on the basis there appeared to be a genuine attempt to deal with the licence.

18. The granting of further time was conditional upon the following:

“...that no further extensions will be provided. Further and for the avoidance of doubt, a complete application for the transfer of the liquor licence must be received including executed lease or sale documents. Also, materials must be provided by the Country Women’s Association of the Northern Territory Inc. as title holder of the premises, confirming their approval for the application and the use of the premises as particularised on the liquor licence, specifically the hours of operation being sought.

Failure to provide all required materials by COB 31 October 2016 will result in the cancellation of the licence. Please note, in the event the licence is cancelled this does not preclude prospective purchasers seeking a new licence at those or other premises.”

19. Mr Maher confirmed receipt of the correspondence and noted the terms upon which the extension was granted.
20. As at the close of business 1 November 2016 no materials or further correspondence has been received from Mr Maher or the licensee directly.

ASSESSMENT OF MATTER

21. During this period Principal Licensing Officer Jeff Verinder had been approached by representatives of the Country Women’s Association, the owner of the premises. They advised Mr Verinder that they had initially given approval for the licensee to operate the premises from that location however, had not been aware of a subsequent variation granted to extend the hours of operation until 02:00 hours in the morning.
22. The representatives stated had they been made aware of the application from the licensee they would not have objected and had not given approval for such an operation.
23. The variation, whilst indirectly unrelated to this present matter should also be examined for completeness. One consideration of applications under the Act is whether the applicant has the authority to seek, in that case a variation of the licence conditions, or approval from the building owners if they are in a lease arrangement.
24. It would appear no such enquiry was made with the Country Women’s Association when the variation application was made. That said the variation was publically advertised both in the newspaper and physically at the premises in the prescribed manner.
25. It may therefore be argued the owner, whilst not directly approached may reasonably have been afforded an opportunity to be apprised of the application, given that it had been publicly advertised.
26. Accordingly such a position by the owner of the premises may have impacted any potential recommencement of trade by the licensee. Further, in the event an application for transfer of the liquor licence had been received, approval would be required from the Country Women’s Association.
27. Whilst it is accepted on the basis of the representation of Mr Maher that efforts had been made to deal with the business and licence, the licensee has not conducted the business of the licensee for at least eight (8) months that Licensing NT is aware of.

28. The licensee was given 90 days in March to deal with the licence or make alternate arrangements to the satisfaction of the Director-General of Licensing. A further 90 days was given to the licensee in July, with a further extension on the request of the licensee until 31 October 2016.
29. It was clearly communicated to and acknowledged by the licensee, that the licence must be dealt with by that day and that no further extension would be granted given the circumstances.
30. Whilst the licensee was given until 31 October in the absence of receipt of any materials, and on the basis Mr Maher had originally sought an extension until 1 November 2016, further reprieve was given until the close of business 1 November 2016.
31. No materials have been received from any party, nor has there been any further representations made to the Director-General of Licensing.
32. The Act is highly prescriptive and mandates the action of the Director-General in the event the licensee has is not conducting the business of the licensee. In such circumstances if it is considered the inability to conduct the business is permanent and no transfer application has been received, after the expiration of 42 days the Director-General must cancel the licence.
33. Whilst there is some discretion to extend time given to the determiner, the outcome is not discretionary.
34. The licensee has not physically operated the premises since at least February 2016 and subsequently sub-let the premises to a third party. This third party have operated a café at the premises until 30 October 2016, and for completeness they have not sold liquor or sought the sale of liquor at any time.
35. The licensee has not re-commenced trade at the premises and no other party has lodged an application to transfer the liquor licence. It may therefore be accepted the licensee is no longer conducting the business of the licensee, and there is no evidence to suggest this is not a permanent situation.
36. As an aside in the event the licence is cancelled there is no impediment, save for the consent of the owner for any prospective purchaser or lessee to seek the granting of a new liquor licence.

CONSIDERATION CRITERIA

37. In considering this matter the Act requires me to be satisfied the licensee is no longer conducting the business of the licensee that the inability of the licensee is or expected to be, permanent and that no application has been made to transfer the liquor licence.
38. I have considered all the materials before me and the circumstances that exist in this matter. I am satisfied that the above criteria have been met.

SUMMARY

39. The licensee has not conducted the business of the licensee at the premises for a considerable period of time. The licensee sub-let the premises to a third party who operated a separate cafe that did not sell liquor.

40. The licensee was given two periods of 90 days to deal with the licence and, upon application a further period until 31 October 2016 to re-commence trade or transfer the licence.
41. The licensee has not re-commenced trade at the premises and no party has sought to transfer the liquor licence. The period within which the licensee was given to deal with the licence has expired and the licensee was aware of the outcome in the event no activity was evident.

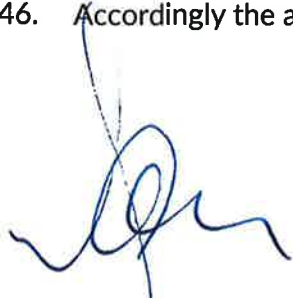
DECISION

42. Pursuant to Section 47(5) of the Act, it is the determination in this matter that the licensee is unable to conduct the business of the licensee, that being 80518182 - Istanbul Kebab Pty Ltd trading as Turnt Bar Restaurant at the Country Women's Association Building, 12 Knuckey Street Darwin. No application has been received to transfer the aforementioned liquor licence. Accordingly the licence must be cancelled as no arrangements which are satisfactory to the Director-General have been made during the extended period afforded the licensee, to conduct the business of the licensee.
43. Liquor Licence 80518182 is cancelled pursuant to Section 47(5) of the *Liquor Act* from the date of this notice.

REVIEW OF DECISION

44. Determinations under Section 47(5) are not reviewable decisions when made by the Director-General; this decision however is made by a delegate and therefore subject to separate review provisions.
45. 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 applications made 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 licensee and a person who made a submission, complaint or objection (however described) during the process that resulted in the decision being made.

46. Accordingly the affected person in relation to this matter is Istanbul Kebab Pty Ltd.

A handwritten signature in blue ink, appearing to be 'Mark Wood', with a vertical line extending upwards from the top of the signature.

Mark Wood

Delegate of the Director-General of Licensing

2 November 2016