

Delegate of the Director-General of Licensing

Decision Notice

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| Matter: | Application for the transfer of a liquor licence |
| Premises: | The Bark Hut Inn Arnhem Highway Annaburoo NT |
| Applicant: | Colin E & Jaye L Fink in Partnership |
| Current Licensee: | The Bark Hut Inn Pty Ltd |
| Legislation: | Sections 40, 41 & 43 <i>Liquor Act</i> |
| Decision of: | Deputy Director-General (Operations) |
| Date of Decision: | 19 May 2017 |

BACKGROUND

1. On 8 February 2017 Colin E & Jaye L Fink in Partnership (the applicant) made application for the transfer of a liquor licence pursuant to section 40 of the *Liquor Act* (the Act).
2. The Act provides for Director-General of Licensing to authorise the transfer of a liquor licence having regard to the objects of the Act.

APPLICATION

3. The transfer application relates to Liquor Licence 81200994: "AUTHORITY - ROADSIDE INN (UNSERVICED)".
4. The holder of the licence is The Bark Hut Inn Pty Ltd (the licensee), with Mr Andrew Armstrong as Nominee and also a director of the company.
5. The applicant is the owner of the premises from which the business of the licensee was conducted under a lease agreement which expired on 1 December 2016 (the lease).
6. The lease was not renewed by either party with the result being that the licensee relinquished possession of the premises to the applicant.
7. The licensee does not consent to the transfer of the licence and has stated its intention to conduct the business of the license elsewhere. However, substitute premises have not yet been identified and no application for the substitution of premises has been received to date.
8. The applicant acknowledges that the licensee does not consent to the transfer however, seeks to rely on a clause within the lease which the applicant submits is a Power of Attorney and which authorises the applicant to act on behalf of and in the name of the licensee with respect to matters affecting the licence.

CURRENT SITUATION

9. The licensee has held the licence since 28 October 2009 when the subject licence was transferred to it from Spicedew Pty Ltd.
10. Spicedew Pty Ltd also leased the premises from the applicant and assigned the lease to the licensee as part of the transfer process.
11. The assigned lease contains the provision now sought to be relied on by the applicant to deal with the licence absent consent of the licensee.

ASSESSMENT OF APPLICATION

12. Section 41 of the Act mandates that an application for a transfer must be considered with reference to sections 25, 26A and 28 of the Act as if that application was an application for the grant of a licence under section 24.
13. In that regard, I note that the applicant provided evidence of its financial stability, reputation and character. There is no evidence to suggest that the applicant is not fit and proper to hold a liquor licence.
14. The issue central to determination of the application is the licensee's objection to the transfer in circumstances where it (not the applicant) has a *prima facie* right to operate the licence and in circumstances where an intention to operate the licence from a substituted premises has been communicated to the Director-General of Licensing.
15. The applicant submits that the application is made with authority to deal with the licence on behalf of the licensee pursuant to the lease agreement which bound the parties with respect to the operation of the licence from the premises at The Bark Hut Inn.
16. It must be noted that both the applicant and the licensee agree that the lease ceased to have effect on 1 December 2016. Presumably, it must follow that any rights and entitlements of either party arising from the lease agreement also ceased to have effect on that date.
17. The application for transfer of the licence was submitted on 16 December 2016, 15 days after the lease (and presumably any right or entitlement flowing from it) ceased to exist.
18. I have been made aware that there is an ongoing commercial dispute between the licensee and the applicant relating to business dealings associated with the operation of the lease prior to 1 December 2016 however, it is not for me to consider those matters, nor are they relevant to determination of the present application.
19. The operation of the licence at a premises other than The Bark Hut Inn, Arnhem Highway, Annaburoo is subject to approval by the Director-General of Licensing after consideration of an application being made in accordance with section 46A of the Act. The licensee is entitled to make such application but would not be so entitled if the licence was transferred to the present applicant and it ceased to be a licensee.
20. Whilst it has previously been determined that a liquor licence is not property 'belonging' to a licensee, the transfer of a licence without the consent of the entity presently entitled to operate it would, in my view be to deny the licensee a present right and entitlement to deal with its licence.
21. Taking those matters into account, I am not satisfied that the application for the transfer of the licence should be approved at this time.
22. It may be noted that the applicant is entitled to make application for a liquor licence in accordance with section 24 of the Act.

DECISION

23. The applicant seeks to transfer a liquor licence for the premises known as The Bark Hut Inn, Arnhem highway, Annaburroo.
24. The licence sought to be transferred is 81200994, "AUTHORITY - ROADSIDE INN (UNSERVICED)".
25. The licensee under the licence is The Bark Hut Inn Pty Ltd which does not consent to the transfer of the licence.
26. Whilst not presently operating the licence, the licensee has communicated an intention to make application to substitute the premises from which the licence operates. To date, no application has been made nor an alternative premises identified.
27. Unresolved commercial disputes between the applicant and the licensee arising from the previous operation of the licence and which was subject to a lease agreement existing between the two is not a matter for determination in this application or, pursuant to the Act.
28. I am not persuaded that the transfer of the liquor licence in the present circumstances should be authorised; that is, in the absence of consent of the current licensee, and where the applicant is not precluded from applying for a licence in accordance with section 24 of the Act.

For the reasons set out and in accordance with section 43(1)(b)(ii) of the Act, I refuse the application.

REVIEW OF DECISION

29. Section 8 of the *Licensing (Director-General) Act* prescribes that a delegate decision is a decision under any Act, of the Director-General that is made by a delegate of the Director-General.
30. Section 10 of the *Licensing (Director-General) Act* provides that a person affected by a delegate decision may apply to the Director-General for a review of the decision. Such application for review must be made within 28 days after written notice of the delegate decision is given to an affected person, or within any additional time that the Director-General allows.
31. Section 9 of the *Licensing (Director-General) Act* prescribes an affected person for a delegate decision to be the applicant and a person who made a submission, complaint or objection (however described) during the process that resulted in the decision being made.
32. Accordingly, the affected persons in relation to this decision are Colin E & Jaye L Fink in Partnership and The Bark Hut Inn Pty Ltd.



Sally Ozolins
Deputy Director-General (Operations)

19 May 2017