

Director-General of Licensing

Decision Notice

MATTER: Disciplinary action against licensee pursuant to section 68 of the *Liquor Act*

LICENSEE: Deckora Pty Ltd

PREMISES: Jingili Foodland

LICENCE NO: 80900664

LEGISLATION: Sections 67 and 68 of the *Liquor Act*

DECISION OF: Director-General of Licensing

DATE OF DECISION: 21 February 2018

BACKGROUND

1. Deckora Pty Ltd currently holds Liquor Licence 80900664 for premises known as Jingili Foodland. Jingili Foodland operates a supermarket and general store business located at Jingili Terrace, Jingili.
2. On 15 November 2007, the former Licensing Commission at the request of the licensee exempted the licensee from complying with section 33E of the *Liquor Act* (the Act) and suspended the liquor licence for a period of 5 years. Section 33E of the Act prohibits a licensee from retaining possession of a person's credit or debit card as security for payment by the person for the sale of liquor or other goods at the licensed premises. The licensee's request appears to have been prompted at the time by a change in business practices whereby liquor would no longer be sold at the premises, however the licensee did not wish to surrender the liquor licence on the basis that he may wish to sell the premises at a later date.
3. It would appear from the former Licensing Commission's decision referred to above that the licence became operational again on 15 November 2012. However, during a review of liquor licences undertaken at my direction in 2016 it was identified that Jingili Foodland had not engaged in the sale or supply of liquor since the suspension imposed by the former Licensing Commission in 2007.
4. On 5 July 2016, notice was provided to the licensee that licence cancellation procedures would be instituted if operation of the licence was not resumed.
5. On 11 April 2017, a complaint was accepted by the Director-General against the licensee pursuant to section 68 of the Act. The ground of the complaint was that the premises were no longer being used for the sale or supply of liquor as set out in section 67(3)(g)(i) of the Act. The licensee was advised that the complaint had been accepted and was invited to provide a response.

6. As at 5 May 2017 the licensee had not provided a response and in accordance with section 68(5)(b)(iii) of the Act, the licensee was advised that a determination to take disciplinary action had been made. The disciplinary action proposed was cancellation of the licence on the grounds that the licensed premises was no longer being used for the sale or supply of liquor contrary to section 67(3)(g)(i) of the Act.
7. At that time, the licensee was invited to make submissions as to why the licence ought not be cancelled, however no response was received.
8. On 22 December 2017, the licensee was advised that I had determined to hold a Public Hearing in relation to the matter in accordance with the Director-General Guideline relating to Public Hearings regarding complaints under the Act.
9. On 18 January 2018 the licensee confirmed, by e-mail correspondence to my office, that liquor was not being sold from the premises.
10. The Public Hearing proceeded on 25 January 2018. The licensee did not attend.

CONSIDERATION OF THE ISSUES

11. The substance of the complaint is that the premises effectively ceased selling or supplying liquor on or about 15 November 2007 when the licence was suspended by the former Licensing Commission.
12. The information available to me, including confirmation from the licensee indicates that liquor has not been sold from the premises since the date of suspension.
13. It appears that over a period of time, Licensing NT officers engaged with the licensee in relation to the operation of the licence and on 5 July 2016 notice was provided to the licensee that licence cancellation procedures would be instituted if operation of the licence was not resumed.
14. The licensee has previously advised my office that he has no immediate intention to resume the operation of the licence however, did not wish to surrender the licence for commercial reasons. Specifically, that if the business was to be sold in the future, it could be sold with a liquor licence for the premises.
15. Liquor licences are issued and must be operated in accordance with the Act. The inclusion of a specific ground of complaint which contemplates that a licensee will commit a breach if it fails to sell or supply liquor lends weight to the proposition that a liquor licence is not an independent asset belonging to a licensee which may be retained even if it is not being operated.
16. In the present case, the licensee confirmed that there is no intention to operate the licence and presently, there is no evidence that the licensee is seeking to sell the premises or the business operating as Jingili Foodland. In fact, the licensee advised my office that the sale of liquor simply does not fit within their current business model.

DECISION

17. In accordance with section 69(3) of the Act and having considered all relevant matters, I am satisfied that the ground for the complaint accepted on 11 April 2017 that is, that the licenced premises are no longer being used for the sale or supply of liquor is substantiated.
18. I am satisfied that the licensee was notified of intended disciplinary action namely, cancellation of the licence on 5 May 2017 and that the licensee was provided sufficient opportunity to make submissions in relation to the proposed disciplinary action.
19. I am satisfied that cancellation of the licence is appropriate in the circumstances and accordingly, Liquor Licence 80900664 is cancelled.
20. Further, pursuant to section 123 of the Act, the licensee must now return the licence to the Director-General.

REVIEW OF DECISION

21. Section 120ZA of the Act provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. A decision of the Director-General to take disciplinary action pursuant to section 69(3) of the Act is specified in the Schedule and is a reviewable decision.
22. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.



Cindy Bravos
Director-General of Licensing
21 February 2018