

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Good Fortune Take Away and Mini Market 57 Ryland Road Nightcliff NT 0810
Licensee:	Ms Leang Soy Te
Licence Number:	80901818
Proceeding:	Cancellation of Licence pursuant to Section 72(5)(a) of the <i>Liquor Act</i>
Heard Before:	Mr Richard O'Sullivan (Chairman) Mr Philip Timney (Legal Member) Mrs Kerri Williams
Date of Hearing:	31 August 2010
Date of Decision:	3 September 2010
Appearances:	Mr Mark Wood, Counsel for the Director of Licensing Ms Leang Soy Te in person

Background

- 1) In or about May 2010 the Director of Licensing became aware of the closure of the premises of the Good Fortune Take Away and Mini Market ("Good Fortune"), located at 157 Ryland Road, Nightcliff. On 6 May 2010 Licensing Inspectors visited the premises and observed that the premises were secured and empty of stock.
- 2) On 7 May 2010 a letter was sent to the residential address of the Licensee informing her of her obligation in respect of surrendering the licence pursuant to Section 39 of the *Liquor Act* ("the Act"). No response was received to that letter.
- 3) By a report dated 12 May 2010 Director of Licensing recommended to the Chairman of the Licensing Commission that the Licence for Good Fortune be suspended on the basis the premises were not currently being used for the sale and supply of liquor. On the same date the Chairman issued a notice pursuant to Section 66(1)(c) of the Act suspending the liquor licence for Good Fortune indefinitely.
- 4) On 9 August 2010 the Deputy Director of Licensing forwarded a further report to the Licensing Commission noting that, as of that date, the Good Fortune had not traded in the sale or supply of liquor for a period in excess of 90 days. The report recommended that the Commission conduct a hearing to determine whether the liquor licence for Good Fortune should be cancelled pursuant to Section 72(5)(a) of the Act. The Commission adopted that recommendation.

The Hearing

- 5) The Hearing was convened on Tuesday 31 August 2010.
- 6) Mr Wood submitted to the Commission a Business Name Extract indicating that the business name of Good Fortune Take Away and Mini Market had been removed from the Register of Business names on 28 August 2006 and that there was no current business name under which the premises was operating.

- 7) Ms Te stated that she had no knowledge as to why the business name had been removed from the register as she had received no notification regarding renewal of the business name. She also informed the Commission that the business had been running at a loss for a significant period, due in part to her being unable to obtain approval to accept the Basics Card because of the run down state of the premises. Ms Te stated that the premises were in urgent need of repair however the landlord was unwilling to undertake the necessary repairs.
- 8) Ms Te confirmed that the business had not traded since the end of September 2009 and that she had given up vacant possession of the premises to the landlord in June 2010, with the lease expiring on 1 July 2010. She stated that she wished to continue to operate the business, including the retention of the liquor licence, but had been unable to secure suitable premises from which to do so.
- 9) Ms Te stated further that she had entered negotiations for the transfer of the liquor licence around September 2009 however there was no contract entered as of December 2009 and the prospective purchaser was no longer interested. Ms Te noted that her problems had been further compounded by her suffering a recent illness and she advised that she was currently pregnant. She stated that she had been searching for new premises from which to operate the business but to date had been unsuccessful in finding suitable premises.
- 10) Following a brief adjournment, the Chairman advised Ms Te the Commission was not overly concerned with the issue of the removal of the business name from the Register of Business Names as the liquor licence was issued in the name of Ms Te and not to some corporate entity.
- 11) The issue of significant concern to the Commission is that licensed premises have not been used for the sale of alcohol since September 2009, well in excess of the period of ninety days prescribed by Section 72(5)(a) of the Act. That factor alone triggered the power of the Commission to cancel the licence. The Commission also noted that, during the course of the hearing Ms Te was unable provide any indication whatsoever in respect of when, if at all, the business would recommence trading, despite a period of some eleven months having elapsed since trading ceased.
- 12) The Commission also noted the advice provided by Mr Wood that, since September 2009 when the business ceased to trade, Ms Te had not contacted the Director to advise that the premises had ceased to trade or that the licence was no longer operational. He noted also that, when that situation came to the attention of the Director, Inspector Holehouse had experienced significant difficulty in contacting Ms Te and obtaining information for the assistance of the Commission in determining whether to cancel the licence.
- 13) The Chairman advised Ms Te that the Commission was not prepared to wait for an indefinite period for her to get her affairs in order and decide what she intended to do with the licence.

Decision

- 14) The Commission determined to adjourn the hearing for a period of three months to allow Ms Te to address the situation of the failure to trade under the liquor licence. The options available to Ms Tee are an application for the transfer of the liquor licence to a third party or, alternatively, an application for the substitution of the liquor licence at different premises. A further option would be for Ms Te to make application for the lifting of the suspension of the licence to enable her to recommence trade at the current premises, assuming the landlord agreed to improve the condition of the premises and renew the lease.
- 15) The Chairman advised Ms Te that unless she was in a position to demonstrate that an application for transfer, substitution or the lifting of the suspension of the licence had been lodged with the Director when the Hearing resumed then there was the very real prospect that the licence would be cancelled pursuant to Section 72(5)(a) of the Act.

- 16) The Chairman also directed that Ms Te keep Inspector Holehouse informed of progress with any of those applications during the course of the adjournment.
- 17) The Hearing was adjourned for a period of three months with the date of the resumption of the hearing being 09:30 hours on Wednesday 1 December 2010.

Richard O'Sullivan
Chairman

3 September 2010