

Director-General of Licensing

Decision Notice

Matter:	Review of Delegate Decision - Refusal to Grant Liquor Permit
Applicant:	XXXXXXXXXX
Legislation:	Part VIII Division 2 of the <i>Liquor Act</i> and Part 3 of the <i>Licensing (Director-General) Act</i>
Decision of:	Director-General of Licensing
Date of Decision:	21 November 2016

BACKGROUND

- 1) On 22 June 2016 XXXX, who resides at XXXX, applied for a restricted area liquor permit pursuant to Section 89 of the *Liquor Act* (the Act). By decision dated 1 November 2016 a delegate of the Director-General of Licensing (the Director-General) refused to grant a liquor permit to XXXX on the ground XXX had been issued with a drug infringement notice by NT Police for the possession of cannabis in March 2016. At the time the infringement notice was issued XXXX was at the Darwin Airport waiting for a flight to the Tiwi Islands.
- 2) In reaching the decision to refuse to grant a liquor permit to XXXX the delegate determined that, although the offence described above did not occur within the community of Tiwi Islands or a restricted area, it does raise concern over XXXX overall suitability to be issued a restricted area liquor permit. In addition the delegate concluded that the information received from enquiries made in respect of the application, including the information provided by NT Police in respect of the drug infringement notice, was of sufficient gravity to warrant a refusal of the application at the time.

CURRENT SITUATION

- 3) On 7 November 2016 XXXX sought a review of the decision of the delegate to refuse to grant XXX a liquor permit. The grounds on which XXXX seeks the review are that XXX has not been convicted of any alcohol related offences and the decision is unfair. In XXX letter XXXX concedes that XXX "made a mistake in March and paid my drug infringement notice".
- 4) Part 3 of the *Licensing (Director-General) Act* provides for the review of delegate decisions by the Director-General. Section 14 of that Act provides that in conducting a review of a delegate decision the Director-General must take into account any matter that the Act under which the delegate decision was made requires the Director-General to take into account in reviewing the decision.

CONSIDERATION OF THE ISSUES

- 5) Section 91 of the *Liquor Act* sets out the matters that the Director-General must take into consideration in determining whether or not to grant a liquor permit for a general restricted area. In considering an application for the grant a liquor permit the Director-General must

take all steps necessary to ascertain opinions regarding the application of the people who reside in the restricted area to which the application relates. In deciding whether to grant the application, the Director-General must consider any opinions regarding the applicant.

- 6) The obvious purpose for the requirement that the Director-General make inquiries regarding an applicant for a liquor permit is to determine whether the person is an appropriate person to be granted a liquor permit. In this instance that determination involves an assessment of whether XXXX is a fit and proper person to hold a liquor permit due to the issue of the drug infringement notice.
- 7) Determining whether an applicant is a fit and proper person generally involves the assessment of a number of factors and those factors may vary dependent on the nature of the application under consideration. For the purpose of assessing whether a person is a fit and proper person to hold a liquor permit the following factors are relevant considerations:
 - whether the person has ever had his or her liquor permit cancelled or suspended;
 - whether the person has ever had a special condition imposed on his or her liquor permit;
 - whether the person has ever breached a condition of his or her liquor permit;
 - whether the person has been found guilty of an offence against a law of the Commonwealth or of a State or Territory and if so, the seriousness of the offence;
 - whether the person has provided false or misleading information in making an application for a liquor permit knowing that the information was false or misleading.
- 8) In relation to XXX application the delegate made inquiries of Police to ascertain if there were any matters that would impact on the grant of a liquor permit. Information provided by Police showed that XXXX was issued with a drug infringement notice on March 2016, three months prior to the date on which XXX applied for a liquor permit. At the time XXXX was in possession of cannabis at the Darwin Airport, just prior to XXX boarding a flight to the Tiwi Islands. It is apparent that XXXX was planning to take the cannabis to the Tiwi Islands and that XXX would have done so were it not for the intervention of the Police.
- 9) The issue of a drug infringement notice falls within the list of relevant considerations set out above as an offence that needs to be taken into account in deciding whether to grant a liquor permit. Of relevance in this case, liquor permits issued for the Tiwi Islands are subject to a condition that a liquor permit may be revoked if the holder is found to have brought a dangerous drug into a restricted area or possessed a dangerous drug in a restricted area. The Tiwi Islands are a restricted area and cannabis is prescribed as a dangerous drug.
- 10) XXXX was not found guilty of an offence of bringing a dangerous drug into a restricted area. However, the fact that XXXX was not successful in bringing cannabis into the Tiwi Islands was not a matter for which XXX can be given any credit. XXX did not have a last minute change of heart and decide not to commit an offence. XXX was caught by Police before XXX boarded the flight and the cannabis was seized. In assessing the seriousness of the offending in this instance it is of significance that the relevant legislation and the community at large regard the possession of dangerous drugs as a serious offence.
- 11) In XXX application for review XXXX submits that the decision to refuse to grant XXX a liquor permit is unfair as XXX has not been convicted of any alcohol related offences and that XXX has paid the fine for the drug infringement notice. That submission cannot be sustained. Determination of whether an applicant is an appropriate person to hold a liquor permit involves an assessment of the applicant's overall character and reputation. That assessment includes consideration of all criminal offending on the applicant's part and not just offences that involve alcohol that are committed on the Tiwi Islands.
- 12) In the Decision Notice the delegate appropriately and properly considered the drug possession offence, as well as the seriousness of the offending, in reaching the decision to

refuse to grant a liquor permit to XXXX. In my view, on the basis of the matters set out above, I consider the delegate's decision to be the correct and appropriate decision in the circumstances.

DECISION

- 13) On the basis of the matters set out above, and in accordance with section 14(2)(a) of the *Licensing (Director-General) Act*, I have determined to affirm the decision of the delegate dated 1 November 2016 to refuse to grant a liquor permit to XXXX pursuant to section 92(1)(b) of the *Liquor Act*.
- 14) In addition, I have determined that XXXX shall not be entitled to make any further application for a liquor permit within six months of the date of this decision. Following the lapse of the six month period any future application by XXXX for a liquor permit will be assessed on its merits at the time of the application.

REVIEW OF DECISION

- 15) 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 by the Director-General to refuse to grant a liquor permit under section 92 of the *Liquor Act* is included in the Schedule to the Act and is therefore a reviewable decision.
- 16) 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 ("NTCAT"). Any application for review of this decision must be lodged with NTCAT within 28 days of the date of this decision. For the purpose of this decision, and in accordance with section 120ZB of the Act, the affected persons are XXXX and NT Police.



Cindy Bravos
Director-General of Licensing

21 November 2016