

## Delegate of the Director of Liquor Licensing

### Decision Notice

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<b>MATTER:</b>	Contravention of the <i>Liquor Act 2019</i>
<b>LICENSEE:</b>	Riverway Nominees Pty Ltd
<b>VENUE:</b>	MOM's
<b>LEGISLATION:</b>	Section 293 of the <i>Liquor Act 2019</i>
<b>DECISION OF:</b>	Delegate of the Director of Liquor Licensing
<b>DATE OF DECISION:</b>	24 April 2023

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#### BACKGROUND

1. Riverway Nominees Pty Ltd is the licensee of MOM's, a liquor licensed premises situated at 52 Mitchell Street Darwin, liquor licence number 80817455. The nominee is Mr Stratton Gilroy (Mr Gilroy).
2. The licence operates under a Lodging Authority which states:
  - a) "Subject to the conditions below, the licensee is authorised to sell to guests staying at the licensee's accommodation for consumption on the licensed premises."
  - b) Special condition within the licence state:
  - c) "Liquor Restrictions -Liquor may be sold at any time during the above trading hours to bona fide lodgers of the premises or invited guests of the lodger (in the presence of the lodger) for consumption on the licensed premises.
  - d) Alcohol is not permitted to be consumed in the swimming pool, nor at or on the immediate edge of the pool."
3. MOM's was first issued a liquor licence on 23 December 2004, pursuant to the *Liquor Act 2019*.
4. On 7 February 2023, a complaint was formally accepted by the delegate of the Director of Liquor Licensing, Glynn Verity, pursuant section 160 of the *Liquor Act 2019*. On the same day the licensee was informed of the complaint via email. The licensee was given 14 days to provide a response to the complaint.

#### PARTICULARS OF COMPLAINT

5. The particulars for the complaint allege that on 26 December 2022, Senior Compliance Officer Holehouse through direct observations and at a later date viewing recorded CCTV, did observe the licensee, on 3 (three) counts contravened section 293 of the Act, in that the licensee contravened a licence condition of their licence by:
6. Count 1 - allowing persons to consume liquor on the licensed premises and these persons were not bona fide lodgers or invited guest of the lodger (in the presence of the lodger) for consumption on the licensed premises.

7. Count 2 - allowed alcohol that is not permitted to be consumed in the swimming pool and at the immediate edge of the pool and;
8. Count 3 - allowed patrons to smoke and use tobacco products (as defined within part 5 and section 6 of the *Tobacco Control Act 2020* outside of the designated smoking area but still within the liquor licensed area.

#### **Licensee's response to Complaint**

9. Offence 1 - The licensee was approached by the organisers of the event on or about 21 December 2022 regarding the availability of the licensee's premises to host the event, as a precursor to (and in combination with) a pre-planned event at the downstairs Motel Loco premises.
10. At the time the licensee's premises were occupied by approximately 150 lodgers. Upon consideration of the organiser's approach, the licensee determined that an event of the kind proposed would be mutually beneficial to the licensee, its in-house patrons, the organisers, and to Motel Loco.
11. The licensee adopted a view that it could ensure adherence to the conditions of its Lodging Authority by offering a "day pass" for purchase by persons other than its in-house guests so that they may access the premises, utilise the licensee's facilities, and consume liquor on the premises lawfully. The licensee sold 133 "day passes" to members of the public to facilitate their attendance at the event.
12. The licensee accepts, in hindsight, that the "day pass" arrangement utilised for the event cannot achieve compliance with the conditions of its Lodging Authority.
13. Offence 2 - The licensee accepts that throughout the event at various times persons were consuming liquor while sitting on the rock edge of the swimming pool, facing away from the pool towards the licenced area. The licensee also accepts that the CCTV depicts a tray of alcoholic drinks in plastic cups being served by staff to pool users on one occasion.
14. While there is no ambiguity regarding the prohibition on consumption of liquor by patrons in the swimming pool, the licensee notes its staff have raised some confusion with respect to this condition. Specifically, whether "at or on the immediate edge of the pool" is intended to apply to persons sitting on the rock wall of the pool facing away from the pool and towards the licenced area. It had been the licensee's understanding that the condition prevented the consumption of liquor by persons sitting on the edge of the pool with their legs in the water. The licensee again accepts that any ambiguity of the special conditions of its liquor licence can be clarified in consultation with Licensing NT.
15. The licensee notes that it operates a "glass free" bar, and that all liquor sold to patrons is served in cans or plastic / polycarbonate drinkware, which minimises the risk of injury to pool users arising from broken glassware in the vicinity of the swimming pool (or indeed throughout the premises).
16. It is further accepted that responsibility rests solely with the licensee to ensure that any events held on its premises are compliant with the terms of its liquor licence, and that any uncertainty with respect to what is permissible under the conditions of its licence must be resolved in consultation with Licensing NT prior to any event taking place. The licensee regrets not having done so on this occasion.

17. Offence 3 - The licensee accepts that throughout the event persons were intermittently using tobacco products (as defined) outside the designated smoking area. The licensee contends that the majority of non-compliance relates to persons "vaping" at various locations throughout the premises.
18. While the licensee accepts that the Tobacco Control Act 2002 draws no distinction between the use of cigarettes / traditional tobacco products and "vapes", the difficulties in detection and enforcement of vaping in non-smoking areas of licenced premises are well known to Licensing NT and are certainly not unique to the licensee's premises.
19. The licensee accepts that it must strive for nothing other than complete adherence to the legislation and its Smoking Management Plan, and undertakes to continue to ensure all staff (including temporary security staff) are aware of the boundaries of the premises' designated smoking area, that vaping can only occur within a designated smoking area, and that appropriate action is taken against patrons who fail to comply with those restrictions.
20. Licensing NT Senior Compliance Officer Holehouse commenced an investigation into the complaint noting the obligations of the licensee pursuant to the Act.

#### **Investigation of complaint**

21. On 21 December 2022, a search of social media site "Litpicnic" evidenced the following advertisement:
  - a) "Silly Monday Boxing Day Rooftop Pool Party 3pm till 10pm, 58 Mitchell Street/ After Party at Motel Loco Downstairs from 10pm till 4am". (the event)
  - b) "Come to the Motel Loco entrance and then take the secret passageway up to the roof top pool/bar".
22. On 26 December 2022, between 15:00hrs-19:00hrs, Senior Compliance Officers (SCO's) Holehouse and Neall conducted general inspections at licensed premises including observations of the event.
23. During the inspection, activities of both patrons and the licensee were observed that required further assessment, namely:
  - a) Persons consuming liquor on the licensed area that were not bona fide lodgers of the premises or invited guests of the lodger (in the presence of the lodger).
  - b) Alcohol being consumed in the swimming pool, or at or on the immediate edge of the pool.
  - c) Patrons smoking on the licensed area but outside of the OSA.
24. On 6 January 2023, Mr Gilroy on request, provided MOM's CCTV footage for 26 December 2022, 15:00hrs -midnight. The footage recorded occurrences at the Poolside Bar, Patio Side Bar and around the main pool.
25. CCTV evidenced the following breaches of licence conditions in relation to the offences:
  - a) On 4 (four) occasions patron/s drinking in the pool.
  - b) On 5 (five) continuous and overlapping occasions patron/s continually drinking at edge of pool.
  - c) On 21 (twenty one) occasions patrons continually smoking around the pool outside of OSA.

- d) Of note is footage which evidences staff serving a tray of up to twelve drinks to patrons swimming in the pool and;
  - e) Footage of Mr Gilroy himself drinking and vaping beside the pool and outside the OSA's.
26. Further footage evidences eight individual patrons sat at tables labelled with "No Smoking" stickers smoking/vaping whilst in direct line of sight of bar staff. The tables and patrons are located within 5 metres of the poolside bar and outside either of the OSA's. All incidents of either drinking and/or smoking outside of designated areas often involved several patrons at the same time and were often for an extended and overlapping period of time.
27. On 31 January 2023, on request, Mr Gilroy attended the Darwin office of Licensing NT to partake in a recorded interview regarding the event and provided the following information:
- a) Mr Gilroy had little to do with the organisation of the event and mainly left it to promotion staff of Motel Loco.
  - b) On 26 December 2022, approximately 150 persons were bona fide lodgers of MOM's and approximately 150 patrons were not patrons or guests of patrons.
  - c) Mr Gilroy understands the special condition within the licence relating to bona fide lodgers of the premises or invited guests of the lodger (in the presence of the lodger) for consumption on the licensed premises.
  - d) Mr Gilroy is aware that the licence does not allow members of the public to consume liquor on the licensed area.
  - e) The event was further seen as an opportunity to trail patrons being a "day guest" of the licensee.
  - f) Mr Gilroy was unable to recall whether the crowd controller for the event was briefed in relation to the DOSA.

### **Compliance Inspections**

28. Over the past 12 months 14 inspections have been carried out at MOM's. Within the 14 inspections one was found to involve creating an approved smoking management plan and another related to providing live entertainment outside of permitted hours.

### **Compliance History of the Licensee**

29. On 23 June 2021, information was received regarding patrons displaying intoxicated behaviour within the licensed area at MOM's.
30. CCTV footage was subsequently obtained of the Pool Deck area for the 19 June 2021, which evidenced several patrons displaying behaviours of being intoxicated.
31. Due to the premises being newly opened it was determined to provide education to the licensee and staff in relation to the following: RSA, Staff powers in relation the removal of intoxicated patrons and adherence to internal practices/policies relating to personal alcohol on premises.
32. On 19 May 2022, following SCO's being informed by surrounding business of music emanating from the premises at high volume, SCO's met with the licensee and provided education in relation to the following trading hours, liquor restrictions, entertainment, licence concept; and excessive noise.

33. On 1 June 2022, the Manager Compliance provided the licensee a written warning in relation to contravening of liquor licence conditions. The substance of the warning was in relation to the licensee providing entertainment after 23:00hrs & providing a designated dance floor contrary to licence conditions.

### Analysis of Evidence

Section 293 Contravening licence conditions -

34. Offence 1 - Admissions made by Mr Gilroy at interview on 31 January 2023, including CCTV footage is sufficient evidence to support the alleged offence, namely:
- a) Not all persons attending the event were bona fide lodgers or invited guest of a lodger.
  - b) Identifying patrons as “day guests” in lieu of being a lodger or invited guest of a lodger.
  - c) Negated the use of the swipe key entrance for MOM’s by providing alternate access off a public street and;
  - d) Liquor was sold and consumed by patrons who were not bona fide lodgers of the premises or invited guests of the lodger (in the presence of the lodger).
35. Offence 2 -The CCTV footage provides direct evidence in relation to patrons consuming alcohol both in the pool and at the immediate edge of the pool and is sufficient evidence to support the alleged offence.
36. Offence 3 - The CCTV footage provides direct evidence in relation to patrons smoking outside of the OSA and is sufficient evidence to support the alleged offence.

### Additional Information

37. No patrons observed displaying signs of intoxication.
38. No underage patrons observed on premises.

### DECISION

39. In respect to the alleged breaches of section 293 - Contravening licence conditions (3 counts,) I determine in relation to offences one and two, the prescribed penalty by way of an infringement notice as specified at Schedule 6 Part 1 of the *Liquor Regulations 2019*,
40. Offence 1 - The licensee allowed persons to consume liquor on the licensed premises and these persons were not bona fide lodgers or invited guest of the lodger (in the presence of the lodger) for consumption on the licensed premises.  
Issue an infringement of 5 (five) penalty units, (\$810.00).
41. Offence 2- The licensee contrary to licence conditions allowed alcohol to be consumed in the swimming pool and at the immediate edge of the pool;  
Issue an infringement of 5 (five) penalty units, (\$810.00).
42. Offence 3 - The licensee allowed patrons to smoke and use tobacco products outside of the outdoor smoking area but still within the liquor licensed area;  
Issue a warning in regards to the offence.

## REVIEW OF DECISION

43. Section 27(1) of the *Liquor Act 2019* provides that an affected person for a delegate decision may apply to the Director for a review of the decision.
44. Section 27(2) of the *Liquor Act 2019* sets out the procedures for applying for a review of a delegate decision. Such application must be made within 28 days after written notice of the delegate decision is given to the affected person unless the Director extends the time allowed for making an application.
45. The affected person in this matter is the licensee of MOM's.



Bernard Kulda  
Delegate of the Director of Liquor Licensing  
Date: 11 May 2023