

# NORTHERN TERRITORY LIQUOR COMMISSION

## DECISION NOTICE

---

<b>MATTER:</b>	<b>DISCIPLINARY ACTION PURSUANT TO THE <i>LIQUOR ACT 2019</i></b>
<b>REFERENCE:</b>	<b>LC2022/004</b>
<b>LICENCE NUMBER:</b>	80915420
<b>LICENSEE:</b>	<b>Deckmar Pty Ltd</b>
<b>PREMISES:</b>	<b>Woodroffe Fresh Food Supermarket</b> 32 Baldwin Drive WOODROFFE NT 0830
<b>LEGISLATION:</b>	Part 7 Divisions 3 and 4 of the <i>Liquor Act 2019</i> and Regulation 53(2) of the <i>Liquor Regulations 2019</i>
<b>HEARD BEFORE:</b>	Ms Jodi Truman (Deputy Chairperson) Mr Bernard Dwyer (Health Member) Ms Amy Corcoran (Community Member)
<b>DATE OF HEARING:</b>	23 February and 30 March 2022
<b>DATE OF DECISION:</b>	30 March 2022

---

### **Decision**

1. On the basis that the Director has withdrawn the referral of this matter to the Commission for disciplinary action, the Commission pursuant to section 166(6)(a) of the *Liquor Act 2019* (“the Act”) dismisses the matter and cancels the hearing listed for 30 March 2022.

### **Reasons**

#### **Background**

2. The licensee is the holder of Liquor Licence 80915420, trading as Woodroffe Fresh Food Supermarket (“the premises”) situated at 32 Baldwin Drive, Woodroffe. The nominee is Ms Sandra Eagle.
3. In March 2017 the Northern Territory Government (“the NTG”) commissioned the Alcohol Policies and Legislation Review (“the Review”). The NTG stated

it commissioned this Review “to deliver a cohesive approach to alcohol reduction”<sup>1</sup>. Importantly the NTG noted that:

“The review was conducted under the *Inquiries Act*, reflecting how seriously the Government views the misuse of alcohol in the community”.

4. On 19 October 2017, the Alcohol Policies and Legislation Review Final Report was delivered to NTG (“the Report”). It provided 220 recommendations on reforms.
5. Part of those recommendations included what was referred to in the Report as “key recommendations<sup>2</sup>” which included:

“addressing significant issues including the density of alcohol retail outlets ... implementing an immediate moratorium on takeaway liquor licences and phasing out store licences to **reduce the number of corner grocery stores that sell alcohol**” (emphasis added).

6. Within the Report, it was noted by the panel that:

“There is universal agreement that there are far too many licences to sell alcohol issued in the Northern Territory <sup>3</sup>...”

## The Referral

7. On 20 December 2021 a complaint was formally lodged with the delegate of the Director of Liquor Licensing, Mr Bernard Kulda (“the Delegate”) pursuant to section 160 of the Act in relation to the alleged breach of regulation 53 of the Regulations by the licensee. For the purposes of these reasons, it is not necessary to go into the facts of that complaint.
8. On 21 December 2021, the complaint was accepted by the Delegate with the licensee being informed of the complaint via email on the same day.
9. In the usual course, having accepted the complaint and the investigation commencing, upon completion of the investigation the Delegate was empowered under section 163(1) of the Act to take several actions, including referring the complaint to the Commission.
10. On 24 January 2022, the Delegate referred the complaint to the Commission for disciplinary action to be taken against the licensee. Pursuant to section 166(2) of the Act, upon receipt of such a referral, the Commission must conduct a hearing and pursuant to section 166(1) decide whether to take disciplinary action against the licensee.

## Public Hearing

11. Following receipt of the referral the Commission listed the matter for a hearing at the next available date being 23 February 2022. On that date, the Director

---

<sup>1</sup> Response to the Alcohol Policies and Legislation Review Final Report (“The Report”)

<sup>2</sup> The Report, pg.9

<sup>3</sup> The Report, pg.34

appeared via his Delegate, Mr Bernard Kulda. The licensee appeared via counsel, Ms Mary Chalmers SC together with its nominee, Mrs Sandra Eagle (“Mrs Eagle”).

12. At the commencement of the matter, Ms Chalmers SC applied for an adjournment of the hearing indicating that there “may be a statutory interpretation argument” and further that the licensee had not had sufficient opportunity to properly instruct her and provide relevant evidence for the consideration of the Commission. The adjournment was not opposed on behalf of the Director.
13. The adjournment was granted, and the matter listed for hearing at 10.00am on 30 March 2022.
14. On 25 March 2022 the Director formally wrote to the Commission advising that he had determined “to now withdraw the referral to the Commission”. This was because of material having been provided by the licensee to the Director. The Commission notes that section 166(6) of the Act clearly contemplates the Director’s power to withdraw a “matter” after it has been referred to the Commission.
15. That section however also makes clear that it is in the Commission’s discretion as to whether it dismisses a matter referred to it after it is withdrawn by the Director.
16. On 30 March 2022, the matter returned before the Commission. Ms Chalmers SC again appeared with the nominee and the Director appeared in person. Ms Chalmers SC made application for the Commission to dismiss the matter referred to it and cancel the hearing pursuant to section 166(6)(a). Both the licensee and the Director made submissions on that application. The application was not opposed by the Director.
17. The Commission received evidence on the application as to the material provided by the licensee to the Director in relation to action taken to comply with regulation 53 of the Regulations. The Director provided some material as to his reasoning for withdrawing the matter.
18. The Commission does not consider it appropriate to “review” the exercise of the Director’s discretion. It appears the Director has complete discretion to withdraw and is not required to provide reasons to the Commission. It is apparent however that the Director has scrutinised the information provided to him by the licensee and is satisfied in relation to that information and further that the licensee would be under *no* misapprehension that the Director will be carefully monitoring the licensee’s compliance with regulation 53 into the future.

19. In all these circumstances and without making any determination whether disciplinary action should be taken against this licensee, the Commission has determined to exercise its discretion and dismiss this matter and cancel the hearing pursuant to section 166(6)(a) of the Act.
20. Whilst it is questionable whether this is in fact a decision requiring a Decision Notice pursuant to section 166(1) and (7) of the Act, the Commission has issued this to the parties to avoid any doubt.

**Notice of Rights:**

21. Section 31 read with section 166(7) of the Act provides that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal ("NTCAT"). Section 94(3) of the *NTCAT Act 2014* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
22. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for review of this decision are the Director and the licensee.



JODI TRUMAN  
PRESIDING MEMBER  
DEPUTY CHAIRPERSON

On behalf of Commissioners Truman, Dwyer and Corcoran  
30 March 2022