

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR NEW AUTHORITY AND PERMANENT VARIATION OF CONDITIONS OF LICENCE

LICENCE NUMBER: 81403928

REFERENCE: LC2021/008

LICENSEE: Palmerston Golf & Country Club Incorporated

PROPOSED PREMISES: Palmerston Golf & Country Club
University Avenue
PALMERSTON NT 0830

LEGISLATION: Sections 52 and 110 of the *Liquor Act 2019*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Mr Kenton Winsley (Health Member)
Ms Sandra Cannon (Community Member)

DATE OF HEARING: 4 March 2021

DATE OF DECISION: 19 March 2021

DECISION

1. For the reasons set out below and in accordance with sections 60 and 112 of the *Liquor Act 2019* (“the Act”), the Northern Territory Liquor Commission (“the Commission”) has determined;
 - a. To refuse to issue a late night authority in respect of the licence;
 - b. To vary the conditions of licence by extending the trading hours to 24:00 hours every day of the week;
 - c. To vary the conditions of licence by amending the conditions relating to the sale of take away liquor for consumption on the golf course by changing the words “No trading on good Friday and Christmas Day” to “No trading on Christmas Day”;
 - d. To vary the conditions of licence by amending the condition permitting restricted liquor trading on Good Friday and Christmas Day by removing the reference to Good Friday, (with the effect that Good Friday is a day on which normal liquor trading occurs) and;

- e. To vary the conditions of licence by removing the reference to “Public Holiday” within the trading hours condition (with the effect that all public holidays, other than Christmas Day are days on which normal liquor trading may occur).

REASONS

BACKGROUND

2. Palmerston Golf & Country Club Incorporated (the Licensee) is the holder of liquor licence number 81403928 for premises known as Palmerston Golf & Country Club, University Avenue Palmerston.
3. An application was lodged by Mr Tom Richardson of De Silva Hebron Lawyers on behalf of the Licensee seeking a new late night authority to be attached to the licence and permanent variations to the liquor licence. The application was subject to various consultation between Mr Richardson and the Principal Licensing Officer to clarify the application over a period of time, with final clarification taking place 17 November 2020.
4. The application was finalised and clarified to be:

Additional Liquor Licence Authority

- To add a Late Night Authority to the existing liquor licence

Permanent Variations

The variations sought are;

- Liquor trading times to be extended to 24:00 hours every day of the week;
 - Liquor trading times for every Thursday, Friday and Saturday be further extended to 02:00 hours in accordance with the late night authority;
 - Amend the condition for the sale of take away liquor for consumption on the golf course by changing the words “ No trading on Good Friday and Christmas Day” to “No trading on Christmas Day”;
 - Amend the condition permitting liquor trading on Good Friday and Christmas Day from 11:00 hours to 21:00 hours if liquor is served, sold or supplied only to patrons purchasing full meals during those hours by deleting the reference to Good Friday;
 - Remove the liquor trading times condition stating “Public holidays between 10:00 and 22:30 hours”;
 - The proposals if approved would mean that there is no restriction of liquor trading for any public holiday and that normal liquor trading would take place on those days, except where specified in the licence conditions.
5. The application was accompanied by;
 - Updated Cover letter

- Affidavit in accordance with Section 54 of the Act.
 - Updated Combined Community Impact Assessment and Public Interest Test to reflect finalised application
 - CIA Summary Form
6. In regards to the application for a new authority, as the Licensee already holds a liquor licence, the Director did not require the usual personal probity documents for either the Licensee or nominee as these are not changing. The usual corporate probity documents for the Licensee such as incorporation certificates, financial reports and similar were also not required.

PUBLICATION AND CONSULTATION

7. The application was published by way of two notices in the NT News on the 21 and 25 November, 2020. A green advertising sign was also erected at the premises for the course of the advertising period.
8. In response to the public advertising three adverse responses were received from Ms Bronwyn Harrison a local resident, Palmerston Council and NT Police which the Director treated as objections.
9. In accordance with the Act, the following were notified of the application.
- The Chief Executive Officer of the Department of Health
 - The Commissioner of Police
 - CEO, City of Palmerston
10. The Department of Health replied via email dated 26 November 2020 stating it had no adverse comments.

OBJECTIONS

11. Ms Harrison submitted that as the premises were in the middle of the suburb of Driver, surrounded by residential properties an extension of trading until 2:00am would increase noise disturbance to surrounding residences. She argued that there were already three (3) late night licensed premises in Palmerston, including Cazaly's which were sufficient to satisfy local demand.
12. Palmerston Council objected to any increase in trading hours because the premises were in a residential setting.
13. NT Police raised a "potential concern" that increased trading until 2:00am will result in increased vehicular and pedestrian movement which "may disturb local residents due to the club being situated in a residential suburb". Although Police were advised that their response was being treated as an objection they subsequently indicated that it should only be regarded as a comment and took no further part in the proceedings.

14. A copy of the objections were supplied to the applicant via De Silva Hebron on the 18 January 2021 in accordance with Section 62 of the Act seeking a response to the objections. At the request of De Silva Hebron, and approved by a delegate of the Director, the time frame to return a response was extended to the 5 February 2021.
15. The applicant's Solicitor provided a comprehensive response to the objections by letter dated 5 February 2021. He argued that because admission to the club was restricted to members and the gaming room was further limited to no more than 111 patrons that there would not be "an unsustainable amount of traffic" caused by the grant of a late night authority.

COMPLIANCE HISTORY

16. A check of records held at Licensing NT reveals that there are no negative or adverse compliance issues regarding this Licensee.
17. The Licensee had submitted a previous application which included applications for late night trading and normal trade on Easter Friday. The Commission dealt with that matter by Decision Notice of 10 April 2019, in which it granted reciprocal membership rights to members of Cazaly's Club but declined to approve any permanent extension of trading hours.

THE HEARING

18. This matter was referred to the Commission by the Director on 18 February 2021. The Commission wrote to the applicant's solicitor and to the three (3) objectors on 24 February 2021 notifying them that the application would be determined at a public hearing on 4 March 2021. The matter proceeded on that date. Mr Richardson of De Silva Hebron appeared for the Licensee. Mr Mathew Hewer the Club's General Manager, was also in attendance. There were no appearances from anyone associated with the objectors. Mr Jeff Verinder appeared to represent the Director. The Commission is grateful for the assistance provided by all those present.

ASSESSMENT OF THE MATTER

19. As has been referred to in paragraph 17 above, the Licensee has previously sought an extension of trading hours. The earlier application was lodged in May 2018 and included, inter alia an extension of, for trading hours until midnight on weekdays until midnight and until 1:00am on Saturday and Sunday mornings. In refusing the application for a permanent variation of conditions the Commission stated:

The Commission was not impressed by the applicant's CIS. It did not present any sound logical case for extending the trading hours. Much of the statistical data relied upon, was over 3 years old and was in any case, not relevant to what was being proposed in relation to the extended trading hours. It would appear that the sole benefit of extending the trading hours would be to enable patrons to spend longer on the gaming machines and thereby increase the financial return to the club from the additional machines¹.

¹ Northern Territory Liquor Commission, *Palmerston Golf & Country Club Incorporated Decision Notice Application for Variation of the conditions of licence pursuant to the Liquor Act 1978*: (10 April 2019) paragraph 36

We also had concerns over the lack of any real evidence to support the extension of trading on Good Friday. It was only during questioning from the Commission that Mr Hewer was able to satisfy us that there had been significant community support for past golf events on Good Friday and preparations had already been made for a similar event this year. On that basis we were persuaded to allow a temporary variation for trading on this Good Friday, 19 April 2019, between the hours of 10:00 and 22:00. If there is to be a permanent variation for trade on Good Friday, then the Licensee would need to submit a further application supported by a proper Community Impact Analysis. If the Licensee is minded to submit a further application in the near future for Good Friday, then the Director-General may well give sympathetic consideration to not requiring that notice of the application be advertised, having regard to the fact that there were no objections from members of the public to this application².

20. In support of this application the Licensee's solicitor has submitted well-argued Community Impact and Public Interest statements. Since the earlier application, the new Act has now commenced and has introduced via the regulations new standard operating conditions for the various authorities.
21. The standard hours of operation for a club authority are from 10:00 to 24:00 hours every day of the year apart from Christmas Day and Good Friday³.
22. In light of that development, this licensee's application to increase its hours of trade until midnight from Sunday to Wednesday, including public holidays, is not particularly controversial. The Licensee relies on its "significant experience" in operating a licensed premises", together with its good compliance record "to demonstrate that it is able to effectively minimise the potential for harm caused by the service of alcohol"⁴. Furthermore, apart from Sunday evenings and public holidays, the extension sought is only for an additional half hour on four nights a week.
23. The application to extend the trading hours is clearly motivated by the desire of the Licensee to increase the return from its gaming machines as gambling would seem to be the prime attraction for members to be patronising the premises late at night. Mr Hewer told the Commission that the income derived from gaming supported the ongoing maintenance of the golf course as well as aiding the operation of a number of other local sporting clubs.
24. The Commission has observed on a number of occasions in the past, including in the November 2019 Hibiscus Tavern Decision⁵, that the current legislative regime does not envisage a role for the Commission in assessing and balancing the social harms caused by the irresponsible use of gaming machines. That would appear to be the sole responsibility of the Director Gambling and Racing. This is despite the fact that the hours of operation of gaming machines are linked by section 88 of the Gaming Machine Act 1995 to the trading hours of the liquor licence. The Commission would hope that

² Northern Territory Liquor Commission, *Palmerston Golf & Country Club Incorporated Decision Notice Application for Variation of the conditions of licence pursuant to the Liquor Act 1978*: (10 April 2019) paragraph 37

³ *Liquor Regulations 2019*: paragraph 38

⁴ *Palmerston Golf & Country Club Incorporated, Community Impact Assessment*, (Exhibit 1) page 35

⁵ Northern Territory Liquor Commission, *Hibiscus Tavern Pty Ltd Decision Notice Application for Variation of conditions of licence pursuant to the Liquor Act 1978*: (26 November 2019)

the Director Gambling and Racing would conduct a review of a Licensee's risk mitigation strategies for problem gamblers following any decision by the Commission to significantly extend the hours during which gaming machines can be used on licensed premises.

25. On the evidence before the Commission it is satisfied that it is in the public interest to extend the daily hours of trade until midnight on each day of the week and that this will not have any significant adverse impact on the local community.
26. The application to allow normal trading on Easter Friday was also not a significant bone of contention with the objectors. The Licensee has over many years conducted a Good Friday golf tournament which has been well patronised and is a popular fixture on the Club's golfing calendar. In the past this has necessitated the grant of a Special Licence or temporary variation of conditions. The Commission accepts that it would be to the benefit of both the Licensee and Licensing NT for this situation to be regularised by the permanent removal of the Good Friday trading restrictions. It also finds that such a variation will be in the public interest and not have any significant adverse impact on the community.
27. The issue of greatest contention with the objectors and the primary focus of the Commission in this hearing was the application for a late night authority to allow trading until 2:00am on Friday, Saturday and Sunday.
28. The Licensee told the Commission that it is not expecting any significant increase in liquor sales as a result of the proposed late night authority. It does however anticipate an increase in the gaming machine returns if its late night patrons are able to stay on playing the machines after midnight. Currently those club members that want to keep gambling after midnight must travel to one of the other late night venues in Palmerston. The Licensee claims that this impacts adversely on the profitability of the Golf Club and its ability to maintain the golf course and continue funding its affiliate community clubs.
29. The Licensee also submitted it should be able to compete commercially on a level playing field with its local competitors most of which held late night authorities.
30. However, as was observed by the Commission during the hearing, the other late night venues are not situated in a residential neighbourhood. Furthermore what might be regarded as this Licensee's major "competitor", Cazaly's Club is in fact a "sister club" of the applicant. The two clubs have reciprocal membership rights, share the same management board and have close financial links. Mr Hewer agreed that the Golf Club was entitled to call on Cazaly's for assistance in maintaining the infrastructure of the golf course. He also agreed that the Golf Club had considered the joint operation of a courtesy bus to ferry those of its patrons that might want to keep gambling after midnight, to its sister club Cazaly's. As the principal justification for the proposed late night authority seems to be focused on maintaining the economic viability of the Golf Club, that goal can also be achieved by encouraging its members to exercise their reciprocal rights to use the facilities at Cazaly's. This would assist in retaining the revenue derived from members' expenditure on gaming machines within the "not for profit" sector to the ultimate benefit of the applicant, whilst not causing unnecessary disturbance to the residents who live in the vicinity of the Golf Club.

31. The Palmerston golf course is in the centre of a residential suburb and was established as part of a significant urban development project. Residents have purchased homes in this area, no doubt influenced by the amenity offered by the golf course. The club house and car park are situated in close proximity to a number of residential properties including that of Ms Harrison. The Commission accepts that the concerns raised by Ms Harrison, NT Police and Palmerston Council over the risk of noise disturbance by vehicles and pedestrians leaving the club house in the early hours of the morning are well founded.
32. Having had regard to the purposes of the Act (section 3), together with the requirements of section 49 of the Act, the Commission is not satisfied that the application for a late night authority is in the public interest nor that it will not have a significant adverse impact on the community. Accordingly for the reasons outlined above, the application for a late night authority is refused.

Notice of Rights

14. Section 31(1) read with section 60(3) of the Act provides that the decision set out in this decision notice is reviewable by Northern Territory Civil and Administrative Tribunal ("NTCAT"). Section 94(3) of the NTCAT Act provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
15. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director and the Licensee.



RICHARD COATES
CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
19 March 2021

On behalf of Commissioners Coates, Winsley and Cannon