

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR PERMANENT VARIATION TO LIQUOR LICENCE

LICENCE NUMBER: 81416400

REFERENCE: LC2019/015

LICENSEE: **Cazalys Palmerston Club Incorporated**

PREMISES: Cazalys Palmerston
Temple Terrace
Palmerston NT 0830orporated

APPLICANT: Cazalys Palmerston Club Inc

NOMINEE/S: Matthew Scott Hewer

OBJECTOR/S: Nil

LEGISLATION: Section 32A of the *Liquor Act 1978*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Mr Kenton Winsley (Health Member)
Ms Christine Hart (Community Member)

DATE OF HEARING: 10 April 2019

DATE OF DECISION: 10 April 2019

Decision

1. For the reasons set out below and in accordance with section 32A(7) of the *Liquor Act 1978 (the Act)* the Commission has determined vary the conditions of the liquor licence for the premises known as the Cazalys Palmerston by varying condition 9 of the licence as follows:

9. In this licence, unless the contrary intention appears:

...

(e) 'member' means a member of the Club, or the Reciprocal Club, presently entitled under the Club or Reciprocal Club rules to exercise the rights and privileges appropriate to his class of membership of the Club or Reciprocal Club;

(f) 'financial member' means a member of the Club, or the Reciprocal Club, presently entitled under the Club, or Reciprocal Club rules to exercise the rights

and privileges appropriate to the class of financial membership of the Club or Reciprocal Club;

(g) 'visitor' means a person who is a bona-fide guest of a member of the Club or Reciprocal Club whose;

- name and address have been entered in the visitors' book next to the signature of the member whose guest he is; and

- presence on the Club premises is permitted by the Club's rules.

(h) 'Reciprocal Club' means Palmerston Golf and Country Club Inc. 01174C.

Any reference within the liquor licence to a member of the Club will now be referenced as a member defined above.

2. In accordance with s32(A)(9) the variation of the condition of licence is to take effect as at 10 April 2019.

Reasons

Background

3. On 22 May 2018, an application was lodged pursuant to section 32A of the Act by Cozens Johansen Lawyers on behalf of Cazalys Palmerston Club Incorporated (the Licensee) for the premises known as Cazalys Palmerston located at Temple Terrace, Palmerston NT (Licensed Premises).
4. The Licensee is seeking to vary the current definitions and conditions in their liquor licence with reference to members. This will replace definitions of members within their liquor licence and replace it with Reciprocal Member rights following the changes to the approved Club's constitution recognising their partner club Palmerston Golf & Country Club Inc (PGCC) members rights (excluding voting rights).
5. Palmerston Golf and Country Club Inc have lodged a concurrent application for the Reciprocal Rights of Cazalys Club Inc members which is subject of a separate referral for the NT Liquor Commission's review.
6. In support of the application the Licensee lodged:
 - Affidavit in accordance with s26A of the Act;
 - Community Impact assessment in accordance with s6A of the Act;
 - Sealed Constitution Cazalys Palmerston Club Inc dated 1 September 2018;
 - Special General Meeting Minutes for Cazalys Club and Palmerston Golf and Country Club.
7. The Licensee is seeking a permanent variation to amend the current definitions and conditions in the liquor licence where reference to members now reflects Reciprocal Member rights of Palmerston Golf & Country Club Inc 01174C, whilst on the premises (excluding voting rights).

Current Definitions in Cazalys Palmerston Club Inc - Liquor Licence (81416400):

9. In this licence, unless the contrary intention appears:

...

(e) 'member' means a member of the Club presently entitled under its rules to exercise the rights and privileges appropriate to his class of membership of the Club;

(f) 'visitor' means a person who is a bona-fide guest of a member of the Club whose;

- name and address have been entered in the visitors' book next to the signature of the member whose guest he is; and
- presence on the Club premises is permitted by the Club's rules.

Proposed Changes to Definitions in Cazalys Palmerston Club Inc - Liquor Licence (81416400):

9. In this licence, unless the contrary intention appears:

...

(e) 'member' means a member of the Club, or the Reciprocal Club, presently entitled under the Club or Reciprocal Club rules to exercise the rights and privileges appropriate to his class of membership of the Club or Reciprocal Club;

(f) 'financial member' means a member of the Club, or the Reciprocal Club, presently entitled under the Club, or Reciprocal Club rules to exercise the rights and privileges appropriate to the class of financial membership of the Club or Reciprocal Club;

(g) 'visitor' means a person who is a bona-fide guest of a member of the Club or Reciprocal Club whose;

- name and address have been entered in the visitors' book next to the signature of the member whose guest he is; and
- presence on the Club premises is permitted by the Club's rules.

(h) 'Reciprocal Club' means Palmerston Golf & Country Club Inc 01174C.

Any reference within the liquor licence to a member of the Club will now be referenced as a member defined above.

Publishing and Consultation

8. The application was advertised in the Northern Territory News on Saturday 10 November 2018 and Wednesday 14 November 2018. A signed declaration that the "Green Sign" had been erected at a prominent external area of the proposed premises and had been displayed for a 30 day period coinciding with the advertisements has been supplied.

9. As a result of publication of the application, no objections were received from the public.

10. Notification and comments were sought with regard to the Reciprocal Rights variation under the dual application for the Palmerston Golf & Country Club licence (81403928) by email from:

- CEO of Department of Health via email dated 16 October 2018;
 - Commissioner Northern Territory Police via email dated 16 October 2018;
 - Palmerston City Council via email dated 16 October 2018.
11. In addition to the requirements of Section 32A(5) comments were also sought from the Northern Territory Fire and Rescue Service via email dated 16 October 2018.
 12. The Department of Health advised that they have 'no adverse comment' however they requested the Director-General to consider patron and community safety & amenity when determining the application. The Department of Health requested the venue displays signage to delineate the smoking and non-smoking areas. It is noted by Licensing NT that the applicant operates an existing licensed venue and is already aware of their responsibilities regarding the *Tobacco Control Act 2002*.
 13. The Northern Territory Police advised that they 'do not object to alignment with reciprocal rights'.
 14. The Palmerston City Council advised that they 'did not object' to the variation of allowing the members Reciprocal Rights of the associated Cazalys Palmerston Club Inc.
 15. The Northern Territory Fire and Rescue Service advised they 'have no objections' to the permanent variations made under the Palmerston Golf and Country Club Inc. application which applied inclusive of the variation of Reciprocal Rights.

Public Hearing

16. Pursuant to section 50 of the Act, the Director-General of Licensing ("the Director-General") must refer *inter alia* applications under section 32A of the Act to the Commission. Therefore this application must be heard and determined by this Commission.
17. Pursuant to section 53 of the Act, the Chairperson of the Commission must fix the time and place for hearing and give notice to the relevant parties not less than 7 days before the hearing date. As stated earlier, this application was referred to the Commission on 26 February 2019. The hearing was fixed for 11.00am on 10 April 2019 and notice was given to the applicant.
18. Pursuant to section 53 of the Act; the Commission is not bound by the rules of evidence and may inform itself in the manner it considers appropriate and conduct the hearing, or part of the hearing, by use of telephone or online facilities. A hearing must also be conducted in public unless the Commission considers that a public hearing is likely to cause undue hardship to a person.

No such submission has been made to this Commission and there is no evidence to suggest any such hardship.

19. Mr Scott Hewer appeared for the applicant with Ms Tania Chin as representative for the Director-General of Licensing was also present to provide information and assistance to the Commission during the course of the hearing.

Assessment of the Application

20. As earlier noted, there were no objections to this application. Despite there being no objections made to the application lodged by the Applicant, the Act clearly provides that the Director-General of Licensing must refer these types of applications to the Commission for decision. In addition, section 6B of the Act makes clear that it is the Applicant who bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test.
21. As is clear from section 6(1) of the Act; when considering or determining an application under the Act in respect of licensed premises, this Commission **must** apply the public interest and community impact test as relevant to the application. Section 6(2) of the Act provides that:

“For subsection (1), the public interest and community impact test requires consideration of the following objectives:

- a. harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;
- b. liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;
- c. public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;
- d. the safety, health and welfare of persons who use licensed premises must not be put at risk;
- e. noise emanations from licensed premises must not be excessive;
- f. business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school;
- g. a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:
 - i. by-laws made under the Local Government Act; and
 - ii. provisions of or under the Planning Act;

- h. each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;
- i. the use of credit in the sale of liquor must be controlled;
- j. practices which encourage irresponsible drinking must be prohibited;
- k. it may be necessary or desirable to limit any of the following:
 - i. the kinds of liquor that may be sold;
 - ii. the manner in which liquor may be sold;
 - iii. the containers, or number or types of containers, in which liquor may be sold;
 - iv. the days on which and the times at which liquor may be sold;
- l. it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;
- m. it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee;
- n. it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices;
- o. any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.”

22. In addition, pursuant to section 6(3), the Commission must:

- a. consider the potential impact on the community in the area that would be affected by the outcome of the decision to grant or refuse an application or the changing of conditions of a licence and, in doing so, must have regard to:
 - i. the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and
 - ii. the cultural, recreational, employment or tourism impacts; and
 - iii. the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and

- iv. the density of existing liquor licences within the community area; and
- v. the volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application; and
- vi. any other prescribed matter; and

b. apply the community impact assessment guidelines.”

23. On 6 March 2018, pursuant to section 6A of the Act, the Minister by Gazette notice published community impact assessment guidelines for determining whether or not an application being considered or determined under section 6(1) satisfies the public interest and community impact test. Relevantly those guidelines are stated to

“... set out those matters that will be considered by the Commission when assessing the community impact of the application against the criteria set out in section 6A(1) of the Liquor Act”.

24. Those matters are identified as follows:

Criteria	Matters to be considered
<p>The potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability and accessibility of an additional liquor outlet.</p>	<p>Are there any ‘at-risk’ groups or sub-communities within the locality? This may include –</p> <ul style="list-style-type: none"> • children and young people; • Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community; • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers. <p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p>

	<ul style="list-style-type: none"> • schools and educational institutions; • hospitals, drug and alcohol treatment centres; • accommodation or refuges for young or disadvantaged people; • child care centres; • recreational areas; • dry areas; and • any other area where young people may congregate or be attracted to. <p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities</p>
<p>Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community. This includes information about the density of licensed premises within the community area.</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p> <p>This could also include traffic and pedestrian impact and any plans developed to address these potential issues.</p>
<p>Volume</p>	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable this should be provided for both on and off premises sales).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>

Any cultural, recreational, employment or tourism benefits for the local community area.	Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?
Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.	<ul style="list-style-type: none"> • What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining? • Will the proposed licensed premises provide additional choices of service or products that are no available in the area? • Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts? • Will it use existing premises improve or add to existing premises or is it a new premises?

25. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Applicant must address (and satisfy the Commission of) under the new public interest and community impact test and guidelines. The guidelines do make clear however that:

“... the Commission has the authority to consider a broad range of issues specific to each application and flexibility exists to assess each individual application on its merits”.

26. The Licensee’s Community Impact Statement explained that Cazalys had acquired the majority interest in Palmerston Golf and Country Club after the golf club faced serious financial difficulties. The two clubs now share board members, premises and employees and believe it is appropriate that each club allow the other full reciprocal membership rights apart from voting rights.

27. On the same day the Commission dealt with this matter, there was an application by Palmerston Golf and Country Club to grant reciprocal membership to the members of Cazalys. The two applications to extend reciprocal membership to each other’s members are a logical extension of the close relationship between the two entities and the Commission is satisfied that it is appropriate to vary both club’s licence conditions to allow for reciprocal membership.

Therefore, for the reasons outlined and having regard to the objects of the Act the Commission has decided to vary the conditions of the licence as outlined at the start of this Decision Notice.

Notice of Rights:

28. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to vary the conditions of a liquor licence pursuant to section 32A of the Act is specified in the Schedule and is a reviewable decision.

40. 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. Any application for review of this decision must be lodged within 28 days of the date of this decision.

41. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected person is the applicant.

RICHARD COATES

Chairperson
Northern Territory Liquor Commission

24 April 2019