

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE

LICENCE NUMBER: 81403928

REFERENCE: LC2019/016

LICENSEE: Palmerston Golf & Country Club Incorporated

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

NOMINEE: Brian Kamp

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 to temporarily vary the conditions of the liquor licence for the premises known as the Palmerston Golf & Country Club (PGCC) 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 Cazalys Palmerston Club Inc. 02243C.

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

2. The application to extend the weekly trading hours is dismissed.
3. The Licensee's trading hours are extended to enable it to trade on this Good Friday 19 April 2019 from 10:00 hours until 22:00 hours.
4. In accordance with S32A(9) of the Act the variation of the condition of the licence is to take effect as at Wednesday 10 April 2019.

Reasons

Background

5. On 22 May 2018, an application was lodged pursuant to section 32A of the Act by Cozens Johansen Lawyers on behalf of Palmerston Golf & Country Club Inc. (the Licensee) for the premises known as PGCC located at University Avenue, Palmerston NT (Licensed Premises).
6. The Licensee is seeking two variations within this application. They are seeking to vary the current membership definitions, also the 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 Cazalys Palmerston Club Inc. (Cazalys) members rights (excluding voting rights).
7. Cazalys have lodged a concurrent application for the Reciprocal Rights of PGCC members which is subject of a separate referral for the NT Liquor Commission.
8. This Licensee is also seeking to alter their trading hours as well as requesting to permanently extend their trading on Public Holidays including Good Friday (but excluding Christmas Day). The original application was to reflect Cazalys' trading hours which would have seen it trading until 2:00am on weekends.
9. Following objections from NT Police, the applicant has reviewed the hours sought and the current hours and proposed new trading hours are as follows:

Current Trading Hours	Proposed New Trading Hours
Sunday 10:00 and Sunday 22:00	Sunday 10:00 and Sunday 23:59
Monday 10:00 and Monday 23:30	Monday 10:00 and Monday 23:59
Tuesday 10:00 and Tuesday 23:30	Tuesday 10:00 and Tuesday 23:59
Wednesday 10:00 and Wednesday 23:30	Wednesday 10:00 and Wednesday 23:59
Thursday 10:00 and Friday 23:30	Thursday 10:00 and Thursday 23:59
Friday 10:00 and Saturday 23:59	Friday 10:00 and Saturday 01:00
Saturday 10:00 and Sunday 23:59	Saturday 10:00 and Sunday 01:00
No trading on Good Friday & Christmas Day Public Holidays between 10:00 and 22:30 hours	No Trading on Christmas Day

Publishing of Application

10. The application was advertised in the Northern Territory News on Saturday 10 November 2018 and Wednesday 14 November 2018. A signed declaration that the public notice "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 was supplied.
11. As a result of publication of the application, no objections were received from the public.

Consultation

12. Notification and comments were sought 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.
13. In addition to the requirements of Section 32A(5) comments were also sought from:
 - Northern Territory Fire and Rescue Service via email dated 16 October 2018.

14. 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 and requested that 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*.
15. The Northern Territory Police advised that they 'do not support the application' and stated the following grounds:
 - The property was within a suburban location with residential dwellings in close proximity, the extension to 02:00 hours has the potential to adversely affect immediate surrounds and amenity and as this is a Golf Club there is no demonstrated need for the licensing hours to extend to 2am in the morning going beyond main operations of the venue (golfing); and
 - The extension to Good Friday is not supported by police, as the current licence allows 363 days a year. This is sufficient as hours of operation are limited across the board and Good Friday throughout the NT and this should be maintained for this premises. No special interest or need is satisfied within the application proper.

Police were agreeable to an extension to 23:59 hours for trading hours only.

16. The Palmerston City Council advised that they 'did not object' to the variation of allowing the members Reciprocal Rights of the associated Cazalys Club Inc.

However, Palmerston City Council advised that they objected to the variation of the trading hours based on the following grounds:

- the location is within a residential setting with residents properties adjoining the club boundaries;
- the matching of the hours with Cazalys Club Inc. under the Reciprocal Rights amendments wasn't sufficient reasoning or justification to vary the hours given that Cazalys is located within the Central Business district with no residential properties and the PGCC is situated within a neighbourhood residential setting. Opening hours until 2.00am from Thursday to Sunday would not be considered appropriate.
- that Council did not agree that the information submitted with the original licence application in relation to the public interest and community impact was sufficient for this variation or that it provides satisfactory evidence that an approval of this variation in hours meets the public interest and community impact test.

Council did state that they have previously accepted variations to allow the club to trade on Good Friday but with restriction to operating hours and no trading of take-away sales. Council have requested that consideration be given for specific modified hours and conditions for Good Friday.

17. The Northern Territory Fire and Rescue Service advised that they 'have no objection'.

Response to Objections

18. In responding to the stakeholder comments from NT Police the Licensee agreed to moderate the claim for additional trading hours which are now reflected in Paragraph 9 above. It also agreed to confine the extended trading hours to the gaming room which would be separated from the Sports Bar. In relation to the proposed trade on Good Friday, the Licensee argued this was necessary because there has been a long standing tradition of the club holding golf events on this day. However the Licensee was prepared to limit the proposed trade on Good Friday until 22:00 hours only.
19. In responding to the stakeholder commentary from Palmerston City Council, the applicant reiterated the points raised in its response to the concerns of police.
20. The applicant lodged a Public Interest Criteria in support of its application which largely detailed its existing policies and procedures directed toward ensuring it complied with requirements for the responsible service of alcohol.
21. A Community Impact statement (CIS) was filed which explained that Cazalys had acquired the majority interest in PGCC and now shared board members, premises and employees. Accordingly it was appropriate that each club allow the other full reciprocal membership rights excluding voting rights.
22. In the CIS it was claimed "*There is no evidence to suggest that the Variation Application will increase the consumption of alcohol in the local community area*".

The PGCC submits that instead, the variation application will likely simply shift the location of some purchases of liquor from Cazalys to PGCC.

23. The Licensee also relied on a Community Impact Analysis which had been prepared by DWS Consultants in 2016 to justify its application for additional gaming machines. It was clear when looking at the two documents that the CIS referred to in paragraphs 21 & 22 is a cut and paste of the 2016 document with some minor updates.

The Hearing

24. 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.
25. 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 27 February 2019. The hearing was fixed for 11:00am on 10 April 2019 and notice was given to the applicant.

26. 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.
27. Mr Scott Hewer appeared on behalf of 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

28. 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.”

29. 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.”

30. 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”.

31. 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</p>

	current alcohol consumption rates for the community area.
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?

32. 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”.

33. On the same day the Commission dealt with this matter, there was an application by Cazalys to grant reciprocal membership to the members of PGCC. 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 clubs’ licences conditions to allow for reciprocal membership.

34. During the hearing, Mr Hwer was reminded that the onus of making the case for increased trading hours was clearly on the applicant. Statements in the CIS which claim that there is no evidence to say that allowing the variation will have an adverse impact miss the point. The onus is on the applicant to satisfy us that there will be no adverse impact and the variation will be in the community interest. It was originally claimed that it was necessary to increase trading hours so that they

would mirror those of its sister club Cazalys. In the Commission's view there is no such justification. The Applicant's premises are in a residential area whilst Cazalys is in the central business district. If anything, the reciprocal membership would counter against extending trading hours because patrons of the golf club will now have the option of going to Cazalys if they wish to continue drinking.

36. 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 machines.
37. 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 application.
38. 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

39. 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 persons are the Licensee, NT Police and Palmerston City Council.

A handwritten signature in black ink, appearing to read 'Richard Coates', with a large, stylized initial 'R'.

RICHARD COATES
Chairperson
Northern Territory Liquor Commission

18 April 2019