

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**DECISION NOTICE**

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**MATTER:** APPLICATION FOR VARIATION OF CONDITIONS OF LICENCE

**REFERENCE NO:** LC2019/113

**LICENCE NUMBER:** 80303086

**LICENSEE:** Hibiscus Tavern Pty Ltd

**PREMISES:** Hibiscus Tavern  
8 Leanyer Drive  
Leanyer NT 0812

**APPLICANT:** Hibiscus Tavern Pty Ltd

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

**HEARD BEFORE:** Mr Richard Coates (Chairperson)  
Dr Robert Parker (Health Member)  
Ms Sandra Cannon (Community Member)

**DATE OF HEARING:** 26 November 2019

**DATE OF DECISION:** 26 November 2019

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**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 vary the conditions of the Liquor Licence of the Hibiscus Tavern Pty Ltd (‘the Licensee’) for the premises known as Hibiscus tavern by extending its trading hours in the Saloon Bar to allow trading on Sundays from 10:00 hours until 24:00 hours and on every other day of the week from 10:00 hours until 02:00 hours the following day. This extension of trading is subject to the condition that on Sundays after 22:00 hours and on other days after 24:00 hours that liquor is only sold to patrons that are engaged in playing an electronic gaming machine (‘EGM’), that drinks will only be sold at no less than the standard Saloon Bar prices, and served by a waiter in the enclosed gaming area of the Saloon Bar and that the Saloon Bar will not otherwise be open for the sale of liquor. All other conditions of the existing licence continue to apply.

2. In accordance with section 32A(9) of the Act the variation of the condition of licence is to take effect as of the date of this Decision Notice.

## **Reasons**

### **BACKGROUND**

3. On 14 December 2016, an application for a permanent variation to a liquor licence was lodged pursuant to section 32A of the Act by Mr Paul Palmer, a director of Hibiscus Tavern Pty Ltd (the Licensee) for the premises known as The Hibiscus Tavern situated at 8 Leanyer Drive, Leanyer.
4. The liquor licence allows for liquor trading in the Saloon Bar between the following hours;
  - Sunday 10:00 – 22:00
  - Monday 10:00 -23:59
  - Tuesday 10:00 – 23:59
  - Wednesday 10:00 – 23:59
  - Thursday 10:00 – 23:59
  - Friday 10:00 - 23:59
  - Saturday 10:00 -23:59
  - No trading on Good Friday or Christmas day

The Licensee is seeking to permanently change the hours for liquor trading in the Saloon Bar only to 10:00 – 02:00 (the following day) 7 days per week. There is no application to change any other conditions, trading days or trading hours in any other part of the premises.

5. The application and supporting documents are clear in that the Licensee is seeking to extend the hours of the Saloon Bar only, but not allow the public to use or enter the Saloon Bar for any purpose except to traverse directly to the Gaming Room. Staff will then supply liquor to the public in the Gaming Room by way of wait staff from the Saloon Bar.
6. It is clear from the documentation filed in support of this application and from the applicant's evidence at hearing that the licensee is not motivated by any desire to benefit from liquor sales during the extended trading hours. It is because section 88 of the *Gaming Machine Act 1995* links the approved hours for the Gaming Machine Licence to the trading hours of the liquor licence in the particular area, that the applicant is seeking this extension.
7. Despite the fact that this application was first lodged by the applicant almost three years ago it was only referred to the Commission on 23 August 2019. The Commission had proposed setting the matter down for hearing in September but that date did not suit the applicant so it was rescheduled for November 26. The delay in processing this application occurred, largely through no fault of the

applicant and as the Commission has already told Mr Palmer, he was entitled to expect much better service than he received from the Department.

8. To her credit the Acting Director General of Licensing has acknowledged the failings of Licensing NT with regard to this matter and provided the Commission with the following Chronology.

- 14/12/16 Application lodged via email by Mr Paul Palmer
- 14/12/16 Application acknowledged and applicant informed that the application could not be advertised at the current moment due to advertising restrictions over the Christmas-New Year period.
- 17/1/17 relevant stakeholders advised of application
- 25/1/17 First advertisement in NT News
- 27/1/17 Second advertisement in NT News
- 30/1/17 Objection from Mr Adam Turley received
- 2/2/17 Department of Health objection received
- 13/2/17 NT Police objection received
- 2/3/17 City of Darwin objection lodged
- 9/3/17 Report sent to Director of Legal by Licensing Officer seeking assessment of objections
- 10/3/17 Director-General approves extension of time for lodgement of City of Darwin objection in accordance with Section 127 of the Act.
- 13/3/17 Director of Legal replies to Licensing Officer with assessment of objections
- 16/3/17 Objections forwarded to applicant seeking a response
- 18/3/17 Response received from applicant
- 12/4/17 Licensing Officer completes report to Director-General with recommendation to hold a public hearing in accordance with guidelines and directions current at the time.
- 9/8/17 Principal Licensing Officer Jeff Verinder emailed Manager of Liquor, Mark Wood seeking the decision notice to finalise paperwork during administration of files
- 10/8/17 Wood emailed Verinder saying that the application was returned to Paul Champion (Previous Licensing Officer handling application) back in April 2017 to have it signed but appeared not to have been done. Champion had since left Licensing NT. Original application could not be located.
- 10/8/17 Verinder reconstructed file with recommendation that Director-General of Licensing hold a hearing in relation to the application and submitted for checking Page 25 of 113
- 6/9/17 Paul Palmer queries status of application
- 6/9/17 Reply to Palmer indicating it had been referred to the Director-General of Licensing for a hearing
- 21/12/17 A check of internal records cannot locate copy of the report and application that was forwarded to the office of the Director-General of Licensing
- 28/2/18 Liquor Act amended and Liquor Commission created. These amendments now require an Affidavit, Community Impact Assessment and Public Interest Criteria for any outstanding application to be referred to the Liquor Commission. The Director-General of Licensing did not have authority to hear this application post 28/2/18.

- 24/7/18 Mr Palmer emails generic email account and cc's Director-General of Licensing querying status of application
  - 28/9/18 Palmer emails Dean Moloney (then Director - Liquor)
  - 19/10/18 Palmer emails Dean Moloney asking for update and seeking priority for his application
  - 21/1/19 Palmer emails seeking update.
  - 22/1/19 Verinder reviewed existing files in accordance with updated Liquor Act requirements and determines application is missing required documents and is considered to be "outstanding". Affidavit, CIA and Public Interest Criteria Document not provided.
  - Sometime between 14/1/19 - 25/1/19 (exact date not known but more than likely on or about 22-25/1/19) Wood and Licensing Officer Free met with Mr Palmer. Wood apologies for the delay but also explained the requirements for the application to proceed with the changes to the Act and requirement for further documents. Wood offered to assist with the application but it is later believed that this was misconstrued to mean that Wood would actually author the required documents.
  - At an unknown point of time, but possibly May 2019, Palmer is informed that Licensing Officers will not compile the outstanding correspondence for him and suggests he seeks professional assistance if uncertain of how to compile documents.
  - 17/5/19 Paul Palmer engages DNS Specialist Services to complete application requirements
  - 20/5/19 DNS Specialist Services emails Licensing NT confirming engagement of company to provide services to Mr Palmer
  - 27/5/19 Danny Nixon-Smith of DNS Specialist Services meets with Verinder to discuss application. Anna McGill Acting Deputy Director-General (Operations) also present in meeting.
  - 27/7/19 DNS Specialist Services supplies CIA, PIC and copy of application form.
  - 3/8/19 Verinder emails DNS Specialist Services advising of affidavit and statement of display still not supplied.
  - 8/8/19 Affidavit and Statement of Display supplied
9. As is clear from the Chronology because this application was not finalised before commencement of the Liquor Act amendments of 28 February 2018 the applicant was then required to file an affidavit in accordance with section 32A(1A), a Community Impact Assessment in accordance with section 6A and a Public Interest Criteria Statement as required by section 6.2. Those documents were all filed in July and August of this year.

## **PUBLISHING OF APPLICATION AND CONSULTATION**

10. The application was published in the NT News on Wednesday 25 January 2017 and Friday 27 January 2017. 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 has been supplied.

11. As a result of publication of the application, one public objection was received from Mr Adam Turley.
12. In accordance with Section 32A of the Act, notification was made to;
  - CEO of Department of Health
  - Commissioner Northern Territory Police
  - CEO of City of Darwin
13. Whilst not legislatively required, notification was also sent to NT Fire and Rescue Service.
14. The Department of Health replied via letter dated 2 February 2017 objecting to the application for various reasons.
15. The Northern Territory Police replied via email dated 13 February 2017 objecting to the application for various reasons.
16. The City of Darwin responded via letter dated 2 March 2017 objecting to the application for various reasons.
17. The city of Darwin subsequently withdrew its objection to the application
18. The NT Fire and Rescue Service reply via email dated 30 January 2017 stating it has no objections to the application.

## **OJECTIONS AND RESPONSE**

19. Mr Adam Turley a resident of Castlereagh Drive Leanyer lodged the following objection:

"I am writing to object to the extension of trading hours for the Hibiscus Tavern because it will affect both the amenity of the neighbourhood where Hibiscus Tavern is located and the adverse effect it could have on the health, public safety and social conditions in the community.

I own a house on Castlereagh Drive which is very close to the Hibiscus Tavern. Castlereagh Drive is a commonly used thoroughfare for people heading to and leaving the Tavern and often these individuals can be quite disruptive - especially when leaving and in particular if they're very intoxicated. This is more of a problem at night time when they can be quite noisy and the dogs barking in the street seem to enrage them further creating greater disruption. Given the level of disruption that occurs now I can only presume an extension of hours will cause said disruption to either increase, happen later at night (or in the very early morning hours) or both.

It is also the case that extending trading hours for any licenced premises can be linked to increased alcoholism in the community, a degradation of public safety at night time and a potential increase in violence including domestic violence.

I also like to walk the dog at night and I wish to be able to walk the streets of Leanyer without fearing for my safety. Two weeks ago I was asked by a staff member from the Thirsty Camel to stop two men running from her as they had stolen bottles of spirits. I did not and I convinced the staff member to stop chasing them into the darkness of night because alone her safety was at risk and it wasn't worth it for a couple of bottles of spirits.

Finally, I'd note that there are quite a few itinerants in the suburb who gather in the car park at Hibiscus Shopping Centre or in the surrounding parks and grassed areas. This is a sad situation and happens as a result of a multitude of reasons. I'd argue that extending opening hours for the Tavern will increase the issue with itinerants in the area and will degrade safety for both them, Hibiscus customers and the existing suburb residents.

Leanyer is a nice family friendly suburb - it would be a pity to degrade this through the extension of opening hours at Hibiscus Tavern and it's for this reason I object to the extension of the hours in their licence".

20. The Department of Health did not support the application for an extension of trading hours on the basis that any late night trading in a suburban location should be confined to Thursday to Saturday nights only.

It also referred to the social problems caused by gambling in the Northern Territory.

21. The Police also opposed the extension from Sunday to Wednesday on the basis that:

"There are many social harms that come from drinking and gaming, including the breakdown of the family structure and domestic and family violence issues that arise out of alcohol/gaming. The actions of one problem gambler can negatively impact 5-10 other people, including family, friends and employers; and they are four times more likely to suffer from alcohol abuse. Children of problem gamblers are also at risk of developing a gaming problem themselves. As the tavern is in a residential area, the additional 14 hours being requested would heavily impact on the neighbourhood in regards to social harms".

22. The Applicant by letter from Paul Palmer dated 18 March 2017 responded to the objections as follows:

"The objections generally relate to the concern over the sale of alcohol past the current trading hours. As I stated in my application, this is not about the sale of alcohol but extending the hours of my Gaming Room as we are continually upsetting patrons at midnight when our machines go offline, My gaming room is located in the "Saloon Bar" of the premises and not in the "Bistro" as is more common, which puts me at a disadvantage to other premises as generally the Bistro trades later than the Saloon Bar. My goal here is not to sell more alcohol, in fact I will be closing off the bar and beer garden areas of the Saloon Bar no later than Midnight and should any

Gaming Room patrons wish for a drink between Midnight and 2am it will be served to them by a staff member.

The toilets are accessible to Gaming patrons without going into the closed off bar area. I am prepared, if necessary, to accept a condition of the Saloon Bar licence that no patrons are to be in the Bar area or Beer Garden after midnight and that only patrons playing earning machines are to be permitted in the Gaming Room after midnight and only those patrons playing gaming machines are to be served alcohol after midnight, I agree that Midnight is late enough for a saloon bar in the suburbs and the last thing I need is having to deal with saloon bar patrons after that time.

I want to be clear that there is no hidden agenda here and I believe I have been upfront in what I am trying to achieve and have shown a willingness to compromise and cooperate”.

23. The Commission was also advised by Licensing NT that no compliance issues had been recorded against the Licensee for the past 3 years.

## **PUBLIC HEARING**

24. Pursuant to section 50 of the Act, the Director-General of Licensing 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. The Public hearing commenced at 10:00am on 26 November 2019. The Applicant was represented by Mr Tom Anderson of Counsel and Andrew Giles solicitor. Paul Palmer a Director of the Applicant Company was also present and gave evidence in support of the application. Superintendents Muldoon and Laidler were present to give evidence in support of their objection. Mr Mark Wood and Ms Tania Chin also attended the hearing as representatives of the Director of Liquor Licensing to assist the Commission. We are most appreciative of the assistance provided by all those who attended the hearing.

## **ASSESSMENT OF THE APPLICANT**

26. 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.”

27. 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.”

28. 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”.

29. Those matters are identified as follows:

<b>Criteria</b>	<b>Matters to be considered</b>
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<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"> <li>• children and young people;</li> <li>• Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community;</li> <li>• migrant groups from non-English speaking countries;</li> <li>• people in low socio-economic areas; and/or</li> <li>• communities that experience high tourist/visitor numbers.</li> </ul>
	<p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> <li>• schools and educational institutions;</li> <li>• hospitals, drug and alcohol treatment centres;</li> <li>• accommodation or refuges for young or disadvantaged people;</li> <li>• child care centres;</li> <li>• recreational areas;</li> <li>• dry areas; and</li> <li>• any other area where young people may congregate or be attracted to.</li> </ul>
	<p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to</p>

	these 'at-risk' groups or sub-communities
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>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>
Volume	<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"> <li>• What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining?</li> <li>• Will the proposed licensed premises provide additional choices of service or products that are no available in the area?</li> <li>• Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?</li> <li>• Will it use existing premises improve or add to existing premises or is it a new premises?</li> </ul>

30. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Licensee must address (and satisfy the Commission of). The guidelines 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”.

31. Although the Applicant engaged the services of an interstate “expert” to prepare the community impact and public interest statements the Commission was not greatly assisted by those documents. A statement such as “The proportion of Aboriginal and Torres Strait Islanders residing in the local catchment area (8.7%) is slightly higher than in the Darwin local catchment area (7.4%) and significantly lower than the whole of NT (25.4%)” (Page 47 exhibit 1) is unhelpful. Similar statements have been made in many CIA’s that have been produced by interstate experts. Those of us who live here know that the majority of Aboriginal Territorians live outside Darwin and the fact that a particular suburb has significantly less Aboriginal people than the proportion of Aboriginal people across the Territory as a whole is unremarkable.
32. Another bland statement in the community impact assessment (page 49 exhibit 1) included “The higher levels of unemployment evident in the latter SA 2’s may be of concern as high rates of unemployment are associated with a higher propensity of problem gambling and alcohol consumption; however, **it is anticipated that the granting of this application will result in minimal negative impacts as the applicant is established within the community, will be providing entertainment services in a controlled environment and has robust RSA and RSG policies in place to minimise any potential harmful effects on the community that may arise as a result of their operations**”.

That part of the statement which has been highlighted is gratuitous waffle and has done nothing to advance the applicant’s case. To his credit Mr Anderson did not rely on any of the “evidence” contained in the community impact statement.

33. The Commission acknowledges that the prospect of compiling community impact assessment or public interest statements might be daunting to some licensees however we rarely require the detail and breadth of information, much of which was irrelevant, as was provided in this case. It is important that an applicant address those provisions of the Act which are relevant to the circumstances of the particular application and often it is the applicants themselves who are best placed to recognise the particular risks that might potentially arise as well as the strategies they can put in place to minimise those risks.
34. In this case the applicant had a clear appreciation of the issues that would be of concern to the Commission and had already come up with a strategy to minimise the risks associated with the proposal. We realise there are time constraints for licensees in putting aside the time to compile their own community impact assessment’s however as well as the cost saving, the fact that an applicant has made the effort to acquaint themselves with the legislation and personally

address the issues we are bound to consider will often weigh in favour of the application.

35. Mr Anderson on behalf of the applicant submitted a document, exhibit 2, which was a table of closing times for similar licensed venues with gaming machines in the Northern Suburbs, City, Palmerston and Rural Areas. That table is replicated below.

**Venue Closing Times - Northern Suburbs and City**

Hotels/Taverns	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Hibiscus Tavern Saloon Bar	22:00	23:59	23:59	23:59	23:59	23:59	23:59
Beachfront Hotel (same hours for both defined areas)	23:59	23:59	23:59	23:59	23:59	2:00	2:00
Karama Tavern Jilvies Bistro	23:00	23:00	23:00	23:00	23:59	2:00	23:59
Airport Tavern Saloon Bar-Bistro & Beer Garden	22:00	23:30	23:30	1:30	1:30	1:30	1:30
Parap Tavern Raging Bull Steakhouse	23:59	2:00	2:00	2:00	2:00	2:00	2:00
The Cav (same hours for both defined areas)	2:00	2:00	2:00	2:00	2:00	2:00	2:00
Frontier Hotel Lobby Bar and Arnhem Room	23:59	2:00	2:00	2:00	2:00	2:00	2:00
Lizards Bar & Restaurant Sports Bar	2:00	2:00	2:00	2:00	2:00	4:00	4:00
The Tap on Mitchell	2:00	2:00	2:00	2:00	2:00	2:00	2:00
The Lost Arc	4:00	4:00	4:00	4:00	4:00	4:00	4:00
Monsoons	4:00	4:00	4:00	4:00	4:00	4:00	4:00
Hotel Darwin	2:00	2:00	2:00	2:00	2:00	2:00	2:00
Shennanigans	2:00	2:00	2:00	2:00	2:00	2:00	2:00
Deck Bar	2:30	2:30	2:30	2:30	2:30	4:00	4:00
Smith Street Social	2:00	2:00	2:00	2:00	2:00	2:00	2:00
The Precinct	2:00	2:00	2:00	2:00	2:00	2:00	2:00
<b>Clubs</b>							
CAS Club	2:00	23:59	23:59	23:59	2:00	2:00	2:00
Tracy Village	2:00	23:59	23:59	23:59	2:00	2:00	2:00
Nightcliff	22:00	23:30	23:30	23:30	1:30	2:00	2:00
Darwin Golf Club	23:30	23:30	23:30	23:30	23:30	1:00	1:00
Darwin Trailer Boat Club	23:30	23:30	23:30	23:30	23:30	1:00	1:00
<b>Casino</b>							
Mindil Beach Cent City	3:00	3:00	3:00	3:00	3:00	4:00	4:00

**Venue Closing Times - Palmerston & Rural**

Hotels/Taverns	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Landmark	3:00	3:00	3:00	3:00	3:00	3:00	3:00
The Bell	23:59	23:59	23:59	23:59	23:59	23:59	23:59
Palmerston Tavern	23:59	23:59	23:59	2:00	2:00	4:00	4:00
Archies*							
Coolalinga Tavern	23:59	23:59	23:59	23:59	23:59	2:00	2:00
Howard Springs Tavern Lounge Bar / Dining Room	2:00	2:00	2:00	2:00	2:00	2:00	2:00
Virginia Tavern	23:59	23:59	23:59	23:59	23:59	23:59	23:59
<b>Clubs</b>							
Cazalys	23:59	23:59	23:59	23:59	2:00	2:00	2:00
Palmerston Golf & Country Club	22:00	23:30	23:30	23:30	23:30	23:59	23:59

36. The applicant submitted that the current trading hours for its licensed gaming area, the Saloon Bar, put it at a competitive disadvantage with other venues. Although it was argued by Police that this was a suburban area where there was an expectation that earlier closing hours were necessary to preserve the amenity of the residential neighbourhood, it is difficult to see why suburban residents of Parap living near the Parap Tavern should be entitled to any less consideration of their amenity than those of Leanyer, particularly as the Hibiscus Tavern is located well within the confines of a shopping centre complex.

37. An examination of the table (exhibit 2) reveals that nearby venues such as Casuarina Club and Tracy Village are licensed to trade until 2:00 am four nights a week and the Parap Tavern 6 nights a week.
38. The Hibiscus Tavern also operates the Dolly O'Reilly's Bar which is open until 2:00am on Fridays and Saturdays however there are no electronic gaming machines in that part of these licensed premises. The applicant has confined its twenty electronic gaming machines to a discrete area of its Saloon Bar and it is only that bar that this application pertains to. The Commission was provided with a plan of the gaming area within the Saloon Bar, exhibit 3, which shows how that section of the premises is able to be separated from the rest of the general Saloon Bar Area. Mr Palmer gave evidence that in his experience the patrons who attend his premises to play electronic gaming machines do not consume very much alcohol. He said that if he could open the gaming area to late night patrons without being obliged to provide them alcohol he would prefer to do so. The Commission accepts he was genuine in that regard. He further suggested that in order to minimise any risk of an increase in alcohol consumption by late night patrons in the Saloon Bar he would be prepared to limit the service of liquor to persons playing an electronic gaming machines, solely by waiter service, and that the Saloon Bar would otherwise be closed. He also stressed that gambling patrons would not be offered cheap or free drinks as an enticement to keep playing the machines.
39. The Commission accepts that given the measures that the licensee is prepared to put in place to limit the sale of liquor to only those patrons that are playing the electronic gaming machines that there would be little or no increase in the consumption of alcohol on these premises as a result of the application being approved.
40. Both the Police and Health Department objections also referred to the social harms that arise because of gambling. The Acting Director of Alcohol and other Drugs Directorate within the Department of Health, Sandra Schmidt said in her response to NT Licensing "Australians lose more on gambling than any other nation, mostly because of poker machines. In 2014, Australians lost more than US \$1,100 per capita compared with less than US \$600 in New Zealand and US and less than US \$500 in Canada and Britain" (exhibit 1 page 102).
41. The Commission accepts that excessive gambling is an issue within the Northern Territory, however as was confirmed by another panel of Commissioners in determining an application for substitution of premises by Darwin Turf Club Incorporated, LC2019/092 in Decision Notice dated 27 August 2019 at para 52 (d).

*"The safety, health and welfare of persons who use licensed premises must not be put at risk.*

The only particular potential concern to the Commission regarding this objective relates to the use by club patrons of EGMs. However, as discussed at paragraph 14 to 16 above, the Commission accepts that this is a matter exclusively for the Director-General to consider. The Commission considers that the scope of s6(2)(d) of the Act does not extend to consideration of the risk to the welfare of

patrons arising from their use of EGMs while using the licensed premises, because that is a field covered by the *Gaming Machine Act 1995*. That Act establishes a scheme to regulate the assessment of applications for gaming licences, and for the substitution of gaming licences. The scheme includes the requirement to conduct and consider a community impact analysis, which in turn is required to address, among other matters, problem gambling risk management and responsible gambling strategies”.

42. The Commission is bound to accept that any concerns that might arise over a potential increase in harmful gambling activity associated with this application have already been considered and determined in favour of the applicant by the appropriate regulatory authority.
43. The applicant is entitled to rely on the fact that it has won several awards for the quality of its gaming venue over the past decade in support of this application. It also stressed that as a wholly owned Territory enterprise its profits would remain in the Northern Territory and that both this factor together with the additional staffing that would be required would make a positive contribution to the local economy.
44. On the basis of the evidence before us the Commission is satisfied that having regard to the objects of the Act and the specific matters we are required to consider that the applicant has made a case to extend its trading hours. We are however not convinced that the principles of competitive fairness, relied upon by the applicant, support its proposal to extend its trading hours to 2:00am seven days a week. It is currently only permitted to trade in the Saloon Bar until 22:00 hours on Sundays. The Parap Tavern also has shorter trading hours on Sundays and the applicant’s closest competitors are only entitled to trade until 2:00am four days a week. We have therefore determined to only extend the applicant’s trading hours until 24:00 on Sundays, otherwise the application is approved to extend trading hours in the Saloon Bar until 2:00am the following day, Monday to Saturday inclusive. On the conditions set out in para 1 of this Decision Notice.
45. We would caution other licensees to not treat this decision as an indication that the Commission is prepared to increase trading hours across the board for suburban venues. This application was very much confined to extending trading hours only for the Saloons Bar’s gambling patrons in a way that ensures that there will be little or no increase in liquor sales during the additional hours of trade.

## **NOTICE OF RIGHTS**

46. 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 issue a licence pursuant to section 29 of the Act is specified in the Schedule and is a reviewable decision.
47. 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.

48. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected persons are the Applicant and Objectors.



RICHARD COATES  
CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION  
9 December 2019

On behalf of Commissioners Coates, Cannon and Parker