

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: APPLICATION FOR VARIATION OF THE CONDITIONS OF LICENCE

LICENCE NUMBER: 81416400

REFERENCE: LC2019/023

LICENSEE: Cazalys Palmerston Club Incorporated

PREMISES: Cazalys Palmerston
Temple Terrace
PALMERSTON NT 0830

APPLICANT: Cazalys Palmerston Club Incorporated

NOMINEE/S: Matthew Hewer

OBJECTOR/S: Nil

LEGISLATION: Section 32A, Part IV and V of the *Liquor Act*.

HEARD BEFORE: Mr Richard Coates (Chairperson)
Ms Jodi Truman (Deputy Chairperson)
Mr Kenton Winsley (Health Member)

DATE OF HEARING: 26 March 2019

DATE OF DECISION: 26 March 2019

Decision

1. For the reasons set out below and in accordance with section 32A(7) of the Liquor Act the Commission has determined to vary the condition of the liquor licence for the premises known as Cazalys Palmerston Club Inc. by varying the conditions to additional trading hours for ANZAC Day, 25 April as follows:
 - a. In accordance with the Memorandum of Understanding (MOU) between Palmerston Golf and Country Club and Palmerston RSL, RSL members and guests will be permitted to attend the ANZAC Day Dawn Service “Gunfire” Breakfast between the hours of 04:30 and 09:59 hours.
 - b. No liquor may be sold prior to 7.00am, however a traditional “tot of rum” will be provided at no cost to attendees during the period 4.30 to 7.00 hours. Normal liquor sales may commence at 7.00 hours.
 - c. These extended trading hours for ANZAC Day will remain whilst the MOU with Palmerston RSL remains in force.

2. In accordance with section 32A(9) the variation of the condition of licence is to take effect as at Tuesday 26 March 2019.

Reasons

Background

3. Cazalys Palmerston Club Inc. ("the applicant") currently holds a Club (Incorporated) Liquor Licence authorising the sale of liquor:
 - a. for consumption on or at the licensed premises by a member of the club or by a visitor in the presence of such a member.
 - b. for removal and consumption away from the licensed premises **only** to financial members of the Club.
4. On 25 January 2019, an application was lodged pursuant to section 32A of the Act by De Silva Hebron on behalf of Cazalys Palmerston Club (the Licensee) for the premises known as Cazalys Palmerston located at Temple Terrace, Palmerston NT (Licensed Premises).
5. The licensee has made an application seeking to permanently vary their trading hours within their liquor licence.
6. Submissions provided by De Silva Hebron on behalf of the licensee for the proposed variation is to include for the provision of the ANZAC Day Dawn Service "Gunfire" Breakfast and early trade on 25 April each year.
7. Following the closure of the Palmerston Sports Club Inc, Maluka Street, Palmerston NT being the previous home of the Palmerston RSL, The Licensee has entered into a Memorandum of Understanding with the Palmerston RSL for the use of the Palmerston Golf and Country Club (PGCC) facilities as the new home for the Palmerston RSL. Within the agreement all RSL members have reciprocal Membership rights at Cazalys and all ANZAC Day activities will be held at Cazalys premises.
8. The licensee is proposing to vary their trading hours and conditions within their liquor licence for ANZAC Day (25 April) every year from 04:30 to 09:59 hours. This variation to the liquor licence is to allow the hosting of the ANZAC Day Dawn Service "Gunfire" Breakfast.
9. The licensee is proposing that alcohol will not be sold during 04:30 and 07:00 hours, with sale of alcohol to commence from 07:00 hours. As is tradition, RSL members and guests will be invited to the traditional "tot-of-rum" which will be donated to the club by a regular supplier.
10. Service of alcohol will be available from 07:00 hours to allow veterans and other attendees to partake in a drink with other servicemen. Historically, the majority of attendees partaking in the service will leave prior to the lunch service.

11. There will be games of “two-up” available to be played throughout the extended trading hours.
12. The licensee has indicated within their application that security will be employed within the industry standards for the expected number of patrons which will be approximately 200-300 for the event.
13. There will be no removal or consumption of liquor away from the premises and there will be water made available.
14. The Commission notes that section 32A(1A) of the Act requires applicants to make an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted. The applicant, Mr Matthew Hewer has filed such an affidavit.
15. The Act prescribes that upon the application being filed, together with the affidavit under section 26A, there must be investigations conducted by the Director-General in relation to the application. The Commission has received no information to indicate there have been any adverse matters discovered as a result of the investigation by the Director-General.

Advertising and Consultation

16. Within their application the licensee requested that the matter be referred to the Director-General for consideration that an exemption be considered for publishing pursuant to section 119(3) as the licensee has offered the venue to the RSL with charitable intentions and that there had previously been an application underway by Palmerston Sports Club venue with regard to ANZAC Day variations that had completed the publishing requirement prior to them going into Administration.
17. On 20 February 2019, the A/Director of Liquor, Gambling & Racing reviewed the application and exercised the discretion under Section 119(3) to not undergo public notices for this matter.
18. It is noted that section 32A(5) of the Act requires that the Director-General must inform:
 - a. the Chief Executive Officer (“CEO”) of the Department of Health (“DOH”);
 - b. the Commissioner of Police; and
 - c. if the application relates to premises within the area of a shire council or a regional council - the Chief Executive Officer (“CEO”) of the council.
19. That occurred with respect to this application with the following response received:
 - a. The DOH made no adverse comment.
 - b. The NT Police had no objection.
 - c. The Palmerston City Council did not respond.
20. Notice was also provided to the Northern Territory Fire and Rescue Service who advised that they also had “no objection” to the application.

Public Hearing

21. 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.
22. 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 12 March 2019. The hearing was fixed for 11.30am on 26 March 2019 and notice was given to the applicant.
23. 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.
24. Mr Scott Hewer appeared on behalf of the applicant and 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

25. 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 it 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.
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:

Criteria	Matters to be considered
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.	Are there any ‘at-risk’ groups or sub-communities within the locality? This may include – <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;

	<ul style="list-style-type: none"> • 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>

	The Commission will consider information available to it about the 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?

30. 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”.

31. With respect to this application the Commission considers it relevant to note that this is not an application for a new licence. This is an application to vary conditions of an existing licence that already enables the premises to be open for trade on this day by extending the hours on which a restricted group of patrons may be on the premises.

32. Although an extension of trading is sought from 4.30am, no liquor will be sold by the licensee until 7.00am and then only to members of the Palmerston RSL and their guests.

33. The ANZAC Day breakfast has previously been held at the Palmerston Sports Club (PSC) which was affiliated with the Palmerston RSL, However the PSC has

been placed under administration and is no longer operating. The RSL approached the Palmerston Golf & Country Club (PGCC) to take over the hosting of the breakfast and because PGCC is intending to establish a reciprocal membership arrangement with the applicant, it was determined that Cazaley's was a more suitable venue.

34. The applicant has provided submissions addressing the public interest test and also the community impact assessment guidelines. The Commission was impressed with the additional information provided by Mr Hewer and is satisfied that the primary motivation behind this application is to serve the community need to honour the traditional remembrance of ANZAC Day.
35. In all of the circumstances, including the limited nature of the application, the processes put in place by the applicant to ensure appropriate service and consumption of alcohol at all times and that there is no evidence of any compliance issues or particular adverse impact upon the community; this Commission is, on balance, satisfied that it is appropriate to vary the conditions of the licence as sought. 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:

36. 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.
37. 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.
38. 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

16 April 2019