

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE AND REASONS FOR DECISION

CITATION: CAZALYS PALMERSTON CLUB INCORPORATED
APPLICATION FOR VARIATION TO CONDITIONS [2024]
NTLiqComm 3

FILE NUMBER: LC2023/038

LICENSEE: Cazalys Palmerston Club Incorporated

PREMISES: Cazalys Palmerston

LICENCE: 81416400

LEGISLATION: Part 4, Division 5 of the *Liquor Act 2019*

DECISION OF: Ms Jodi Truman (Deputy Chairperson)
Mr Bernard Dwyer (Health Member)
Ms Katrina Fong Lim (Community Member)

DATE OF HEARING: 20 December 2023 & 16 January 2024

DATE OF DECISION: 18 January 2024

Decision

1. For the reasons set out below and in accordance with section 112(2) of the *Liquor Act 2019* (NT) (**the Act**), the Northern Territory Liquor Commission (**the Commission**) has determined to approve the application to permanently vary the conditions of the licence for the premises known as “Cazalys Palmerston” at 10 Temple Terrace, Palmerston NT 0830 (**the premises**).
2. The conditions of the licence shall be varied by deleting the “Special Conditions” relating to “Trading Hours” from the licence thus enabling the licensee to sell liquor to patrons for consumption on or in the premise until 2.00 am seven (7) days per week.

Reasons

Background

3. Cazalys Palmerston Club Incorporated (**the licensee**) is the holder of liquor licence number 81416400 for premises known as “Cazalys Palmerston”, 10 Temple Terrace, Palmerston NT 0830 (**the premises**).
4. The license held over those premises includes a takeaway authority, club authority and late-night authority. Although the late-night authority is included, the hours of operation are in fact set out within the licence as “Special Conditions” with the trading hours being from 10:00 am to midnight five (5) days per week and 10:00 am to 2:00 am on Thursday, Friday and Saturday evenings.

The Application

5. On 5 October 2023, Mr Max Funch (**Mr Funch**) of DNS Specialist Services (“DNS”) lodged an application with the Director of Liquor Licensing (**the Director**) under section 110 of the Act on behalf of the licensee for approval to vary the conditions of the licence.
6. The substance of the application to vary the licence was to extend the trading hours of the late-night authority already held to include Sunday to Wednesday evenings (inclusive) from midnight to 2:00 am. In short, to become a venue trading until 2.00 am, seven (7) days per week.

Publication and Consultation

7. The Commission was informed by the Director that the “application was advertised on 11 November 2023” and that the Director was “satisfied that the applicant has complied with the requirements to advertise the application”.
8. In accordance with section 56 of the Act, notification was given to the Department of Health (**DoH**), NT Police and the City of Palmerston.
9. There was “no objections” to the application by DoH. NT Police responded “no issues”. The City of Palmerston stated it would “not be making an objection or comment”.
10. In submissions to the Commission at the hearing of the application, the representative of the Director stated that the Director “had no concerns with the application”.

Compliance

11. The Director advised the Commission within the referral that “there are no adverse inspection reports for the past 12 months. The most recent audit found the venue to be compliant”. It was made clear to the Commission during the course of the hearing that the venue has a very good compliance record and reputation.

The referral

12. On 28 November 2023, pursuant to section 59 of the Act, the Director referred the application to the Commission to be determined by way of a public hearing. Notice was subsequently given by the Commission on 6 December 2023 that the matter would be listed for a public hearing on 20 December 2023.
13. The referral included a number of documents, including:
 - a. Application to vary a liquor licence
 - b. Affidavit and Declaration of Associates pursuant to section 54 of the Act
 - c. Public Interest and Community Impact Assessment pursuant to sections 49 to 52 of the Act
 - d. Nominee's driver's licence
 - e. Lease agreement for premises

The hearing

14. On 20 December 2023, the application proceeded as a public hearing. Mr Matthew Hewer (General Manager of the Applicant) appeared in person and requested that Mr Danny Nixon-Smith of DNS be permitted to represent the applicant via Microsoft Teams. Although not a legal practitioner, Mr Nixon-Smith was permitted to do so. Ms Christine Free ("Ms Free") appeared for the Director. The Commission thanks all persons for their attendance, respect shown, and assistance provided at the hearing.
15. Pursuant to s 23 of the Act, the Commission is not bound by the rules of evidence and may inform itself in any manner it considers appropriate. Section 21(2) provides that a hearing must be conducted in public unless the Commission is of the opinion it is not appropriate. No submissions were made to the Commission to this effect.
16. At the hearing on 20 December 2023, the Director's referral brief was tendered into evidence as Exhibit 1. Numerous other documents were also tendered on behalf of the Licensee during the course of the hearing and submissions were made on behalf of the Licensee and very briefly on behalf of the Director. The Commission accepted this material into evidence as tendered by the applicant, without objection.
17. During the course of that hearing, the Commission indicated to the applicant that there were some matters that were not clear on the documents filed in support of the application and that further material was needed in order to comply with the requirements of the Act.

18. As a result, application was made for an adjournment in order to file further materials. That application was granted, and the hearing was adjourned to 16 January 2024. On that date, the hearing recommenced and the following documents were tendered on behalf of the applicant:
 - a. Updated Public Interest and Community Impact Assessment pursuant to sections 49 to 52 of the Act
 - b. Licensee’s Strategic Plan 2021 to 2025
 - c. Licensee’s Responsible Service of Alcohol, Licensing & Compliance Policy
 - d. Licensee’s Staff Induction Handbook
 - e. Community Benefit Fund Annual Reports for 2021-22 and 2022-23, published by the Department of Industry, Tourism and Trade

ASSESSMENT OF THE APPLICATION

19. In accordance with section 112 of the Act, the Commission has considered:
 - a. the applicant's affidavit required by s 54 (relevant to the application under section 112).
 - b. The public interest and community impact requirements.
20. There were no objections to this application for the Commission to consider.
21. When considering this application (and therefore exercising its power or performing its function under the Act), the Commission must also have regard to the primary and secondary purposes of the Act set out in section 3 and exercise its power in a way consistent with those purposes¹.
22. As set out in section 3(1) the “primary purpose” of the Act is to “minimise the harm associated with the consumption of liquor in a way that recognises the public interest in the sale, supply, service, promotion and consumption of liquor”. The Commission therefore accepts the Act makes clear that there is a public interest in the sale, supply, service, promotion and consumption of liquor, which is a legal substance. It is also clear that there is a public interest that this occurs in a way that **minimises** the harm associated with the consumption liquor.
23. Section 51 of the Act further provides that at all times the onus is upon the Applicant to satisfy the Commission that approval of the application “is in the public interest” and “will not have a significant adverse impact on the community”.

¹ Section 3(4) of the Act

24. In relation to the question of “significant adverse impact”, this term is not defined in the Act. The Commission relies upon previous discussion in an earlier ruling on the meaning of this term² and in accordance with that earlier ruling the Commission will proceed on the basis that the term “significant adverse impact” means an adverse impact that is important or of consequence but not necessarily substantial.

The applicant

25. The Commission notes the applicant already holds this licence. This is not an application for the issue of a new liquor licence or the transfer of one. It is an application for a variation of the licence already in existence and held by the applicant. There is therefore no issue for the Commission to consider in relation to whether the applicant is fit and proper.
26. Should the Commission be mistaken in this regard, the Commission is satisfied as to the well-established credentials of the principals of the applicant and is satisfied that sufficient disclosure has previously been made.

The applicant’s associates

27. Whilst that may be the case concerning the applicant, section 112 does require that the Commission consider the affidavit required under section 54 of the Act that discloses persons of influence and potential beneficiaries.
28. The applicant is a not-for-profit company with five (5) Directors who have all been identified within the application and the Affidavit.
29. On 26 October 2023, the applicant lodged with the Commission an affidavit from Mr Matthew Hewer, nominee for the applicant, pursuant to section 54. The Commission is satisfied with the matters set out within that affidavit and compliance with section 54 of the Act.

Public interest and community impact requirements

30. Before turning to the application itself, the Commission notes that section 112 requires the Commission consider the public interest and community impact requirements.
31. In considering the public interest requirements the matters set out in section 49(2) of the Act must be considered:
 - (a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor.

² See Northern Territory Liquor Commission Decision Notice – Application for Substitution of Premises and Application for Variation of Conditions of Licence – Liquorland (Australia) Pty Ltd (“Palmerston Liquorland Decision Notice”), 3 July 2020, para. 103

- (b) ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner.
 - (c) safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises.
 - (d) protecting the safety, health and welfare of people who use licensed premises.
 - (e) increasing cultural, recreational, employment or tourism benefits for the local community area.
 - (f) promoting compliance with this Act and other relevant laws of the Territory.
 - (g) ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business.
 - (h) preventing the giving of credit in sales of liquor to people.
 - (i) preventing practices that encourage irresponsible drinking.
 - (j) reducing or limiting increases in anti-social behaviour.
32. When considering the community impact requirements, the matters set in section 49(3) of the Act must be considered:
- (a) the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school.
 - (b) the geographic area that would be affected.
 - (c) the risk of harm from the excessive or inappropriate consumption of liquor.
 - (d) the people or community who would be affected.
 - (e) the effect on culture, recreation, employment and tourism.
 - (f) the effect on social amenities and public health.
 - (g) the ratio of existing liquor licences and authorities in the community to the population of the community.
 - (h) the effect of the volume of liquor sales on the community.
 - (i) the community impact assessment guidelines issued under section 50.

(j) any other matter prescribed by regulation.

33. The Commission notes there are no such “other” matters prescribed by regulation. As recently identified by the Commission³ there are also apparently no community impact assessment guidelines currently in force, following the expiry on 1 October 2020 of Part 8 (“Transitional matters”) of the Regulations, which included a provision deeming the community impact assessment guidelines previously published under the *Liquor Act 1978* to be guidelines issued under s 50 of the *Liquor Act 2019*.
34. Finally, it is important to note that at all times, the applicant bears the onus of satisfying the Commission of the relevant matters. Even if there were no objections, the applicant must still satisfy this Commission of all matters.

The public interest and community impact requirements

35. In determining the question of the public interest, the Commission notes the following objectives under section 49(2) to be particularly relevant as to considering how the variation would **advance** the following objective/s:
- a. minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor.
 - d. protecting the safety, health and welfare of people who use licensed premises.
 - e. increasing cultural, recreational, employment or tourism benefits for the local community area.
 - j. reducing or limiting increases in anti-social behaviour.
36. In relation to the matters set out in section 49(2)(b), (c), (f), (g), (h) and (i) the Commission accepts that these objectives can be adequately addressed by the applicant via its current operational practices and that there is no evidence to suggest the venue has practices that encourage irresponsible drinking or that “large numbers of people” are likely to be attracted to this venue by virtue of the variation proposed, particularly give this is a community club and will remain subject to Club authority conditions.
37. The Commission has therefore closely analysed the evidence provided in light of particularly addressing those remaining objectives under section 49(2), namely (a), (d), (e) and (j).

³ See DCL Hospitality Pty Ltd decision (LC2023/10), paragraph 142.

38. Further, in determining the question of whether the variation would have a significant adverse impact on the community, the Commission notes the following to be particularly relevant considerations under section 49(3):
- a. the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school.
 - b. the geographic area that would be affected.
 - c. the risk of harm from the excessive or inappropriate consumption of liquor.
 - d. the people or community who would be affected.
 - e. the effect on culture, recreation, employment and tourism.
 - f. the effect on social amenities and public health.
 - g. the ratio of existing liquor licences and authorities in the community to the population of the community.
39. The Commission has therefore also closely analysed the evidence in relation to addressing these remaining objectives.
40. In relation to the geographic area/community/neighbourhood, the Commission notes the evidence provided by the applicant that “there are 4 licensed venues located within 1km” and “an additional venue ... just outside the 1km radius” of these premises. Of these venues, four (4) hold a “late night authority” permitting trade until 2.00 am, 3.00 am or 4.00 am. There is therefore already in existence a high ratio of existing licences with late night authorities (or extended late night authorities) in a relatively small area.
41. The proposed variation will not change the number of such venues. What it will do is allow the venue to remain open until 2.00 am seven (7) days per week. The offering however that the venue will provide to the geographic area/community/neighbourhood is very different as it will still be a premises subject to Club authority conditions. It will not become another “nightclub” or “late night pub” with live music. The applicant was very clear in its evidence in this regard, and this is accepted by the Commission.
42. The Commission also weighs this evidence together with the fact that the venue is well run and operates in compliance with the Act.
43. In relation to the consideration of how the additional hours would **advance** the objective of minimizing the harm or ill-health caused to such people by the consumption of liquor, whilst the Commission acknowledges that permitting a venue to extend its hours would arguably result in an increased amount of liquor being consumed **at** the premises, the Commission finds that does not necessarily mean there would be a commensurate increase in harm of ill health caused by its consumption.

44. Evidence was provided by Mr Hewer that it was in fact his experience (and what he stated was part of the basis for bringing the application to vary) that several members of the club and patrons of the venue stated that the closure of the venue at midnight meant that they had to travel to other venues to continue their evening activities. This meant persons were having to go to venues that were late night venues of the nature of nightclubs or public bars, when such persons preferred to be able to remain at the club which had a very different atmosphere and entertainment.
45. The Commission is aware that there is also an increase in risk at other late-night venues of that nature and therefore is satisfied that by enabling the applicant to extend its hours to cater to its patrons for that period, it minimises the potential harm or ill-health caused to such people by the consumption of liquor by enabling them to stay in a club atmosphere rather than a nightclub or public bar.
46. Commensurate with this finding, the Commission accepts that granting the variation would increase recreational benefits in the local community area offering a venue different to those operating late night on these additional days. It would also increase employment benefits in the local community area with the applicant providing further hours for its staff which has some (albeit minimal) flow on effects in the wider community.
47. Submissions were made that there would also be an increase in tourism benefits. The basis made for this submission was that the venue was particularly popular during the Dry season with the “grey nomad” clientele who heavily populated the nearby caravan parks (for example Free Spirit Resort and Howard Springs Caravan Park). Mr Hewer gave evidence that on numerous occasions it had been stated to him that such patrons found the premises to be a “safer venue” as it was a club. The Commission accepts this submission.
48. In relation to the location of these premises, the Commission finds itself satisfied that there would not be a significant increase in traffic and/or noise that would have a significant impact on residents nearby. This is particularly so given the distance between the premises and nearby residences.
49. The Commission also accepts that the applicant would have policies and procedures in place to attempt to mitigate any noise, disturbance or anti-social behaviour that may be generated.
50. The Commission notes that yet again it is a submission made by an applicant before the Commission that the proposed variation would “present a number of harm minimisation and disruption minimisation opportunities ... with the effectiveness of phased crowd dispersal during a longer trading period ...”⁴. This alleged “benefit” has appeared in several recent applications for variation

⁴ Licensee’s Community Impact Assessment submission, p.64 of Exhibit 1

of trading hours and is a concerning trend particularly given that most make such a claim but then provide no real evidence to support the same.

51. In this application there was no evidence to suggest that there is “ineffective” crowd dispersal occurring right now. The applicant alleged that such a variation would also create “an atmosphere that encourages a more relaxed and casual drinking environment, rather than a sense of feeling that there is an intensified time restricted beverage consumption culture”⁵.
52. A similar submission was made by the applicant under the heading of “Noise Emanations”⁶ which the Commission notes is also no longer a specific factor referred to under section 49(2) of the Act.
53. Again, the Commission notes there was no evidence (other than the applicant’s own submission) that suggested such a culture exists. In fact, the Commission would be extremely concerned if there was such a culture that existed at the premises and that the applicant was doing nothing to address other than to rely upon it as a basis for extending hours of trade.
54. In short, this submission without any evidence is simply not accepted by the Commission. When this was raised with the applicant, the applicant stated it no longer sought to pursue such a basis for its application. That was a sensible approach. The Commission hopes this seemingly recent trend of making such claims in support of applications for variation without evidence comes to an end.
55. The Commission notes that the Northern Territory and its community continues to experience the harms associated with the large-scale consumption of alcohol. This remains the experience of this panel and the general state of the evidence that has been presented many times to this Commission since its inception and founded on the findings made in the Riley Review.
56. However, each application must be considered on its own merits **and** with particular attention to the nature of the premises involved. This is not a public bar or nightclub. This is a community club that has an extremely good reputation, good compliance, has good policies and procedures in place in relation to the responsible service of alcohol and the safety of its patrons. It also contributes a significant amount of funds into the community. Whilst the applicant conceded this was an application related to the financial viability of the club, that financial viability was heavily related to the contributions made to the community and not simply a profit-making exercise.

⁵ Ibid

⁶ Licensee’s Public Interest Criteria submission, p.28 of Exhibit 1

57. As a result, the Commission is persuaded by the applicant that the proposed additional two (2) hours of trade on the additional days sought as sought under the variation is in the public interest and would not have a significant adverse impact on the community.
58. For these reasons the Commission has determined to vary the conditions of the licence as sought and as set out at the commencement of these reasons.

NOTICE OF RIGHTS

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



JODI TRUMAN
DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
19 January 2024

On behalf of Commissioners Truman, Dwyer and Fong Lim