

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**DECISION NOTICE AND REASONS FOR DECISION**

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**CITATION:** PALMERSTON GOLF & COUNTRY CLUB  
INCORPORATED APPLICATION FOR VARIATION TO  
CONDITIONS [2024] NTLiqComm 11

**FILE NUMBER:** LC2024/005

**LICENSEE:** Palmerston Golf & Country Club Incorporated

**PREMISES:** Palmerston Golf & Country Club

**LICENCE:** 81403928

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

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

**DATE OF HEARING:** 14 March 2024

**DATE OF DECISION:** 19 March 2024

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**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 refuse the application to permanently vary the conditions of the licence for the premises known as “Palmerston Golf & Country Club” at University Avenue, Palmerston NT 0830 (**the premises**).

**Reasons**

**Background**

2. Palmerston Golf & Country Club Incorporated (**the licensee**) is the holder of liquor licence number 81403928 for premises known as “Palmerston Golf & Country Club”, University Avenue, Palmerston NT 0830 (**the premises**).
3. The license held over those premises includes a takeaway authority and club 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 every day.

## The Application

4. 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.
5. The substance of the application to vary the licence was to extend the trading hours until 2:00 am on Wednesday to Sunday inclusive. In short, to become a venue trading until 2.00 am, five (5) days per week.

## Publication and Consultation

6. The Commission was informed by the Director that the “application was advertised on 11 November 2023” and a green sign erected at the site. The Director stated he was “satisfied that the applicant has complied with the requirements to advertise the application”.
7. In accordance with section 56 of the Act, notification was given to the Department of Health (**DoH**), NT Police and the City of Palmerston.
8. NT Police responded, “no issues” and there was “no objections” by DoH.
9. The City of Palmerston (**Council**) did however lodge an objection. In addition, there were a further seven (7) objections received from the following persons:
  - a. Glen and Sarah Patrick (neighbourhood residents).
  - b. Ross and Leonie Commons (neighbourhood residents).
  - c. Bronwyn & Roy Harrison (neighbourhood resident).
  - d. Kevin Fitzpatrick (neighbourhood resident).
  - e. Timothy Dodding (neighbourhood resident).
  - f. Lee Monaghan (neighbourhood resident).
  - g. Lachlan Lawford and Holly Sheng (neighbourhood resident).

Each objection was entitled to be made in accordance with section 61(4) of the Act and were made in accordance with section 61(2)(a) namely that the variation would adversely affect:

- (i) the amenity of the neighbourhood and
  - (ii) public safety in the community.
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 good compliance record and reputation.

## The referral

12. On 7 February 2024, pursuant to section 59 of the Act, the Director referred the application to the Commission to be determined by way of a public hearing. The referral was received by the Commission on 12 February 2024 and notice was subsequently given by the Commission on that same day that the matter would be listed for a public hearing on 28 February 2024.
13. Upon receiving that notice the licensee requested an adjournment to enable their consultant to appear at the hearing. As a result the application was relisted for a public hearing on 14 March 2024 and notice provided to the objectors.
14. 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. Driver’s licence for the General Manager of the Applicant
  - e. Lease agreement for premises
  - f. Correspondence with stakeholders and objectors
  - g. Aerial map of the premises and surrounding area
15. Application was made for redactions to the documents because of commercial in confidence. This was granted and a copy of the redacted hearing brief was provided to the objectors.

## The hearing

16. On 14 March 2024, the application proceeded as a public hearing. Mr Matthew Hewer (**Mr Hewer**) (General Manager of the Applicant) appeared in person and requested that Mr Danny Nixon-Smith (**Mr 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. In addition, one of the objectors, Mr Lachlan Lawford (**Mr Lawford**), also appeared via Microsoft Teams.

17. The Commission thanks all persons for their attendance, the respect shown, and assistance provided at the hearing.
18. 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.
19. At the hearing on 14 March 2024, the Director's referral brief was tendered into evidence as Exhibit 1. Numerous other documents were also tendered and exhibited, and submissions were made on behalf of the Licensee and very briefly on behalf of the Director. Mr Lawford was also given an opportunity to be heard on matters raised.

## **ASSESSMENT OF THE APPLICATION**

20. In accordance with section 112 of the Act, the Commission must consider:
  - a. the licensee's affidavit required by s 54 (relevant to the application under section 112).
  - b. any objection to the application made under section 61.
  - c. any response provided by the licensee under section 62.
  - d. The public interest and community impact requirements.
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 purposes<sup>1</sup>.
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 and in accordance with section 110(2) of the Act, the licensee must satisfy the Commission that varying the conditions of the licence is in the public interest and would not have a significant adverse impact on the community. The onus is always therefore clearly on the licensee.

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<sup>1</sup> 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 term<sup>2</sup> 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 credentials of the principals of the applicant and is satisfied that sufficient disclosure has previously been made.

### **Persons of influence and potential beneficiaries**

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, General Manager of 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.

### **The objections**

30. As mentioned above, the objections focused on the variation adversely affecting:

- a. The amenity of the neighbourhood; and
- b. The public safety in the community.

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<sup>2</sup> 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

31. The following concerns were highlighted from residents of the neighbourhood:

a. From several residents located in Martin Court:

- i. "... noise from the club" was already "funnelled towards the properties in Martin Court" with "nothing to stop the noise travelling ... as it is an open area across the course".
- ii. "... also patrons that forget to use the provided toilet facilities and decide to urinate directly on or around the 18<sup>th</sup> green in direct view of our property...".
- iii. "... numerous patrons that walk directly from Drive Avenue past the back of our homes to attend the facilities. This happens at all hours until closing and leaving after closing, with residents' dogs continually barking at these people. We are woken by these people on a regular basis, affecting our hours of sleep".
- iv. "The amount of golf buggy usage after golfing hours is extremely high, with patrons leaving the facilities late and the majority of these have lights or spotlights that directly intrude into our properties in Martin Court".
- v. "... that by extending the hours to after midnight, the noise and intoxicated patrons using the facility will increase" and this "will have an adverse effect on our neighbourhood and may also affect the property values".
- vi. "... residents have already been impacted by increased noise and light from the mini golf (which currently shuts at 10:00 PM each night). The extension of the liquor license has the potential for the mini golf course to be open later and for increased noise and light pollution to be projected to Martin court later into the evenings. The Club has so far made no effort to screen the view nor dampen the increased noise of the mini golf or the redesigned carpark from Martin Court".
- vii. "The renovations of the club are not yet complete, however, to date the Palmerston Golf Club has made no effort to restrict noise or the passage of people away from the residential area. New fencing has been installed along University Avenue; however, this has not extended along the drain between the Club and rear of some Martin Court residences (including the alleyway of Martin Court). This gives foot traffic, the ability to travel through the Club's car park and disperse a variety of ways (including down the Martin Court alleyway) into the residential area".
- viii. "... there is already a saturation of venues with extended operating hours and to vary the liquor license of the Club, located in the middle of a residential area, is unnecessary when there are other choices available".

- ix. "The variation to the liquor license for the Club to increase trading hours, located in the residential area, within a local government area that already has a large number of extended licences increases the likelihood of effects to public safety and social conditions within the direct neighbourhood".
  - x. "Whilst the Club's submission states there is no intention to have loud music at this time, there is nothing stopping the venue changing that intention at a later stage, once the liquor licence trading hours have been extended. The variation of the liquor licence does not specifically exclude live music until closing".
  - xi. "Those located directly across the 18th green from the Club are already impacted by the noise of the Club (due to the wide-open expanse and lack of sound barrier) and an increase to late night trading is expected to include some music (whether live or not), and an increase in noise late into the night. The position of the 18th hole actually allows noise to carry to Martin Court houses, as the wide-open space creates a void for sound to carry rather than dispersing the noise".
- b. From residents located in Martin Court with properties in Dwyer Circuit:
- i. There would be an "Increase in road traffic".
  - ii. "Increase in foot traffic on surrounding streets and the golf course, people walking home intoxicated and rowdy causing dogs barking at all hours".
  - iii. "Increase in golf buggies, driving home on surrounding streets and the golf course, shining lights into our houses, also causing unrest of dogs resulting in residents being woken up at all hours".
  - iv. "This golf club is situated in the middle of a highly populated residential area, not in a commercial location. Therefore residents should not be subjected to the impact that late opening hours will cause to their everyday life".
  - v. "This establishment already continues to serve heavily intoxicated patrons during the current opening times, it is concerning that even this will increase with longer hours. Residents are currently affected by intoxicated patrons, leaving the club in current hours".
- c. Examples were also given of:
- i. Individuals arguing in the carpark.
  - ii. Cars "revving excessively" and departing "at speed".
  - iii. Loud argumentative conversations.

- iv. A resident's home being "egged" twice after the resident spoke to two (2) men removing a "Club golf cart from the premises".
- v. Loud music and offensive language.
- vi. Intrusive lighting.
- vii. Antisocial behaviour.
- viii. Rubbish, alcohol bottles and cans left in the vicinity.

32. It is apparent that the significant concern of the objectors is there are already issues relating to noise, public order and safety, irresponsible drinking, anti-social behaviour, undue offence, annoyance, disturbance and inconvenience and these issues will only worsen if the variation were permitted. As Mr Lawford put it at the hearing; "... (granting the application) will just amplify the issues".

Objection by City of Palmerston

33. As earlier noted, an objection was also lodged by City of Palmerston. The objection by Council was also on the grounds that the variation "may or will"<sup>3</sup> adversely affect:

- a. The amenity of the neighbourhood; or
- b. The health, education, public safety or social conditions in the community.

34. In relation to these grounds the Council highlighted that the premises were "surrounded" by suburbs and were "in close proximity to the suburbs of Marlow Lagoon, Gray and Moulden". That in addition to "two schools, five childcare centres, one emergency housing facility and one area where young people congregate" there were also "sixty-three identified residences that directly share a boundary with the venue"<sup>4</sup>.

35. Council also raised concern regarding noise not just from the premises but also from "the movement of patrons to and from the venue through" the relevant suburbs. Council noted that "potential adverse impacts from a late-night venue on the amenity of a residential community" should not be "limited to increased noise from live entertainment". Council noted "an assessment of its desirability, pleasantness, utility and attractiveness" should be made and stated that "trading until 2:00 AM five nights per week into a quiet residential neighbourhood, predominantly occupied by families, will have an obviously negative impact on the overall amenity of that neighbourhood".

36. With respect to the ground relating to the adverse effect on health, education, public safety or social conditions in the community, Council noted the "well

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<sup>3</sup> See wording of objection by Council at page 141 of the Hearing Brief (exhibit 1)

<sup>4</sup> Exhibit 1, page 142



recognised” impact of alcohol misuse on communities as a whole. Council also noted the following with respect to the reliance by the applicant upon a slight decrease in “alcohol related DV and assault rates in the Palmerston region”:

“... crime statistics are the subject of fluctuation; it is naive to suggest that alcohol related violence does not significantly impact the Palmerston community. In any event, the minor reduction in the reported statistics could hardly support the application for an increase in the hours that alcohol is sold from the venue.”

37. The Commission agrees with this submission.
38. Council also noted that whilst Durack was a “suburb of higher socio-economic outcomes, the neighbouring suburbs of Driver and Gray, and the nearby suburb of Moulden, are not. These neighbourhoods should be considered as within an easily accessible distance, when considering the community impact. The areas of Driver, Gray and Moulden fall into the 1st and 2nd quintile (most disadvantaged) communities in the area”.
39. The Commission considers this a particularly relevant matter that appears not to have been properly addressed by the applicant. Further, on one hand the applicant sought to argue in its submissions that Durack was of a higher socio-economic background and on the other hand during the course of the hearing referred the Commission to the area and the “well known problems” associated with alcohol, “Territory housing developments” and “public disturbances”. This was on the basis of attempting to submit that these were “not the patrons” of the premises, however it shows the contradictory nature of the material provided by the applicant to the Commission
40. Reference was also made by Council to the numerous other licensed venues within a short distance of the premises. In particular that there were three other licensed venues within a 1-kilometre radius all with a late-night authority and another venue “just outside the 1km radius” but still within the Palmerston CBD. The Council also noted there had been no reference made to the Landmark Tavern only “approximately 1.2km from the venue ‘as the crow flies’” which has a late-night authority until 3:00 AM, seven days a week.
41. In relation to these venues Council stated as follows<sup>5</sup>:

“Those venues collectively adequately provide for the needs of the community. Moreover, they are all contained within the confines of the Palmerston CBD. This has led to the creation of an entertainment precinct, where patrons can move freely between venues, and allows for police and other resources to be concentrated within the area where alcohol related harm is most likely to occur. The effect of the application is to extend this precinct into a residential area, placing additional strain

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<sup>5</sup> Ibid, page 143

on police and other resources, and diverting foot traffic through suburban streets after midnight as patrons move between venues”.

42. Finally, Council noted it had “long expressed its concern regarding the unacceptable levels of crime and alcohol fueled violence in the municipality, and the potential for the encroachment of licensed venues into Palmerston’s suburbs to exacerbate these difficult social issues” and referred the Commission to earlier decisions made relating to these concerns.
43. Although the Council did not appear at the hearing, the objection made was well considered, relevant and helpful to the Commission in terms of the matters relevant to determining the application.

### **Public interest and community impact requirements**

44. Before turning to the application itself, the Commission notes that section 112 requires the Commission consider the public interest and community impact requirements.
45. 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.
  - (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.

46. 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.

47. The Commission notes there are no such “other” matters prescribed by regulation. As recently identified by the Commission<sup>6</sup> 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*.

48. 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.

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<sup>6</sup> See DCL Hospitality Pty Ltd decision (LC2023/10), paragraph 142.

## The public interest and community impact requirements

49. 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 (particularly considering the concerns raised by nearby residents):
- a. minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor.
  - 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.
  - j. reducing or limiting increases in anti-social behaviour.
50. In relation to the matters set out in section 49(2)(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.
51. The Commission has therefore closely analysed the evidence provided in light of particularly addressing those remaining objectives under section 49(2), namely (a), (b), (c), (d), (e) and (j).
52. 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) (again particularly in light of the concerns raised by nearby residents):
- 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.
53. The Commission has therefore also closely analysed the evidence in relation to addressing these remaining objectives.
54. 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 either 2.00 am, 3.00 am or 4.00 am. The Commission finds therefore that there is already in existence a high ratio of existing licences with late night authorities (or extended late night authorities) in a relatively small area.
55. The Commission is not satisfied by the submission made by the applicant referencing to the fact that there are other suburbs where the density is higher. That may be the case, but that does not mean that it should be repeated in this location.
56. It must also be noted that the location of these premises is in very close proximity to residences and is clearly in a residential area. This is not like venues such as Cazaly’s Palmerston, Good Times Bar & Grill, Flynn’s Palmerston or Landmark @ Gateway that have some distance (and for some there is considerable distance) between the premises and neighbouring residential homes.
57. The Commission has considered other licenses in Palmerston and there is only one that is somewhat similarly located within a residential neighbourhood (that is currently operating) and that is Bell Bar & Bistro. The Commission notes that it has trading hours until midnight seven (7) days per week.
58. The Commission acknowledges that the proposed variation will not change the number of venues in the geographic area. What it will instead do is allow the venue to remain open until 2.00 am five (5) nights per week.
59. In terms of the “offering” that the venue will provide to the geographic area/community/neighbourhood, it is clear it will remain the same, i.e. a premises subject to Club authority conditions. The Commission accepts the applicant’s submission that it will not become another “nightclub” or “late night pub”. The Commission notes that the applicant further submitted it “has no intention of hosting live entertainment after midnight” and during the hearing in fact stated it was “not planning to do any live music or amplified music beyond 10.00pm”. Whilst this may not be the applicant’s present “intention”, as was rightly pointed out within the objections, there is nothing to stop this from occurring in future.

60. Further, whether there is live music or not after midnight, it is clear on the evidence that the venue is already providing offence, annoyance, disturbance or inconvenience to a number of persons who reside in close proximity during its current hours.
61. The Commission of course weighs this evidence together with the fact that there have been no compliance issues raised by the Director with respect to the venue.
62. 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, 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. It appears on the information before the Commission that the increase however in that consumption is likely to be minimal and the Commission also accepts (on the state of the evidence before it in this matter) that such an increase does not necessarily mean there would be a commensurate increase in harm of ill health caused by its consumption.
63. It was submitted on behalf of the applicant that the “additional hours will allow patrons to stay at the venue and extend their leisure activities across all areas of the club and enjoy the services provided without feeling like they are being ‘moved on’ or having to leave the venue to go to the CBD to continue enjoying their recreation time”. The Commission inquired as to what “leisure” and “recreation” activities were being provided for after midnight by a golf club beyond the ability to continue to consume alcohol and gamble. In this regard the applicant submitted it would be a “social experience, beverages, Keno and limited food”. The Commission is unpersuaded by that submission and does not consider this to advance any benefit to the local community.
64. Submission was also made that closure of the venue at midnight meant that patrons had to travel to other venues to continue their evening activities. As noted previously there are several other venues in the nearby vicinity that could provide for such “leisure” and “recreation” activities as those being provided at this venue. The Commission is therefore not persuaded that this constitutes a basis for adding another late-night venue open until 2.00 am in relatively small local area.
65. The Commission accepts that granting the variation would provide an offering in the local community area of a “club” style venue which is different to other late-night offerings on these additional days, however, there already is such a club in close proximity that provides such an offering, namely Cazaly’s Palmerston. The Commission is not satisfied that there is sufficient evidence to suggest that there is such a market that would require there to be two (2) such venues available in such a small local area.
66. Submission was made on behalf of the applicant that “(t)he success of this application would lead to the creation of up to 2,600 labour hours each year, the equivalent of \$75,400, which would be available for locals employed at the venue, improving the local economy as well as job security for current employees. It should be noted that this figure does not include contractors such

as security and crowd controllers". This obviously weighs in favour of the application and provides some (albeit minimal) flow on effects in the wider community, however the Commission does not consider this to be highly persuasive.

67. Much was also made of the contributions made by the applicant to the community through its contribution to the Community Benefit Fund. The applicant should be acknowledged and congratulated on its significant contributions to the community via this fund. The Commission also notes that these contributions occur due to the gaming machines located at the premises. The increase in contribution to the fund will only occur if the variation is granted and the hours increased by the Director of Gaming Machines to operate such machines. This is not a matter for which the Commission has any role or function whatsoever and therefore little weight is placed by the Commission upon the possibility of such an increase in contributions to the community via this fund.
68. A significant consideration in this application for variation however is the location of these premises. These premises are (to use the colloquial term) "smack bang" in the middle of a residential neighbourhood, or (to use the term adopted by the applicant) "nestled amongst" those residences. There are houses sharing a boundary with the venue. Those residents have made very clear that they are already experiencing negative impacts upon their quiet enjoyment of their homes and of the neighbourhood.
69. In support of the application, reliance was placed upon a survey undertaken by the applicant of "63 homes who share a boundary with the golf course/club" and that only 17% of persons responded to that survey. It was submitted that this could be extrapolated to find "it is probable that the majority of nearby residents did not respond due to a lack of impact from the club on their day to day lives". The challenge that exists with this submission is that the survey made absolutely no reference to the applicant's intention to seek to vary its trading hours to 2.00 am, 5 nights per week. As a result the Commission places no weight on the "results" of that survey.
70. When the Commission inquired whether the applicant had sought to address any of the concerns raised by the objectors living near the premises, Mr Hewer stated he had not done anything whatsoever to address those concerns or complaints. As a result, the Commission does not accept the submission of the applicant that they would "work with" any residents nearby to address any concerns or complaints in the future. They have not done so for any of the matters raised by the objectors since lodging their objections in November 2023, almost four (4) months ago and there appeared before the Commission to be no likelihood of that to change. In fact, the Commission found the response from Mr Hewer during the hearing to be dismissive of the objectors.
71. Comparison was sought to be made by the applicant of other premises located near residential homes in other locations in Darwin that hold a liquor licence with trading hours until 2.00 am. The Commission does not place significant weight on these comparisons. One relates to a restaurant which has a very different business model, does not regularly trade until 2.00 am and is also

surrounded by other businesses rather than sharing a boundary with homes. The Bowls Club also does not share a boundary with any homes and is separated by a busy road. Further the Railway Club has long been the source of some consternation of neighbouring residents on and off for many years and the Commission does not consider that to be an example that would have the Commission look favourably upon the application to extend trading hours in this case.

72. The Commission notes the concerns raised by the objectors directly relate to increased traffic and/or noise caused by an additional two (2) hours of operation for five (5) nights per week. Based on this evidence, the Commission finds itself satisfied that there **would** be an increase in traffic and/or noise and that this would have a significant adverse impact on residents nearby. This is particularly so given the distance between the premises and nearby residences.
73. The Commission also makes a similar finding when considering public order and safety. The applicant acknowledged that it did “expect to attract a small increase in numbers” to the premises. Albeit the concession is related to a “small increase” given the concerns raised by nearby residents as to the public order as it stands now, this is a significant matter.
74. Reliance was placed by the applicant upon its policies and procedures to deal with such issues, however the Commission finds this evidence needs to be mitigated against the evidence of the objectors that such policies and procedures that are currently in place to attempt to mitigate any noise, disturbance or anti-social behaviour that may be generated or impact upon public order from their own personal experience are not sufficiently effective for a number of residents.
75. It was submitted on behalf of the applicant that “(e)xtended trading hours will encourage a more gradual dispersal with patrons exiting the venue over an experience extended period of time rather than a large cluster of people leaving together at closing time, this is an important factor in mitigating potential noise or adverse impact on the local area”. The Commission notes that the objection raised by nearby residents is not that the numbers are “large”, which might then justify a gradual dispersal, but that in fact it is the undue offence, annoyance and disturbance as they come and go from the premises which causes a significant adverse impact. As such the Commission finds that extending the hours would only prolong such disturbances.
76. Submission was also made that “the applicant implements measures to ensure noise is adequately controlled and not excessive”. Based on the material provided to the Commission by the objectors, the Commission places little weight on this submission.
77. 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. It is one with a good reputation, good compliance history, 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.



78. The Commission finds however that the application itself for variation itself does not reveal how this variation is in the public interest or will benefit the community. The benefits identified were members could have a “social experience” which was identified as being able to gamble later, consume liquor for longer and have access to “limited food” that would be available. There would be a small contribution to employment via wages and thus a small resulting contribution to the community and (if granted by the Director of Gambling) a small contribution to the community via the Community Benefit Fund.
79. On the other hand there are a number of other venues available in close proximity to these premises that could provide such “entertainment” to patrons and particularly the applicant’s members as one of those nearby premises, namely Cazaly’s Palmerston, is in fact a “sister club” and provides reciprocal membership rights.
80. The Commission notes that this relationship was in fact a matter raised by the Commission on the last occasion that the applicant sought to vary its licence conditions to include a late-night authority<sup>7</sup>. That application was refused. Relevantly the then panel that forming the Commission on that occasion noted the fact that these premises were situated in a residential neighbourhood and noted that in relation to Cazlay’s Club that<sup>8</sup>:

“ ... Cazaly’s Club is in fact a “sister club” of the applicant. The two clubs have reciprocal membership rights, share the same management board and have close financial links. Mr Hewer agreed that the Golf Club was entitled to call on Cazaly’s for assistance in maintaining the infrastructure of the golf course. He also agreed that the Golf Club had considered the joint operation of a courtesy bus to ferry those of its patrons that might want to keep gambling after midnight, to its sister club Cazaly’s. As the principal justification for the proposed late night authority seems to be focused on maintaining the economic viability of the Golf Club, that goal can also be achieved by encouraging its members to exercise their reciprocal rights to use the facilities at Cazaly’s. This would assist in retaining the revenue derived from members’ expenditure on gaming machines within the “not for profit” sector to the ultimate benefit of the applicant, whilst not causing unnecessary disturbance to the residents who live in the vicinity of the Golf Club”.

81. The exact same concerns arise here and given that the thrust of the evidence presented to this Commission leads to the conclusion that this is about economics for the club, the Commission is somewhat surprised no information was provided to it with respect to anything done by the club in this regard since 2021.

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<sup>7</sup> See Palmerston Golf and Country Club Incorporated decision (LC2021/08)

<sup>8</sup> Ibid, see para 30

82. In relation to this application, the Commission recognises this is a generally well run, popular and successful premises with no adverse compliance history, however on the state of the evidence before it the Commission:

- a. Is not satisfied that there is a community interest (or need) in the market for these premises to be open until 2.00 am, nights per week.
- b. Is not satisfied the application advances minimising the harm or ill health caused to people from the consumption of alcohol.
- c. Is concerned by the information provided by the objectors in relation to the state of patrons leaving the premises late at night.
- d. As a result of that information has concerns about the safety, health and welfare of such persons.
- e. Is not satisfied there is any advancement of increasing cultural, recreational, employment or tourism benefits for the local community area to any significant extent to justify such a variation.
- f. Is not satisfied the variation advances reducing or limiting increases in anti-social behaviour.
- g. Is satisfied there would be a significant adverse impact on the community caused by the variation based on the information provided by the objectors of the already lived experience of undue offence, annoyance, disturbance and/or inconvenience of the nearby residents.
- h. Is satisfied that the ratio of existing liquor licences and authorities in close proximity to these premises and the broader community is such that there is insufficient evidence to support the variation being made.

83. As a result, the Commission is **not** 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.

84. For these reasons the Commission has determined to refuse to vary the conditions of the licence as sought as set out at the commencement of these reasons.

## **NOTICE OF RIGHTS**

85. 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.

86. 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, and the objectors listed at paragraph 9 of these reasons.

A handwritten signature in black ink, appearing to read 'Jodi Truman', with a long horizontal flourish extending to the right.

JODI TRUMAN  
CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION  
19 March 2024

On behalf of Commissioners Truman, Dwyer and Fong Lim