

# NORTHERN TERRITORY LIQUOR COMMISSION

## DECISION NOTICE

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**MATTER:** DISCIPLINARY ACTION PURSUANT TO THE *LIQUOR ACT 1978*

**REFERENCE:** LC2019/059 & LC2019/121

**LICENCE NUMBER:** 81401481

**LICENSEE:** PINT Club Incorporated

**PREMISES:** PINT Club  
Abala Rd  
MARRARA NT 0812

**LEGISLATION:** Part VII, *Liquor Act 1978*

**HEARD BEFORE:** Mr Russell Goldflam (Acting Deputy Chairman)  
Ms Elizabeth Stephenson (Health Member)  
Ms Sandra Cannon (Community Member)

**DATE OF HEARING:** 18 and 19 November 2019

**DATE OF DECISION:** 17 March 2020

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### **DECISION**

1. The Northern Territory Liquor Commission (“the Commission”) upholds the single consolidated and three individual noise complaints referred to it within Reference LC2019/059 against PINT Club Incorporated (“the licensee”). The Commission is satisfied that a ground for disciplinary action exists, namely that the way in which the licensed premises have been used has caused annoyance or disturbance to persons residing in the neighbourhood of the premises. The Commission is not satisfied that the Club contravened a licence condition by exceeding the allowable noise limit fixed by the licence conditions. The Commission is satisfied that it is appropriate to take disciplinary action by way of varying the conditions of the licence, as set out at paragraphs 5 and 6 below.
2. The Commission upholds complaints within Reference LC2019/059 that on 27 July 2018 and 27 July 2019 the licensee contravened its licence by playing music after 2300 hours. The Commission is satisfied that disciplinary action should be imposed by way of a monetary penalty in the sum of \$815 for each of these contraventions, for a total of \$1,630.
3. The Commission dismisses the remaining complaints referred to it within Reference LC2019/059.

4. The Commission upholds the single complaint referred to it as Reference LC2019/121. The Commission is satisfied that a ground for disciplinary action exists, namely that the licensee has contravened s119(1) of the *Liquor Act 1978* (NT) (“the Act”), by making a material alteration to the licensee’s licensed premises without the Commission’s approval. Noting that the licensee presents its “First Sunday Blues” program on the first Sunday of each month, the Commission is satisfied that it is appropriate to take disciplinary action by:
  - a. suspending the licence on Sunday 3 May 2020 from 1000 hours to 2200 hours;
  - b. directing the licensee to refrain from providing entertainment in the form of live music at the licensed premises on 3 May 2020;
  - c. directing the licensee to refrain from holding the May 2020 First Sunday Blues concert on 3 May 2020; and
  - d. directing the licensee to refrain from rescheduling the May 2020 First Sunday Blues concert to another date.

## **VARIED CONDITIONS**

5. The Special Condition headed “Noise Complaint Policy” in Licence 81404181 (“the licence”) is deleted.
6. The following Special Condition is added, to be headed “**Noise Management**”.

### **1 Introduction and Interpretation**

- 1.1 The object of this special condition is to ensure that residents in the neighborhood of the licensed premises are not unduly annoyed or disturbed by the conduct of live or amplified music or other entertainment events in the rear yard area of the licensed premises (“events”).
- 1.2 This special condition (“the special condition”) commences on 30 March 2020.
- 1.3 This condition is to be read consistently with the Club Condition.
- 1.4 As at the date of commencement, the licensee intends to construct a new west-facing live performance stage (“the sound shell”) in the rear yard area of the licensed premises in order to replace the existing east-facing open

stage. Construction is intended to be in accordance with the BESTEC report dated 3 October 2019.<sup>1</sup>

- 1.5 The technical acoustic terms referred to in this Special Condition (including dB(A) and  $L_{Aeq}$ ) have the meanings ascribed by “Guidance Document Number Two” in the *Northern Territory Noise Management Framework Guideline* (Northern Territory Environment Protection Authority, September 2018)<sup>2</sup>.

## **2 Arrangements for noise management**

- 2.1 The licensee is permitted to continue to conduct the First Sunday Blues event on the first Sunday of each month between 1500 and 2000 hours, except on 3 May 2020.
- 2.2 In addition to the First Sunday Blues events, the licensee is permitted to conduct a maximum of six (6) other events each calendar year, with each event being no more than five (5) hours duration, and ceasing no later than 2300 hours on Fridays and Saturdays, and otherwise no later than 2200 hours.
- 2.3 Subject to condition 2.4 and 2.5, sound levels at these events conducted using the existing stage shall not exceed 85 dB(A)  $L_{Aeq}$  measured at front of house (4 metres from the stage).
- 2.4 Subject to condition 2.5, if the Commission or its delegate has provided the licensee with written confirmation that it is satisfied that the sound-shell has been constructed in accordance with the BESTEC Report, sound levels at events conducted using the sound-shell shall be permitted to exceed 85 dB(A)  $L_{Aeq}$  but not to exceed 95 dB(A)  $L_{Aeq}$  measured at front of house (4 metres from the stage).
- 2.5 The licensee must install a noise limiting device to prevent noise being emitted in excess of the levels fixed by conditions 2.3 and 2.4, even if the volume is turned up by the sound system operator. Until the Commission or

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<sup>1</sup> Referred to hereafter as “the BESTEC Report”.

<sup>2</sup> Referred to hereafter as “the NT Noise Management Guideline”. The Northern Territory Environment Protection Authority, and, for convenience, the Environment Division of the Northern Territory Department of Environment and Natural Resources, are both hereafter referred to as the “EPA”.

its delegate has provided the licensee with written confirmation that it is satisfied that the noise limiting device has been properly installed, engaged and locked, sound levels shall not exceed 80 dB(A)  $L_{Aeq}$  measured at front of house (4 metres from the stage).

- 2.6 Once the licensee's sound system has been equipped with the sound limiting device, the licensee shall only permit music to be played using the licensee's sound system and with the sound limiting device engaged.
- 2.7 Sound checking for events must not exceed 1 hour and may not commence until midday.
- 2.8 The licensee must arrange for the professional measurement of sound levels and the operation of the sound limiting device at least quarterly to ensure compliance with the above conditions.
- 2.9 All measurement must be carried out using an integrating sound level meter and shall be of at least 15 cumulative minutes of music audible at the measurement point.
- 2.10 Records of measurement must be kept by the licensee and produced to a Licensing Inspector upon request.

### **3 Patron numbers**

- 3.1 Within one month of completion of the sound-shell, the licensee must arrange for an inspection by NTFRS of the premises and provide to the Director a report by NTFRS regarding compliance with fire safety requirements, including the maximum number of patrons permitted in both the interior and exterior areas of the premises. Total number of patrons on site is not to exceed such number as is approved by NTFRS at any one time.

### **4 Advertising and notice of events**

- 4.1 All entertainment events referred to in this condition must be advertised in advance on the PINT Club website.
- 4.2 All advertising must be in compliance with the Club condition.
- 4.3 In addition, all events other than a First Sunday Blues event must be the subject of a letterbox drop notice to residents of Sunningdale Court and

Carnoustie Circuit between Troon Place and the Carnoustie Circuit fork delivered at least 5 days prior to the conduct of the event. Notices must include the time of the event and sound checks.

## **5 Noise Complaint management**

- 5.1 The licensee shall publish on its website a dedicated email address for the receipt of noise complaints.
- 5.2 All noise complaints received by the licensee must be printed out and kept in a register and produced to a Licensing inspector upon request.
- 5.3 In addition, any noise complaints directed to the licensee received by telephone or in person must be documented at the time of receipt and placed in the said register.
- 5.4 The nominee must table new complaints at each meeting of the management committee of the Licensee and meeting minutes must be produced to a Licensing Inspector upon request.

## **6 Delegation**

- 6.1 For the purpose of the Special Condition, the Commission delegates to any Member of the Commission Panel that fixed this Condition the authority to provide written confirmation to the licensee that conditions 2.4 and 2.5 have been satisfied.

## **BACKGROUND**

7. The PINT<sup>3</sup> Club, located in the Marrara Sporting Precinct, was established in 1968, making it one of Darwin's oldest licensed clubs. It is situated on the eastern boundary of the Marrara Cricket Ground. The western boundary of the cricket ground, some 200 metres from the PINT Club, abuts the 13<sup>th</sup> fairway of a golf course, on the other side of which is the Northlakes Estate, a residential precinct built around Carnoustie Circuit and various cul de sacs, including Sunningdale Court. The back yards of three houses in Sunningdale Court have a largely unobstructed view to the PINT Club 240 metres away across the fairway and cricket oval. The passage of sound across that distance is also largely unobstructed.

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<sup>3</sup> Postal Institute of the Northern Territory

## THE 2017 COMPLAINTS

8. According to the uncontested evidence of several of the complainants, which the Commission accepts, until 2017 Northlakes Estate residents, some of whom had lived there for over twenty years, were neither annoyed nor disturbed by the activities of the PINT Club.
9. However, in 2017 the PINT Club built a substantial outdoor sound stage in its beer garden, which it used to present a string of rock, blues, pop, folk and country music concerts. It is apparent that in doing so, the PINT Club had adopted a business model by which it sought to raise revenue by becoming a leading venue for the performance of live amplified music. For reasons that have not been explained to the Commission, the Club built the stage facing directly towards Sunningdale Court. The resulting noise caused disturbance and annoyance to at least ten residents of the Northlakes Estate, who complained to the Director-General of Licensing (“the Director-General”) about noise emanating from the premises at concerts held on 5 May 2017 and 23 June 2017.
10. In her decision of 31 January 2018,<sup>4</sup> the Director-General upheld the complaint on the ground that the licensee had caused annoyance or disturbance to persons residing in the neighbourhood of the premises. The disciplinary action imposed was to vary the licence conditions, including the insertion of a Noise Complaint Policy (“the Noise Complaint Policy condition”). The Director-General found that the residents who had complained “have indicated genuine and legitimate concerns in response to what they regard as a breach of their entitlement to peaceful enjoyment of their residential premises.”<sup>5</sup>
11. At least two of the affected residents, Mr and Mrs Lawson, considered that the Noise Complaint Policy did not go far enough, and accordingly the Lawsons applied to the Northern Territory Civil and Administrative Tribunal (“NTCAT”) to review the 2017 Decision.<sup>6</sup>
12. NTCAT found Mr Lawson “to be an honest witness who has been severely affected by the past actions of the PINT Club”. NTCAT also made the following salient finding:

Had the PINT Club put as much thought into dealing with both the outdoor noise level emanating from the club, and the complaints about such noise, before the outdoor stage was constructed and the 2017 events held, [these proceedings] may have been averted.

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<sup>4</sup> Accessed at [https://justice.nt.gov.au/\\_data/assets/pdf\\_file/0007/480148/Director-General-Decision-Notice-PINT-Club-Complaint-Redacted.pdf](https://justice.nt.gov.au/_data/assets/pdf_file/0007/480148/Director-General-Decision-Notice-PINT-Club-Complaint-Redacted.pdf).

<sup>5</sup> Ibid. at [86].

<sup>6</sup> *Lawson & Lawson v Director General of Licensing & Pint Club Incorporated* [2018] NTCAT 539.

13. Nevertheless, NTCAT was not persuaded that the Director-General's decision of 31 January 2018 was flawed, or that the Noise Complaint Policy condition would be inadequate, and dismissed the Lawsons' application.
14. On 21 October 2017 the Lawsons made a further complaint to the Director-General, that the licensee had made a material alteration of the premises without the approval of the Commission ("the material alteration complaint"). This related to the construction of the outdoor stage.

## **THE 2018 AND 2019 COMPLAINTS**

15. In the sixteen month period from May 2018, the PINT Club advertised public outdoor concerts to be held on 38 days.<sup>7</sup> Twenty nine of the events conducted by the licensee during this period attracted a total of some 50 complaints about noise and associated matters from the Lawsons and other Northlakes Estate residents to the Director-General.<sup>8</sup> The complainants also complained about the noise to the EPA and the Northern Territory Police. This remarkably high incidence of complaints over such a lengthy period strongly suggests that the complainants were exceptionally aggrieved by the licensees' conduct. It must also be inferred that over this period the complainants became extremely frustrated that their grievances were allowed to continue for such a lengthy period without being resolved.
16. The noise complaints generally identified two grounds:
  - a. the licensee used the premises in a way that caused annoyance or disturbance to persons residing in the neighbourhood (see s67(3)(m)(i) of the Act).

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<sup>7</sup> Statutory Declaration Brendan Lawson, 5 September 2019.

<sup>8</sup> The events that attracted noise complaints were on: 5 May 2018 (Billy Joel Tribute concert), 21 July 2018 (Blues and Roots Festival), 27 July 2018 (Hockey presentation), 28 July 2018 (Tropical Jam), 5 August 2018 (First Sunday Blues concert), 18 August 2018 (Beccy Cole and Adam Harvey concert), 26 August 2018 (80<sup>th</sup> birthday function), 1 September 2018 (Battle of the Bands), 2 September 2018 (First Sunday Blues concert), 7 September 2018 (Pink tribute concert), 8 September 2018 (Battle of the Bands), 15 September 2018 (Battle of the Bands), 22 September 2018 (Elvis Tribute concert), 7 October 2018 (First Sunday Blues concert), 2 December 2018 (First Sunday Blues concert), 26 January 2019 (Australia Day), 30 January 2019 (Courtney Barnett and Camp Cope concert), 3 February 2019 (First Sunday Blues concert), 25 April 2019 (Matt Zarb concert), 5 May 2019 (First Sunday Blues concert), 2 June 2019 (First Sunday Blues concert), 22 June 2019 (James Morrison concert), 6 July 2019 (Schnitz & Giggles comedy night), 7 July 2019 (First Sunday Blues concert), 27 July 2019 (Adam Harvey and Beccy Cole concert), 4 August 2019 (First Sunday Blues concert), 17 August 2019 (Gold Chisel tribute concert), 25 August 2019 (Sara Storer concert) and 1 September 2019 (First Sunday Blues concert).

- b. The licensee contravened a licence condition by exceeding the sound limit of “a maximum of 65dB (the sound of a vacuum cleaner) at Sunningdale Circuit [sic]”<sup>9</sup> (see s67(3)(c) of the Act).
17. Mostly in conjunction with the noise complaints, Mr Lawson and others also made the following complaints:
  - a. That on seven occasions the licensee exceeded the permitted number of events.<sup>10</sup>
  - b. That on 13 occasions the licensee breached the Noise Complaint Policy condition by failing to record sound levels as required.<sup>11</sup>
  - c. That on 27 July 2018 and 27 July 2019 the licensee breached the Noise Complaint Policy condition by failing to cease entertainment at the designated time.
  - d. That on 26 August 2018 the licensee failed to display signage showing the maximum number of persons permitted on the premises.
  - e. That on 6 July 2019, 17 August 2019 and 1 September 2019 the licensee breached the Noise Complaint Policy condition by failing to accept and register a noise complaint.
  - f. That the licensee was not a fit and proper person to hold a licence (two complaints).
18. On 21 December 2018, the Director-General informed Mr Lawson that after investigating the complaints received up until 23 September 2018, she had determined to:
  - a. refer the October 2017 material alteration complaint to the Commission;

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<sup>9</sup> “Noise Complaint Policy” (PINT Club, 3 November 2017). The licence condition provides “The licensee is to comply with their ‘Noise Complaints Policy’...”.

<sup>10</sup> The licence includes a “Club Condition” that includes a provision limiting club fundraising or promotional events open to the general public to five within the previous six months. Complaints were lodged that this condition was breached on 5 May 2018, 10 August 2018, 25 August 2018, 2 September 2018, 9 July 2019, 4 August 2019 and 17 August 2019.

<sup>11</sup> On 21 July 2018, 28 July 2018, 15 August 2018, 18 August 2018, 26 January 2019, 30 January 2019, 25 April 2019, 5 May 2019, 2 June 2019, 22 June 2019, 27 July 2019, 4 August 2019 and 17 August 2019.



- b. refer three noise complaints to the Commission, arising from concerts conducted by the licensee on 28 July 2018 (Tropical Jam), 5 August 2018 (First Sunday Blues) and 1 September 2018 (Battle of the Bands);
  - c. issue an infringement notice for the complaint identified at paragraph 17.c) above arising from the concert held on 27 July 2018;
  - d. continue to investigate two complaints; and
  - e. dismiss the then remaining ten complaints.
19. On 17 January 2019, Mr Lawson, as “spokesperson for affected persons who were complainants”, to use his expression, applied to the Commission to review the Director-General’s decision to dismiss ten of the complaints. The Commission has determined to conduct the review “on the papers”, following the delivery of this Decision Notice.
20. The Commission pauses to note that it accepts Mr Lawson’s characterisation of himself as a spokesperson for the complainants. It is not uncommon for litigants as persistent as Mr Lawson, whose correspondence in relation to these matters runs to hundreds of pages, to be stigmatised as vexatious litigants. Having perused Mr Lawson’s written complaints, correspondence and submissions, and observed him over the course of a two day hearing both as the complaints’ representative, and as a witness, it is the Commission’s firm view that Mr Lawson is not vexatious, but vexed, and severely so. Mr Lawson has been severely vexed both by the annoyance and disturbance to which he and his neighbours have been subjected, and by the failure over an extended period of the regulatory authorities to which he has complained, to act effectively to fix the problems he has encountered.

## **THE 2019 REFERRALS**

21. On 30 April 2019 Acting Director-General Ozolins (“the Acting Director-General”)<sup>12</sup> referred the three noise complaints referred to at sub-paragraph 18.b) above to the Commission.
22. In addition, the Acting Director-General referred a fourth noise complaint to the Commission (“the consolidated noise complaint”) for the period 5 May 2018 to 3 February 2019, supported by particulars of 13 events that had been the subject of noise complaints, comprising:

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<sup>12</sup> Director-General Bravos resigned effective 1 January 2018. Ms Ozolins served as Acting Director-General until 1 October 2019, when Mr Timney was appointed as the Director of Liquor Licensing, an office established by the *Liquor Act 2019* (NT), to replace the office of Director-General of Licensing in relation to liquor matters.

- a. the complaints that the former Director-General had previously dismissed;<sup>13</sup>
  - b. the complaints that the former Director-General had previously considered should be further investigated; and
  - c. three fresh complaints relating to events on 26 January 2019, 30 January 2019 and 3 February 2019.
23. Subsequently, the Acting Director-General referred further noise complaints by Mr Lawson and other neighbouring residents to the Commission, arising from events conducted by the licensee on 5 May 2019, 2 June 2019, 22 June 2019, 6 July 2019, 7 July 2019, 27 July 2019, 4 August 2019 and 17 August 2019. In addition, the Commission received evidence of complaints arising from events conducted by the licensee on 25 August 2019 (“the Sara Storer concert”) and 1 September 2019.
24. On 7 October 2019 the Director of Liquor Licensing (“the Director”) referred the material alteration complaint to the Commission. The Commission notes with concern that it took almost two years for this seminal complaint to be referred to the Commission. The first year of this delay was explained to the satisfaction of the Commission,<sup>14</sup> but not the second. The Commission accepts that the volume, complexity, prolixity and variety of the combined complaints against the PINT Club placed a very significant burden on Licensing NT, and contributed to the delay. Nevertheless, the Commission considers that the material alteration complaint should have been referred to the Commission at the same time as the noise complaints, if not earlier.
25. In conjunction with the referrals, the Commission was provided with a brief of over a thousand pages. It is unnecessary to comprehensively detail the contents of the brief. Most of the brief comprised documentation in relation to the individual complaints. By way of a typical and instructive example, in relation to the complaint lodged arising from the Tropical Jam concert held on 28 July 2018, the brief contained the following materials:
- a. Statutory declaration of Brendan Lawson dated 2 August 2018, in which the complainant describes what he heard, the sound level testing he conducted, his observations of sound testing being conducted by an employee of the

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<sup>13</sup> All of the complaints dismissed by the Director-General were included in the consolidated noise complaint except one, arising from the Sunday Blues concert held on 2 September 2018. That complaint and its investigation were similar to many of the other noise complaints, and the Commission speculates that its exclusion from the particulars of the consolidated noise complaint was an oversight.

<sup>14</sup> Investigation of this complaint was suspended pending determination of a separate complaint about the same issue to another agency, following which the Director-General sought legal advice regarding the complaint, which was not provided to the Director-General until 15 October 2018.

licensee, and his communications with neighbours about the noise, supported by annexures including:

- i. Technical specifications of the sound level meter he used.
  - ii. Table of 24 sound level readings recorded by Mr Lawson from 1400 to 2258 hours on 28 July 2018, ranging between  $L_{AmaxT}$  48.7 dB(A) at 1400 hours and  $L_{AmaxT}$  80.1 dB(A) at 2000 hours. After 1600 hours, the lowest  $L_{AmaxT}$  reading taken by Mr Lawson was 65.2 dB. Mr Lawson also recorded  $L_{CmaxT}$  readings, between 66.2 dB(C) at 1400 hours, and 88.9 dB(C) at 2140 hours.
  - iii. Letter from a neighbour, Ms Oblonk, complaining about “the incessant thump of loud music” on 28 July 2018.
- b. Statutory declaration of another neighbour, Ms Sinton, describing her recording of sound levels on 28 July 2018, supported by:
- i. Screen dump of 12 readings from Ms Sinton’s sound level meter on 28 July 2018 between 1800 hours and 2253 hours showing “MAX” readings of between 56 dB and 87 dB.
- c. Notice of decision by Director-General’s delegate dated 10 August 2018 to accept the complaint.
- d. Letter from Delegate dated 10 August 2018 notifying licensee of complaint and inviting a response.
- e. Response from licensee dated 27 August 2018 denying that the sound levels were excessive, and denying breach of licence condition, supported by:
- i. Extract of licensee’s Noise Complaint Register recording receipt of a complaint by telephone on 28 July 2018 at 2050 hours.
  - ii. Extract of licensee’s Noise Monitoring Register showing sound level readings recorded on 28 July 2018 at PINT Club at 2015 hours (80 dB) and 2135 hours (84 dB) and at Sunningdale Court at 2030 hours (51.8 dB) and 2015 hours (58.6 dB).
- f. Statutory declaration by Scott Gooch, Senior Compliance Officer Licensing NT, dated 29 March 2019 detailing his investigations of various complaints

against the licensee. Mr Gooch declares that he attended the licensees' premises with his colleague Mr Neall on 28 July 2018 during the evening concert, took sound level readings with his mobile telephone (the highest recorded being 63 dB(A)), noted the sound level readings recorded by an employee of the licensee at the premises and at Sunningdale Court, and formed the opinion that the noise levels at Sunningdale Court were neither excessive nor offensive.

- g. Statutory Declaration by David Neall, Senior Compliance Officer Licensing NT, dated 16 April 2019 detailing his investigations of various complaints against the licensee. Mr Neall declares that he attended the licensees' premises on 28 July 2018 during the evening concert with his colleague Mr Gooch, and that at 2225 hours they used a mobile phone application to conduct sound level readings at Sunningdale Court, which fluctuated between 51 dB(A) and 65 dB(A).
- h. Inspection Report with further details of the inspections carried out by Mr Gooch and Mr Neall on 28 July 2018, at the PINT Club, at Sunningdale Court and at Carnoustie Cct, and concluding that "SCOs are satisfied the event was conducted within licence conditions for the club... although audible throughout, at no time either on premises or at Sunningdale Court, did SCOs assess the noise levels as being excessive or offensive."

- 26. The Commission notes two further documents of significance in the brief, the authors of which were both called to give evidence at the hearing.
- 27. The first document is a statutory declaration by Jonathon Burcher, Environmental Officer, EPA, who conducted five indoor noise measurements over periods ranging between about 14 and 22 minutes at three Sunningdale Court residences on 30 January 2019 during the Courtney Barnett and Camp Cope concert presented by the licensee. Mr Burcher used a more sophisticated integrating "Class 1" sound level meter than those available to the licensee, NT Licensing officers or the complainants. The five measurements produced an equivalent average noise level ( $L_{Aeq}$ ) in excess of the measured background level ( $L_{A90}$ ) by 8.2, 7.5, 17, 9.7 and 9.5 dB(A) respectively.
- 28. The second document is a report by Alexander Morabito, an expert in the field of sound level measurement, who was engaged by the Commission to investigate the complaints by conducting noise level measurements, on the basis that the brief of evidence revealed significant discrepancies between noise levels measured by the complainants, the licensee and licensing inspectors. Further, the licensee had

submitted that Mr Lawson in particular was not measuring the noise levels properly, and the Commission determined that it would benefit from expert evidence. Mr Morabito conducted outdoor and indoor noise level measurements at two residences at Sunningdale Court on 25 August 2019, during the Sara Storer concert.<sup>15</sup> His measurements of noise levels showed that:

- noise levels did not exceed 55 dB L<sub>Aeq</sub> indoors;
- noise levels did not exceed 65 dB L<sub>Aeq</sub> outdoors;
- noise levels fluctuated and would have momentarily exceeded 65 dB at times;
- the difference between outdoor and indoor noise was 5 to 10 dB.<sup>16</sup>

## THE HEARING

29. The matter proceeded as a public hearing on 18 and 19 November 2019. The licence nominee, Mr Howard, attended on behalf of the licensee, and was represented by Mr Murphy of counsel. Mr Lawson appeared on behalf of the complainants, several of whom attended the hearing, and five of whom gave oral evidence. The Commission was assisted by Ms Chalmers of counsel. The Commission thanks them all for their attendance and assistance.

30. The brief for the three referred noise complaints and the consolidated noise complaint, and the brief for the material alteration complaint were tendered. During the hearing several other documents were received into evidence, notably including:

- the NT Noise Management Guideline;
- a report dated 30 September 2019 by Ms Vaso Alexandrou, acoustic engineer, who had been engaged by the complainants;
- correspondence between officers of Licensing NT and the EPA;
- the BESTEC Report by BESTEC Acoustic Services, who had been engaged by the licensee.<sup>17</sup>

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<sup>15</sup> Several of the complainants gave evidence that they perceived the noise level at the Sara Storer concert to be lower than some of the other events they had complained about.

<sup>16</sup> As shown on Figure 5 of Mr Morabito's Report dated 9 September 2019. It is noted, however, that in his summary conclusions, Mr Morabito states that the difference is "approximately 8-10 dB."

<sup>17</sup> This document was not formally tendered, but was referred to by several witnesses, and provided to the parties and the Commission.

31. Mr Gooch, Mr Alexandrou, Mr Burcher and Mr Morabito gave oral evidence, as did five of the complainants, namely Ms Lawson, Mr Campbell, Mr Roberts, Ms Oblonk, and Mr Lawson.
32. In addition, the Commission attended the licensee's premises and the residences of several of the complainants, and observed an experiment conducted under the supervision of Mr Morabito, during which recorded music was played through the licensee's outdoor sound system, and measurements were taken simultaneously of the noise levels near the stage, as well as at various indoor and outdoor locations in the homes and yards of Sunningdale Court residents.
33. The results of the experiment, as reported by Mr Morabito to the Commission, were:
- The background noise level in the beer garden of the PINT Club (while recorded music was playing inside the Club) was  $L_{A90}$  48 dB.
  - With recorded music playing using the outdoor stage area and music system,<sup>18</sup> the sound level near the stage was  $L_{Aeq}$  95 dB(A).
  - With the music playing, the outdoor sound level at Sunningdale Court varied between  $L_{Aeq}$  55 dB(A) and 63 dB(A).
  - With the music playing, the indoor sound level at Sunningdale Court in a room with a partially open window was measured at  $L_{Aeq}$  51 dB(A).
34. The Commission notes that the above results are necessarily approximate, as the sound measurements were not taken over a continuous period of 15 minutes, as is required when using the  $L_{Aeq}$  descriptor.<sup>19</sup>

## PRELIMINARY ISSUES

### The applicable law

35. The *Liquor Act 2019* (NT) and *Liquor Regulations 2019* (NT) commenced on 1 October 2019. Regulation 133(1) provides that a complaint made under the 1978 Act that was not determined by the Director-General before that date is to proceed and be determined under the 1978 Act. This applies to the material alteration complaint, which was made on 21 October 2017 and referred to the Commission on 7 October 2019.

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<sup>18</sup> The Commission notes that it was treated to repeated performances of the country music song "(I Want a Woman Who Will) Treat Me Like a Dog".

<sup>19</sup> See NT Noise Management Guideline, p. 108.

36. Regulation 133(2) provides that a complaint referred to but not determined by the Commission by 1 October 2019 proceed and be determined under the 1978 Act. This applies to the four noise and associated complaints, which were referred to the Commission on 30 April 2019.
37. Accordingly, both referrals fell to be determined under the 1978 Act. Furthermore, in the view of the Commission, as the issues involved are so closely associated, and as the same parties were involved, it was appropriate and expedient to hear and determine all of the complaints together.

### **The jurisdictional challenge**

38. Before taking evidence, the Commission received both detailed written and oral submissions from the licensee contending that the Commission lacked jurisdiction to hear the four noise complaints. After considering the submissions, the Commission refused the licensee's application that the noise complaints be dismissed for want of jurisdiction. These are the Commission's reasons for refusing that application.

### **The *ultra vires* point**

39. Firstly, the licensee noted that the Director-General, when considering whether to refer three noise complaints to the Commission, had not been satisfied that a condition of the licence had been breached, and had made the referral only on the ground set out at s67(3)(m)(i) of the Act. Accordingly, the licensee submitted, the Commission lacked jurisdiction to determine whether the noise complaints to the Commission should be upheld on the ground that the Noise Complaint Policy condition had been breached.
40. In the view of the Commission, this contention is misconceived.
41. The Commission accepts that neither the Director-General nor the Acting Director-General had been satisfied that there was sufficient evidence to substantiate a specific contravention of a condition of the licence. However, they had both been satisfied that the premises may have been used in a way that caused annoyance or disturbance to persons residing in the neighbourhood,<sup>20</sup> a ground set out at s67(3)(m)(i) of the Act. The referral of the noise complaints specified this ground, in accordance with s69(2)(b) of the Act. In the view of the Commission, Part VII of the Act, when read as a whole, does not confine the Commission to consideration of the ground specified by the referring officer. Section 69(4) requires the Commission to conduct a hearing and then either uphold or dismiss the complaint. In this case, "the complaint" (or to be more accurate, the complaints) identified various grounds, and in the Commission's view it was required to consider and make determinations in relation to all of the grounds alleged in the complaints, and not only the one specified by the referring officer.

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<sup>20</sup> Acting Director-General, Referral to the Northern Territory Liquor Commission, 30 April 2019.

42. This construction is supported by s69(5) of the Act, which confers on the Commission the power to take disciplinary action if it is satisfied that “a ground for taking disciplinary action exists”. Had the legislature intended to constrain the Commission in the manner contended for by the licensee, one would expect it to have enacted s69(5) using words such as “the ground specified by the Director-General for taking disciplinary action.”
43. Even if the Commission is wrong in this construction of the scope of its powers, the Commission has determined in any event not to uphold any of the complaints on the ground that the licensee breached the Noise Complaint Policy condition. Consequently, the *ultra vires* point, even if allowed, would have made no difference to the outcome of these proceedings.

### **The *functus officio* point**

44. The licensee submitted that the Director-General’s decision of 31 January 2018, together with the NTCAT decision of 12 June 2018 confirming the Director-General’s decision,<sup>21</sup> finally determined the issue of what could constitute noise levels capable of raising a ground of complaint under s67(3)(m)(i) of the Act. In support of this submission, the licensee relied on the well-known legal principle of *functus officio*, which provides that the authority of a court comes to an end once it has pronounced judgement.
45. The Commission rejects this contention.
46. In her decision, the Director-General found that on two occasions in 2017 the licensee had caused annoyance or disturbance to neighbouring residents. By way of disciplinary action, the Director-General varied the licence to impose the Noise Complaint Policy condition. Clearly, the Director-General hoped and intended that compliance with that condition would ensure that the licensee would not cause further noise-related annoyance or disturbance. However, the imposition of that condition did not and could not expressly or by implication amount to a decision that compliance with the condition would somehow immunise the licensee against causing further noise-related annoyance or disturbance.
47. Moreover, the instant noise complaints all arise from the licensee’s conduct in 2018 and 2019. The Director-General’s 31 January 2018 decision was not capable of constraining her from considering the 2018 and 2019 complaints. On the contrary, she was bound by Part VII of the Act to do so.
48. The Commission was not referred to any authorities by the licensee to support the submission that the principle of *functus officio* as contended for is applicable to administrative decision-making, as distinct from the exercise of judicial power by judicial officers.

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<sup>21</sup> See paragraphs 10 to 14 above.



49. Moreover, for reasons set out below, the Commission has come to the conclusion that the Noise Complaint Policy condition is fundamentally defective and ineffective. In these circumstances, intervention is required to remedy the defects in the condition, in order to give effect to its stated purpose.

### **The issue estoppel point**

50. The licensee submitted that in its decision of 12 June 2018, NTCAT determined an issue of fact, namely that noise caused by the PINT Club of up to 65 dB (the maximum allowed under the Noise Complaint Policy condition) does not constitute a ground of complaint under s67(3)(m)(i), and that the Director-General was estopped from revisiting this issue.
51. The Commission disagrees.
52. Firstly, the ultimate issue determined by NTCAT was whether or not the Director-General had erred by failing to impose sufficient disciplinary action on the licensee in response to the 2017 complaints. Member McCrimmon found that “I am not persuaded that 65 dB is unreasonable for intermittent outdoor events.”<sup>22</sup> NTCAT’s determination did not go so far as to comprise or include a finding that so long as the Noise Complaint Policy condition was complied with, no future complaint on the ground set out at s67(3)(m)(i) of the Act could ever be upheld. Secondly, the principle of issue of estoppel has strict limits. As authoritatively enunciated by Dixon J in *Blair v Curran* (1939) 62 CLR 464, “nothing but what is legally indispensable to the conclusion is thus finally closed or precluded”. The NTCAT finding that the Director-General did not err in deciding to impose the Noise Complaint Policy condition is not “legally indispensable” to the determination of the 2018 and 2019 complaints. Thirdly, the instant complaints are based on various grounds, and not just excessive noise: s67(3)(m)(i) is not confined in its scope to the volume of noise, but extends to any conduct by the licensee that has allegedly caused annoyance or disturbance, which in the circumstances of these proceedings also includes complaints regarding the type of music, the broadcast of offensive language, and the frequency, timing and duration of noise emissions. Fourthly, as mentioned above, the Commission has come to the conclusion that the Noise Complaint Policy condition is fundamentally defective and ineffective, and that intervention is required to remedy the defects in the condition, in order to give effect to its stated purpose. Fifthly, it is doubtful that the principle of issue estoppel is applicable to the making of decisions in the public interest by administrative decision-makers such as the Director-General.

### **The equitable estoppel point**

53. The licensee submits that by imposing the Noise Complaint Policy condition, the Director-General induced the licensee to believe that if it complied with the condition it would be immune to further noise complaints, and that, in reliance on this belief, the

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<sup>22</sup> *Lawson & Lawson v Director General of Licensing & Pint Club Incorporated* [2018] NTCAT 539 at [36].

licensee conducted further musical events to its detriment, in that it was exposed to further noise complaints. The licensee submits that in these circumstances it was unconscionable of the Director-General to refer the complaints to the Commission, and that she is estopped from doing so.

54. The Commission also rejects this submission.
55. Equitable estoppel is a private law doctrine with limited if any application to administrative decisions. The Commission considers that the Federal Court decision relied on by the licensee is not authority for the propositions advanced by the licensee.<sup>23</sup> In any event, the Commission is unable to discern any unconscionability by the Director-General, when, after having made her decision of 31 January 2018, she proceeded to consider the 2018 complaints. Indeed, as has been noted above, she was obliged to do so by Part VII of the Act.

### **The consolidated noise complaint**

56. The Commission had concerns about the referral of the consolidated noise complaint, because its particulars include nine individual complaints that had previously been considered and dismissed by the Director-General. Arguably, this was unfair to the licensee. However, the licensee did not submit that there was unfairness, or maintain an objection to the referral of the consolidated noise complaint to the Commission.
57. Although this issue was not the subject of argument before the Commission, the Commission has considered it. Director-General Bravos notified Mr Lawson that she had decided to refer three complaints to the Commission and dismiss ten others, but for reasons that were not explained to the Commission, she did not proceed to take the step of making a referral to the Commission. That task was undertaken by her successor, Acting Director-General Ozolins. In the view of the Commission, it was open to and indeed incumbent on the Acting Director-General to exercise her discretion afresh and formulate the referral as she saw fit on her assessment of the complaints, and according to the Act.
58. A further relevant consideration is that by the time the Acting Director-General made her referral on 30 April 2019, Mr Lawson had applied to the Commission to review the decision to dismiss the ten complaints. The Commission considers that it is pragmatic to hear those ten complaints in conjunction with the other extant complaints.
59. In all of the circumstances, the Commission does not consider that the referral of the consolidated noise complaint was improper or inappropriate: it facilitated the process of dealing with all of the outstanding complaints against the licensee in a single hearing. To do otherwise would have left open the real possibility that the Commission would have been obliged to conduct yet another hearing, leading to further protraction of this already lengthy dispute, and additional expense,

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<sup>23</sup> *Re Minister of Immigration, Local Government and Ethnic Affairs v Veselko Kurtovic* [1990] FCA 22.

inconvenience and stress to the parties. Even if there was any unfairness, the Commission is unable to identify any actual prejudice suffered by the licensee as a consequence.

## **THE NOISE COMPLAINT POLICY**

60. A key issue in the proceedings was whether the Noise Complaint Policy condition had been breached. The determination of that issue in turn hinged in large part on what that condition actually meant.
61. As noted at paragraph 10 above, in her decision of 31 January 2018, having upheld the complaint on the “annoyance or disturbance” ground, the Director-General proceeded to impose disciplinary action by varying the licence conditions. Noting that “The Club, to its credit, now has in place a ‘Noise Complaint Policy’ that includes provisions dealing with the handling and reporting of noise complaints and the monitoring of noise levels during concerts, both at the Club’s premises and in the Sunningdale Court area”,<sup>24</sup> the Director-General varied the licence by inserting into it a requirement that the Club comply with its Noise Complaint Policy, which had been promulgated by the Club on 3 November 2017.
62. Regrettably, with the benefit of two years hindsight, it is now abundantly clear that the Noise Complaint Policy is seriously flawed. The Policy relevantly provides:

The sound level from live music played outdoors at the Club will be restricted to a maximum of 65 dB (the sound of a vacuum cleaner) at Sunningdale Circuit [sic] (the closest residential premises to the Club). To achieve this, the Club has acquired a hand held digital sound level meter... When live music is being played at the outdoor area of the Club sound level readings will be taken with the hand held sound level meter every two hours during the playing of that music, both from the point of origin (in the audience at the club) and at Sunningdale Circuit.

63. In summary, the Commission finds that the Noise Complaint Policy is intractably unclear, unworkably simplistic, inconsistent with the NT Noise Management Guideline, and incapable of achieving its stated purpose.

### **The Policy is unclear**

64. The complainants diligently measured the noise at their residences, and frequently recorded maximum readings in excess of 65 dB, as exemplified by the readings taken on 28 July 2018 by Mr Lawson using the  $L_{AmaxT}$  descriptor<sup>25</sup> and by Ms Sinton.<sup>26</sup> Accordingly, they complained that the policy had been clearly breached.

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<sup>24</sup> Director-General’s decision 31 January 2018, at [97].

<sup>25</sup> See paragraph 25.a.ii) above.

<sup>26</sup> See paragraph 25.b.i) above.

65. However, Mr Morabito and Mr Alexandrou, both of whom the Commission finds are experts in the field of sound measurement, gave evidence that in the context of a noise management policy, the term “maximum” does not have its ordinary meaning. Their unchallenged evidence, which the Commission accepts, is that generally speaking, a noise management policy that includes an upper limit provides that the limit is to be measured using the  $L_{Aeq}$  noise descriptor.  $L_{Aeq}$  is described in the NT Noise Management Guideline as “the level of noise equivalent to the energy average of noise levels occurring over a measurement period.” Mr Morabito, as has been noted, measured the outdoors sound levels at Sunningdale Court on two occasions, 25 August 2019 (the Sara Storer concert),<sup>27</sup> and on 18 November 2019 (the Commission’s “experiment”).<sup>28</sup> On both occasions,  $L_{Aeq}$  levels he recorded did not exceed 65 dB (although the Commission notes that on the second occasion, measurements were not undertaken for a continuous period of fifteen minutes).
66. As Mr Morabito explained in evidence that the Commission accepts, the peak level of noise recorded at a given moment is of no utility in assessing the noise from a distant source, because the peak may be due to something else entirely, such as a fly buzzing past the meter’s microphone. Meaningful measurements of intrusiveness of noise can only be obtained by recording over a substantial period. The standard assessment period used for  $L_{Aeq}$  is 15 minutes, which is sufficiently long to “iron out” the distortion caused by transient and ambient noises from other sources.
67. The complainants did not use the  $L_{Aeq}$  descriptor. They could not do so with their Class 2 sound level meters, which, being non-integrating meters, do not have the capacity to provide  $L_{Aeq}$  readings. Instead, Mr Lawson relied on the  $L_{AmaxT}$  descriptor, which is derived from an algorithm designed to account for extraneous noise, but which is more suitable for the measurement of impact or intermittent noises than constant sound.<sup>29</sup>
68. The licensee, as was its right, elected not to call any evidence at the hearing, and consequently, the Commission does not know what the licensee intended “maximum readings in excess of 65 dB” to mean. The Commission finds that the meaning of this expression in the Noise Complaints Policy is intractably unclear, and that for this reason alone, the Policy is fundamentally flawed.

### **The Policy is unworkable**

69. The Policy is also unworkably simplistic. This is because it does not specify the conditions and standards required to undertake the sound assessment. Without such conditions and standards, it is difficult if not impossible to verify the results of the sound measurement. For example, the complainants’ recording of measurements at

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<sup>27</sup> See paragraph 28 above.

<sup>28</sup> See paragraph 33 above.

<sup>29</sup> NT Noise Management Guideline, p. 108.

Sunningdale Court on 25 July 2018 (over 80 dB) varied markedly from the highest measurements taken by the licensee (58.6 dB) and NT licensing officers (63 dB) on that date.<sup>30</sup>

### **The Policy falls short of the NT Guideline**

70. The Commission also finds that the Policy is inconsistent with the NT Noise Management Guideline, which was, it should be noted, not published until September 2018, nearly a year after the licensee developed its Policy. However, as is set out in the NTCAT decision of 12 June 2018 at paragraphs [26] to [27], the licensee drafted its Noise Complaint Policy in accordance with the then draft NT Noise Management Guideline, which recommended that project specific assigned noise levels for outdoor entertainment venues in the day/evening period (ie before 2330 hours) be 65 dB(A) outdoors at the location of the receptor (ie in this case, a neighbouring resident). The equivalent section of the Guideline as subsequently finalised and published was substantially similar to the draft. On its face, the Policy is consistent with the NT Noise Management Guideline.
71. This conclusion is based on the apparently reasonable assumption that the licensee, the presenter of musical entertainment performed on an outdoor stage in its beer garden, should be considered as an “outdoor entertainment venue” for the purpose of the NT Noise Management Guideline.
72. However, three witnesses who gave evidence on this issue, namely the two experts, Mr Morabito and Mr Alexandrou, as well as the Environmental Officer, Mr Burcher, all agreed that, on the contrary, the licensee should be considered as an “indoor entertainment venue” for the purpose of the NT Noise Management Guideline. Furthermore, the Commission received evidence that as early as November 2018, Mr Burcher’s supervisor had informed his counterpart at Licensing NT that the EPA considered that the licensee should be assessed on the basis that it is an indoor entertainment venue.
73. Indeed, on 21 November 2018 the EPA advised Licensing NT that:

The monitoring methodology, locations and noise level criteria prescribed by the [NT Noise Management Guideline] framework differs markedly to the approach outlined in the Pint [sic] Club’s noise management plan. The Pint Club’s current noise level criteria and measurement methodology are believed by officers to be entirely insufficient to be able to identify and assess noise impacts and/or prevent those noise impacts from effecting [sic] the amenity of sensitive receptors.”

Regrettably, this advice, with which the Commission agrees, does not appear to have percolated either down to the Licencing NT Compliance Officers delegated to investigate these complaints, or up to the Director-General or her successors.

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<sup>30</sup> See paragraph 25 above.

74. The counter-intuitive view that the licensee should be considered as an indoor entertainment venue is based in part on the NT Noise Management Guideline itself, and in part on the expert witnesses' familiarity with similar regulatory frameworks in other jurisdictions. The Commission was informed and accepts that the category of outdoor entertainment venue is intended to apply to large outdoor areas such as sports stadiums that host occasional (up to six times a year) large-scale concerts, fireworks displays or other entertainments. Such events tend to be relatively intrusive, but they are also relatively infrequent. They are permitted a higher assigned noise level than indoor entertainment venues, such as night clubs and bars that operate as live music venues on a regular basis.
75. On balance, the Commission finds that the licensee should be considered as an indoor entertainment venue for the purpose of the NT Noise Management Guideline.
76. The NT Noise Management Guideline assigned noise level for indoor entertainment venues is conceptually different from the outdoor entertainment venue assigned noise level. Instead of a designated upper decibel limit based on an  $L_{Aeq}$  measurement, it recommends for the day/evening period (ie up until 2330 hours) " $L_{A90} + 5$  dB(A)".  $L_{A90}$  is in effect a measure of background noise. At the risk of oversimplifying the meaning of this formula, it provides that in the case of Sunningdale Court residents, the noise levels at their homes, whether indoors or outdoors, should be no more than 5 dB(A) higher during concerts at the licensee's premises, than at other times.
77. Significantly, according to the measurements taken by both Mr Morabito (on 25 August 2019<sup>31</sup> and 18 November 2019<sup>32</sup>) and Mr Burcher on 13 January 2019,<sup>33</sup> the licensee exceeded the noise level set out in the NT Noise Management Guideline for indoor entertainment venues.

### **The Policy is not fit for purpose**

78. The Policy's stated purpose is "to reduce the risk of unreasonably disturbing residents in the neighbourhood... caused by live music being played outdoors at the Club".
79. In light of the problems discussed above in interpreting and applying the Noise Complaint Policy, it is unsurprising and unremarkable that Licensing NT Compliance Officers, who attended Sunningdale Court on numerous occasions during the licensee's entertainment events, considered that the licence condition had not been breached. Indeed, neither Mr Morabito nor Mr Burcher concluded that there had been a breach of the condition, on the basis of the measurements they recorded.

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<sup>31</sup> See paragraph 28 above.

<sup>32</sup> See paragraph 33 above.

<sup>33</sup> See paragraph 27 above.

80. In addition, however, the Licensing NT Compliance Officers, as in the example given above of their observations on 27 July 2018,<sup>34</sup> routinely reported that the noise level was neither excessive nor offensive.
81. The Commission does not, with respect, share the views of Mr Gooch and his colleagues that the noise level was acceptable. (The standard fixed by the Act is not one of “excess or offensiveness”, but one of “annoyance or disturbance”, although arguably little turns on this difference in terminology.)
82. The Commission observed the experiment it caused to be conducted during the hearing on 18 November 2019 in the presence of counsel, the licensee’s nominee, Mr Morabito and several Sunningdale Court residents, as described at paragraphs 32 and 33 above. The Commission is satisfied that the noise during the experiment was no louder than the noise at the events the subject of the noise complaints.<sup>35</sup> During the experiment, noise levels at Sunningdale Court were less than  $L_{Aeq}$  65 dB(A). For reasons explained below, the Commission has determined to assign the Policy the reasonably available meaning most favourable to the licensee.<sup>36</sup> On that basis, the Commission finds that the noise levels during the experiment were compliant with the Noise Complaint Policy.
83. In the view of the Commission, however, the noise during the experiment was such as to cause annoyance or disturbance to residents in the neighbourhood of the premises. The Commission members were afforded the opportunity to hear the noise from various locations in and around Sunningdale Court over a period in excess of an hour. Each of the Commission’s members considered that the noise level was so conspicuous and intrusive that it would cause annoyance and disturbance to them if they had been residents of the neighbourhood. The lyrics of the songs played were clearly audible and distinguishable, as was the sound of the various instruments playing. Although for the most part the level of noise was not such as to prevent normal conversation, it was in striking contrast to the familiar background noise of a suburban residential precinct. The Commission also notes that several of the complainants gave evidence to the effect that the noise levels at many of the licensee’s concerts were substantially higher than the level experienced during the experiment. This evidence was supported by the evidence received by the Commission of an audio-video recording made by one of the residents of one of the licensee’s concerts, referred to at paragraph 97 below.
84. Accordingly, in the view of the Commission, the Noise Complaint Policy is not fit for its stated purpose.

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<sup>34</sup> See paragraph 25.f) and 25.h) above.

<sup>35</sup> See the evidence of the complainants on this issue at paragraphs 87 to 91 below.

<sup>36</sup> See paragraph 93 below.

## THE COMPLAINANTS' EVIDENCE

85. The Commission heard oral evidence from five of the complainants. Prior to the calling of these witnesses, the Commission gave an indication to the parties of its assessment of the evidence that had been adduced at that stage of the hearing. To the credit of the licensee, on receiving this indication it elected, with one very limited exception, not to challenge the complainants' evidence by way of cross-examination.
86. The Commission notes that the oral evidence of the complainants was predominantly subjective in nature.
87. Maria Lawson gave evidence that the noise at the experiment (which she witnessed from her home) was "nothing like" the noise at some of the concerts she had endured, and that, similarly, the country music concert playing when Mr Morabito had taken sound measurements, was "more sedate" than some of the other events staged by the licensee, which were louder, with more "bass-thumping". Ms Lawson gave evidence that the noise had had a serious and very stressful impact on her family life, and that on some occasions when concerts were playing, visiting family members would leave her home.
88. Peter Campbell gave evidence that the experiment (which he witnessed from his home and in his street) was "much tamer than much of what we have had to endure", with lower volume, lower intensity and lower beat levels. His evidence was that the music from the licensee prevented him from enjoying the peace and quiet of his back yard and his back deck.
89. Stephen Roberts also gave evidence that the noise from the experiment (which he witnessed from his home) was "much less" than the noise from some of the PINT Club concerts. He tendered an audio-visual recording made in his front yard of the sound of a rock concert at the licensee's premises on 17 August 2019. On that night, he said, his family had tried to watch a movie on television, but had had to turn it off. He said that the window frames in his house were vibrating from the noise.
90. Greta Oblonk gave evidence that during some concerts put on by the licensee she would close the windows and put on the air-conditioning in an unsuccessful attempt to "block out the thump thump thump", that the noise was so loud she could not concentrate or read a book, and that on occasion it had forced her to leave her home. She said, "It's not fair. It's not on. My blood is boiling when I hear them tuning up and doing sound checks. I can't stand it. It is very annoying."
91. Brendan Lawson gave evidence that the noise level at the experiment, which he witnessed and measured with his sound meter both at the licensee's premises and at various locations in and in the vicinity of his home, was lower than at many previous events, which he had also measured with his sound meter. He said, "The pounding stops you from doing anything: can't read, watch TV, watch footy. I don't have the choice about whether to attend or not. I'm very annoyed about what it's done to my family."



## THE NOISE COMPLAINTS: FINDINGS

92. In determining whether the Noise Complaint Policy condition was contravened, the Commission considers that it should apply the “Briginshaw test”. To establish this ground of complaint, the Commission must be satisfied that the allegation is made out to the reasonable satisfaction of the Commission. “In such matters ‘reasonable satisfaction’ should not be produced by inexact proofs, indefinite testimony, or indirect inferences”.<sup>37</sup>
93. In order to avoid basing a finding adverse to the licensee on the basis of “inexact proofs”, the Commission considers that it should assign to the ambiguous expression “a maximum of 65 dB” in the Noise Complaint Policy the reasonably available meaning most favourable to the licensee. That is the meaning adopted by Mr Morabito and Mr Alexandrou, as discussed at paragraph 65 above.
94. The measurements undertaken by Mr Morabito and Mr Burcher (the only witnesses who measured the noise with a Class 1 integrating noise level meter) recorded no noise levels in excess of the 65 dB limit. The licensee has consistently maintained that it did not exceed the permitted noise level. In these circumstances the Commission is unable to be satisfied that the Noise Complaint Policy condition was breached by exceeding the noise limit in the condition.
95. In making this finding, the Commission does not reject the evidence of the complainants that they had recorded noise levels in excess of 65 dB. The complainants’ measurements were based on their reasonable view as to the meaning of the condition, and were undertaken conscientiously with the best equipment reasonably available to them.<sup>38</sup> Nevertheless, for the reasons explained above, the Commission considers that it should accept the evidence of the expert witnesses on this issue.
96. However, on the basis of the compelling subjective evidence given by the complainants both in their documented complaints and at the hearing, the Commission upholds the noise complaints on the ground that the licensed premises were used in a way that caused both annoyance and disturbance. The Commission notes that this finding is contrary to the subjective evidence of Licensing NT officers on this issue. Having formed its own subjective assessment of the noise through the experiment it observed, the Commission prefers the evidence of the complainants to that of the Licensing NT officers in relation to this issue.
97. One particular aspect of this ground of complaint that should be specifically noted is the significant annoyance and disturbance caused by the use (for example, on 17 August 2019) of offensive language, both in song lyrics and comments made by performers on stage. Mr Roberts provided the Commission with a recording he had

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<sup>37</sup> *Briginshaw v Briginshaw* (1930) 60 CLR 336 per Dixon J.

<sup>38</sup> Mr Morabito’s evidence was that a Class 2 sound level meter can be purchased for \$200 to \$300, whereas a Class 1 sound level meter costs \$15,000.

made of a sample of offensive lyrics, and gave impressive evidence about the distress this caused to his family, which includes young children.

98. In addition, the Commission was concerned by unchallenged evidence that on occasion performers on stage had made taunting remarks about the complainants and their complaints. The Commission infers that the performers concerned had been informed by the licensee of the noise complaints in a manner apt to provoke animosity against the complainants by those performers, who in turn spoke to patrons in a manner apt to provoke animosity towards the complainants by patrons. It was submitted on behalf of the licensee that it could not control what performers said when they had the microphone in their hand. The Commission rejects that submission. This aspect of the complaints reflects poorly on the conduct of the licensee and its attitude towards the complainants.
99. The issue of the appropriate disciplinary action for the noise complaints will be addressed later in this Decision Notice.

### **The associated complaints**

100. As noted at paragraph 17 above, Mr Lawson and others made associated complaints.
101. Applying the Briginshaw test, the Commission is not satisfied on the conflicting evidence it received that the licensee exceeded the number of events permitted under the Club condition, that the licensee failed to record sound levels as required, or that the licensee failed to display signage showing the maximum number of persons permitted on the premises. Those complaints are dismissed.
102. The Commission is satisfied that on about three occasions the licensee contravened the condition to accept, record and register complaints, and accordingly this complaint is upheld. However, the Commission is not satisfied in all the circumstances of the matter that disciplinary action is appropriate for this minor contravention of the conditions of the licence, and accordingly, these complaints are dismissed.
103. The Commission dismisses the two complaints that the licensee is not a fit and proper person to hold a licence. This ground was not pressed by the complainants at the hearing, and appears to the Commission to have been based on the general conduct of the licensee in relation to the noise complaints rather than on any specific allegations about the licensees' fitness or propriety.
104. The Noise Complaint Policy condition provides that live entertainment conducted in the outdoor areas of the premises is to cease at 23:00 hours on Fridays and Saturdays, or 22:00 hours on any other day of the week. The Commission is satisfied that on Friday 27 July 2018 the licensee contravened its licence by playing music after 2300 hours. The Director-General found as much, and notified Mr Lawson of this on 21 December 2018.<sup>39</sup> In that notice, the Director-General informed Mr Lawson

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<sup>39</sup> See paragraph 18.c) above.

that an infringement notice would be issued against the licensee. Mr Gooch gave evidence that he prepared and submitted an infringement notice in the sum of \$815, but that it was not endorsed by the Director-General, and accordingly had never been issued.

105. These complaints by Mr Lawson and Ms Sinton arising from the events of 27 July 2018 have been referred to the Commission as part of the consolidated noise complaint. The complaints are upheld on this ground and the Commission is satisfied that disciplinary action should be imposed by way of a monetary penalty in the sum of \$815.
106. Mr Lawson, Mr Ted Berry and Ms Oblonk complained that on Saturday 27 July 2019 a concert being staged by the licensee continued until 2330 hours, 30 minutes later than permitted by the licence. These complaints were referred to the Commission by the Acting Director-General.<sup>40</sup> Unlike many of the earlier complaints, the Commission was not provided with details of the investigation of these complaints, or of the licensee's response to them.<sup>41</sup> Nevertheless, the licensee did not challenge these allegations or adduce any evidence to contest them. The Commission is satisfied that the complaint is made out, upholds the complaint and takes disciplinary action by way of a monetary penalty in the sum of \$815.

## **THE MATERIAL ALTERATION COMPLAINT**

107. This complaint, made on 21 October 2017, and referred to the Commission on 7 October 2019, alleges that the construction of the outdoor stage in 2017 by the licensee was a material alteration made without the Commission's approval, contrary to s119(1) of the Act.
108. It is not in dispute that the outdoor stage was built by the licensee. It is not in dispute that approval was neither sought nor granted by the Commission. It is not in dispute that the stage was built for the purpose of performing live music, or in other words, to make noise.
109. In its response of 19 June 2018 to the complaint, the licensee contended that it considered that approval for the construction of the stage was not required because the alterations:
- a. were not material to the sale of liquor;
  - b. did not involve additional points of sale of liquor;

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<sup>40</sup> See paragraph 23 above.

<sup>41</sup> This is presumably because the complaints were made after the Acting Director-General had referred the consolidated noise complaint to the Commission on 30 April 2019, and, as further complaints continued to accumulate, the Acting Director-General elected to make supplementary referrals to the Commission without all of the usual documentation, rather than take the additional time to compile the standard comprehensive brief. In the circumstances, the Commission considers that this was a sensible course.

- c. did not alter the size or position of the premise's licensed footprint;
- d. did not alter the external appearance or facilities, because the stage was built under an existing roof;
- e. did not change the use of the area for social activities and entertainment; and
- f. had been approved by the Development Consent Authority.

110. The licensee's reliance on the approval of the Development Consent Authority was ill-advised and potentially misleading. On 8 February 2018, the Development Consent Authority had written to the licensee's solicitors as follows:

With respect to the playing of live music, the DCA determined on 2<sup>nd</sup> February 2018 through resolution 4/18 that the playing of live music could be subsumed within the permitted use of the land for the purpose of 'licensed club' and that *in relation to the generation of noise associated with the playing of live music, that the DCA is not the appropriate authority to regulate this.* (Emphasis added.)

111. The licensee's claims that the construction of the stage was not material to the sale of liquor and did not change the use of the area for social activities and entertainment strike the Commission as being unrealistic. The construction of the stage was undertaken so that the licensee could transform its business model, its operations and its program of activities, as it did. It led to greatly increased patronage, and, no doubt, to greatly increased liquor sales. The beer garden remained an entertainment area, but the scale and scope of the entertainment offered in the beer garden was changed, and radically so.

112. The Act provides that:

***Material alteration*** means an alteration to licensed premises which:

- (a) increases or decreases the area used for the sale of liquor or the sale and consumption of liquor; or
- (b) involves structural alteration; or
- (c) alters access to or egress from the premises; or
- (d) alters the external appearance or facilities.

113. Having considered the evidence and the submissions of counsel, and having observed the stage when it attended the premises on 18 November 2019, the Commission is comfortably satisfied that the alteration effected by the construction of the stage altered the external appearance and in addition altered the facilities of the PINT Club to provide a significant outdoor amplified music venue including for large outdoor concerts featuring interstate artists. It is unnecessary to decide whether it also involved structural alteration.

114. The Commission upholds this complaint on the ground that the licensee has contravened a provision of the Act, namely s119(1).

## **DISCIPLINARY ACTION**

### **The material alteration complaint**

115. It is convenient to firstly address the appropriate disciplinary action for the material alteration complaint.

116. As required by s69(2)(b) of the Act, the Director made a recommendation as to the type of disciplinary action that should be imposed. He recommended that the licence be suspended. The Commission notes that the maximum penalty for the offence of breaching s119(1) is 100 penalty units, a sum in excess of \$16,000.

117. The Commission considers that in considering what disciplinary action to impose, the following circumstances apply in favour of the licensee:

- a. The contravention was not deliberate: the licensee believed approval from the Commission was not required.
- b. When, in June 2018, the licensee was first informed that Licensing NT had accepted the complaint, the licensee immediately responded to it.
- c. The licensee did not contribute to any of the delays in investigating or determining the complaint.
- d. The licensee sought and obtained approval for the construction from other regulatory agencies.
- e. To mitigate the problem of noise from the stage, in November 2017 the licensee instituted a Noise Complaint Policy calculated to be compliant with the then draft NT Noise Management Guideline.
- f. The licensee has committed to construct a stage and sound-shell to replace the existing outdoor stage, facing away from the Northlakes estate, with acoustic shielding designed to reduce the emanation of noise to the complainants.
- g. In his closing submissions to the Commission, Mr Lawson stated on behalf of the complainants that they do not seek “retribution”.

118. The Commission considers that in considering what disciplinary action to impose, the following circumstances apply against the licensee:

- a. The licensee constructed the stage without consulting with or informing residents in the neighbourhood.<sup>42</sup>
- b. Despite being made aware from at least 29 June 2017<sup>43</sup> that the placement of the stage facing the complainants' residences was problematic, the licensee did not reposition the stage or seek approval from the Commission for its construction.
- c. Despite being formally warned by the Director-General on 31 January 2018 to effectively supervise and control the club's manager to ensure no breaches of the Act or the conditions of the licence would occur, the licensee continued to utilise the stage without modification.
- d. Despite being warned by the Development Consent Authority on 8 February 2018 that it was not the regulating agency with respect to noise, the licensee continued to rely on the DCA's approval of the stage as a reason not to seek the approval of the Commission.
- e. Despite the constant, continuing and increasingly aggrieved complaints from the neighbouring residents over a period in excess of two years, the licensee continued to utilise the stage without modification.
- f. As an indirect result of the contravention, which facilitated the licensee's staging of numerous, frequent and excessively loud musical events, residents in the neighbourhood have suffered serious disturbance and annoyance.

119. The Commission accepts the recommendation of the Director that a period of suspension be imposed. The Commission is aware that in the past such periods of suspension have been imposed on a suspended basis. The Act does not expressly authorise the imposition of a suspension of licence in this manner. However, even if that course is available, in all the circumstances of this case, the Commission considers that harsher discipline is required, and that the suspension of licence imposed must be actually served.

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<sup>42</sup> *Lawson & Lawson v Director General of Licensing & Pint Club Incorporated* [2018] NTCAT 539 at [34].

<sup>43</sup> Director-General's decision, 31 January 2018 at [34].

120. The contravention is serious in large part because of the sustained and serious disturbance and annoyance that has resulted from the use of the stage. Accordingly, the Commission has determined to suspend the licence on a day when the stage is usually used to present live music. In determining which day to suspend the licence, the Commission has also had regard to the anticipated disruption to the licensee's business resulting from the public health response to the COVID-19 pandemic. The licence is suspended on Sunday 3 May 2020 from 1000 hours to 2200 hours.
121. To give full effect to the Commission's intention in imposing this disciplinary action, in addition the Commission directs the licensee to refrain from the actions specified in paragraph 4 above.

### **The noise complaints**

122. The Acting Director-General recommended that disciplinary action in relation to the noise complaints be taken by way of varying the conditions of the licence.
123. The Commission has upheld three individual noise complaints (arising from events on 28 July 2018, 5 August 2018 and 1 September 2018) and one consolidated noise complaint (arising from 13 events between 5 May 2018 and 3 February 2019, supplemented by noise complaints arising from eight further events from 5 May 2019 to 17 August 2019). The Commission also has regard to noise complaints arising from events on 25 August 2019 and 1 September 2019. In sum, the noise complaints arise from 26 events over a period of 16 months.
124. The Commission considers that in considering what disciplinary action to impose, the following circumstances apply in favour of the licensee:
- a. The sole ground on which the complaints have been upheld is that they caused disturbance and annoyance.
  - b. The licensee accepted and relied on the decision of the Director-General on 30 January 2018 and confirmed by NTCAT to form and maintain the belief that compliance with the Noise Complaint Policy condition would be sufficient to address noise complaints raised by residents in the neighbourhood.
  - c. The licensee believed that the Noise Complaint Policy was consistent with the NT Noise Management Guideline.
  - d. The licensee made conspicuous efforts to comply with the Noise Complaint Policy condition, and no finding has been made that it breached the condition.

- e. During the complaint period, there was a significant degree of acquiescence by the regulator in the licensee's conduct: compliance officers informed the licensee that in their view the noise was not excessive or offensive.
- f. The licensee did not contribute to any of the delays in investigating or determining the complaint, and responded promptly when notified of complaints.
- g. During the hearing, when provided with an opportunity by the Commission to do so, the licensee properly conceded that the disturbance and annoyance ground was made out, and did not challenge the complainants by way of cross-examination on this issue.
- h. The licensee has committed to construct a stage and sound-shell to replace the existing outdoor stage, facing away from the Northlakes estate, with acoustic shielding designed to reduce the emanation of noise to the complainants.
- i. In his closing submissions to the Commission, Mr Lawson stated on behalf of the complainants that they do not seek "retribution".

125. In considering what disciplinary action to impose, the Commission has regard to the same circumstances that apply against the licensee as referred to at paragraph 118 above. In addition, the Commission has regard to the matters adverted to at paragraphs 97 and 98 above.

126. The Commission accepts the recommendation of the Director that the conditions of the licence be varied. The varied conditions are set out at paragraphs 5 and 6 above. The reasons for formulating these particular conditions are as follows.

**The new Noise Management condition**

127. The Commission considers that to the extent that is practicable, the new condition should:

- a. be consistent with the NT Noise Management Guideline;
- b. be simple to apply, monitor and enforce; and
- c. in its operation, minimise intrusion to and involvement by the residents.

128. The Commission endorses and applies the "Agent of Change Principle" set out at section 3.4.5 of the NT Noise Management Guideline. By constructing the sound stage in 2017 (moreover, and in contravention of the Act, without seeking the



approval of the Director-General), the licensee assumed the role of change agent, and accordingly should bear the burden of mitigating the harm caused.

129. During the hearing, the Commission indicated that it would circulate a draft of the proposed Noise Management condition (“the new condition”), and provide the parties with an opportunity to comment on it. The Commission thanks the licensee, Mr Lawson and counsel assisting for their submissions, which have been of real assistance to the Commission in formulating the new condition.
130. In his evidence, Mr Morabito indicated that his endorsement of the findings of the BESTEC Report would be subject to the result of a peer assessment of that Report. Accordingly, at the suggestion of the Commission the licensee engaged Mr Morabito to conduct a peer assessment of the BESTEC Report, which was provided to the Commission on 22 January 2020 (“the peer review report”). The Commission had anticipated that the peer review report would go no further than to assess whether the methods and calculations set out in the BESTEC Report were valid and correct. Instead, however, while not identifying any errors in the methods or calculations set out in the BESTEC Report, the peer review report sets out a series of recommendations to the Commission.
131. The recommendations include:
  - a. that there be one allowable noise limit for occasional (up to six times per year) outdoor “concert type” events, and a different allowable noise limit for more frequent live performance events (such as the Sunday Blues events);
  - b. the engagement of a qualified acoustic consultant to prepare a noise management plan for each of the occasional outdoor concert type events; and
  - c. the undertaking of further measurement of the background noise levels at Sunningdale Court, in order to fix an appropriate noise limit for the more frequent live performance events.
132. The Commission does not accept these recommendations.
133. Firstly, the Commission accepts Mr Lawson’s submission that there should be a single limit for all events. What counts to the residents is the impact of the noise on them, irrespective of whether it is a regular monthly event or a special concert. Having a fixed limit for all events will also make it easier to apply, monitor and enforce compliance with the new condition.
134. Secondly, the Commission accepts the written submissions of both the licensee and Mr Lawson in response to the peer review report that to require the licensee to engage an acoustic consultant to prepare a noise management plan for certain events would

be unnecessary and unreasonably onerous. The Commission considers that the most convenient and practicable approach, and the one that is least intrusive to residents in the neighbourhood, is to impose a fixed limit on the “front of house” noise measured 4 metres from the stage (“FOH”) supported by measures to lock the sound equipment to ensure that the limit is not exceeded. However, the Commission does not accept the licensee’s submission that it should not be required to notify nearby residents of any upcoming music events. Accordingly, part 4.3 of the noise management condition set out at paragraph 6 above requires the licensee to notify residents by letterbox drop of some such events.

135. For the reasons given at paragraphs 70 to 76 above, the Commission has found that the licensee should be considered as an indoor entertainment venue for the purpose of the NT Noise Management Guideline, and that, as provided in the NT Noise Management Guideline for indoor venues, an  $L_{A90} + 5$  dB(A) noise limit should be imposed.  $L_{A90}$  is in effect a measure of background noise. In his written submission in response to the peer review report, Mr Lawson supported this approach.
136. Thirdly, the Commission considers that, notwithstanding the recommendation in the peer review report, sufficient measurement of background noise levels at Sunningdale Court has already been undertaken to enable the Commission to establish with confidence a sound limit based on the  $L_{A90}$  descriptor.
137. The evidence about the value of  $L_{A90}$  in this case is mixed. The NT Noise Management Guideline states that “typical existing background noise levels” for external locations in suburban residential areas are less than 45 dB before 1800 hours, less than 40dB between 1800 hours and 2200 hours, and less than 35 dB after 2200 hours.<sup>44</sup>
138. Mr Alexandrou estimated  $L_{A90}$  outdoors at the residences as being as low as 40dB in the evening, and as high as 48dB during the day. Mr Morabito’s evidence was that  $L_{A90}$  indoors was 35 dB, which on his evidence corresponds to about 43 dB outdoors.<sup>45</sup> BESTEC measured  $L_{A90}$  at the PINT Club (which is closer to a main road than the complainants’ homes) as 38 dB at night and 46 dB in the evening.
139. Mr Burcher measured  $L_{A90}$  inside the house with windows open at between 41 and 47 dB(A) between 7 pm and 8:30 pm. He made one measurement with windows closed, of 37.4 dB. This implies an outdoor  $L_{A90}$  of between about 48 dB and 54 dB. This is substantially higher than the values the Commission received from other sources, and for this reason the Commission does not accept measurements of Mr

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<sup>44</sup> NT Noise Management Guideline, Table 3.6, p. 56.

<sup>45</sup> See footnote 16 above.

Burcher, who is not qualified as an expert in sound measurement, as being a reliable basis on which to make a finding about the value of  $L_{A90}$ .

140. During the hearing, Mr Lawson submitted that  $L_{A90}$  outdoors at Sunningdale Court should be assessed as 43 dB(A). However, in his written submission in response to the peer review report, Mr Lawson took a different approach by contending for a noise limit based on  $L_{A90}$  assessed at 32 dB.
141. The Commission infers that Mr Lawson changed his position because the peer review report itself suggested that until the background noise levels at Sunningdale Court had been established, the NT Noise Management Guideline “base noise level” of 32 dB should be used as a measure of  $L_{A90}$ . However, the Commission does not accept that approach. As explained above, there was ample evidence before the Commission for it to make a finding as to the actual background noise level. Furthermore, the NT Noise Management Guideline defines base noise level as “a noise level which is a limit that applies in some circumstances for indoor entertainment noise where in calculating noise levels it is found noise levels to be unusually low.”<sup>46</sup> The Commission received no evidence suggesting that background noise levels at Sunningdale Court were unusually low. Indeed, the weight of evidence was that background noise levels at Sunningdale Court were not unusual.
142. The Commission accepts Mr Lawson’s submission made during the hearing: an  $L_{A90}$  of 43 dB(A) is within the range in the NT Noise Management Guideline, and is consistent with the evidence of Mr Alexandrou, Mr Morabito and the BESTEC Report.
143. With  $L_{A90}$  at 43 dB(A) outdoors at Sunningdale Court, the permitted noise level outdoors at Sunningdale Court can be calculated as 48 dB (43 dB + 5 dB). The difference observed in the experiment conducted during the hearing between the FOH noise level and the level of noise at the residents’ rear boundary was approximately 37 dB. The FOH limit should therefore be set at 48 dB plus 37 dB.
144. Accordingly, the Commission fixes an interim condition that noise 4 metres from the existing stage be limited to 85 dB(A).
145. The Commission notes that this standard is consistent with Mr Morabito’s unchallenged evidence that an indoors level of 40 dB would normally be permissible,

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<sup>46</sup> NT Noise Management Guideline, p. 71.

allowing for a difference between indoors and outdoors sound levels of approximately 8 dB.

146. Based on the peer-reviewed BESTEC Report, the findings of which the Commission accepts, the assigned noise level outdoors at Sunningdale Court (48 dB) will be achieved by limiting the noise to 95 dB(A) 4 metres from the planned sound-shell.
147. The Commission has therefore determined to impose a 95 dB(A) FOH limit for the sound-shell.
148. During the hearing, Mr Morabito proposed an interim FOH limit of 80 dB(A). To its credit, the licensee adopted this proposal in an undertaking it made to the Commission on 26 November 2019 to not exceed that limit before the issue of this Decision Notice.
149. The Commission accepts that the complainants were particularly annoyed and disturbed by high levels of low frequency noise emanating from the premises. However, on the evidence adduced, the Commission is not satisfied that it can fix a noise limit which would both be consistent with the NT Noise Management Guideline and which would also adequately address this particular concern of the complainants. This is because the NT Noise Management Guideline recommends that an assigned noise level based on low frequency noise level only be imposed after 2300 hours. The Commission recommends that the licensee heed the past complaints of its near neighbours about the particularly intrusive nature of “thumping bass” noise, and exercise restraint when booking acts for future events. For example, the licensee’s management committee might decide to eschew hosting “heavy metal” acts that feature this type of sound.
150. In the Commission’s view residents should be notified of musical events held by the licensee, so that they can make alternative arrangements for the day in question if they choose to do so. The monthly Blues events are regular, so do not need specific notification.

## **CONCLUSION**

151. Unfortunately, these proceedings highlight the failure of the regulatory authorities to effectively address a serious problem that for a lengthy period has plagued not only the residents of the Northlakes Estate but also the licensee, its management and staff.
152. Over the course of the hearing, the Commission was concerned at the evidence it heard of buck-passing both within and between agencies. According to the NT Noise Management Guideline, the NT Liquor Commission has “primary responsibility” for responding to complaints about loud music from liquor licensed premises.<sup>47</sup>

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<sup>47</sup> NT Noise Management Guideline, Table 2.1, pp. 17-18.

However, the Commission can only act once a complaint has been referred to it, and in this matter the referrals came in one case almost a year and in the other almost two years after the complaint was first raised. That is unacceptable.

153. The Commission heard evidence, which it accepts, that at the operational level, Licensing NT officers were aware of the need to act decisively and expeditiously to quell an increasingly damaging and costly dispute, and that this was brought to the attention of the agency's executive officers, who nevertheless allowed the matter to drag on. That is also unacceptable.
154. On the basis of the evidence it has heard, the Commission considers that Licensing NT compliance officers currently receive inadequate training to effectively respond to noise complaints, to use sound level meters, and to understand and apply the NT Noise Management Guideline. The Commission recommends that the Director rectify this deficiency.
155. The Commission also recommends that the Director of Liquor Licensing meet with the Executive Director Environmental Protection, Department of Environment and Natural Resources to identify opportunities for improved collaboration between their respective agencies to protect the community from noise pollution emanating from licensed premises.

## **NOTICE OF RIGHTS**

156. 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 dismiss a complaint a decision to take disciplinary action against a licensee are specified in the Schedule and are reviewable decisions.
157. 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.
158. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected persons are PINT Club Incorporated, Ted Berry, Peter Campbell, Leigh Sinton, Greta Oblonk, Brendan Lawson, Maria Lawson and Stephen Roberts.



RUSSELL GOLDFLAM  
Acting Deputy Chairperson  
Northern Territory Liquor Commission  
17 March 2020  
On behalf of Commissioners, Goldflam, Stephenson and Cannon