

NORTHERN TERRITORY LIQUOR COMMISSION

AMENDED DECISION NOTICE

MATTER: COMPLAINT AGAINST FRONTIER HOTEL [2025] NTLiqComm 10

REFERENCE: LC2025/004

LICENCE NUMBER: 80100274

LICENSEE: DCOH Pty Ltd

PREMISES: Frontier Hotel
3 Buffalo Court
DARWIN NT 0800

LEGISLATION: Part 7 Division 4 of the *Liquor Act 2019* (NT)

HEARD BEFORE: Mr Russell Goldflam (Chairperson)
Prof Phillip Carson (Health Member)
Ms Elizabeth Stephenson (Health Member)

DATE OF HEARING: 31 March 2025

DATE OF DECISION: 8 April 2025

NOTE: On 2 May 2025 the Commission amended this decision by varying the date by which the condition at paragraph 2 takes effect to 16 June 2025.

DECISION

1. On 31 March 2025, the Northern Territory Liquor Commission (**the Commission**) heard and upheld a complaint against DCOH Pty Ltd (**the licensee**) and decided to take disciplinary action against the licensee.
2. The Commission has now determined to take disciplinary action pursuant to s 165(2)(a) of the *Liquor Act 2019* (NT) (**the Act**) by imposing the following additional condition on the licensee, to take effect from ~~Friday 2 May 2025~~ 16 June 2025, or such later date as the Commission allows:

Noise

1 Introduction and Interpretation

1.1 The object of this special condition is to ensure that the licensee does not cause or permit its employees or patrons to cause undue and unreasonable noise on or in the licensed premises that affects the amenity of the neighbourhood.

1.2 For the purpose of this Condition:

1.2.1 “Director” means the Director of Liquor Licensing or their delegate.

1.2.2 “A musical event” means an occasion at the licensed premises when live or pre-recorded music is played using amplified sound emitted by a loudspeaker.

1.2.3 “The approved maximum sound pressure level” means the maximum sound pressure level approved by the Director from time to time.

2 Noise management

2.1 The licensee must install a noise limiting device to prevent noise being emitted in excess of the approved maximum sound pressure level measured at front of house (4 metres from the stage), even if the volume is turned up by the sound system operator.

2.2 The licensee shall only cause or permit music to be played with the noise limiting device engaged.

2.3 The licensee must not cause or permit any music to be played at the licensed premises unless and until the Director has provided the licensee with written confirmation that it is satisfied that the noise limiting device has been properly installed, engaged and locked.

3 Noise Complaint management

3.1 The licensee shall publish on its website, Facebook and Instagram pages an email address to which noise complaints can be addressed.

3.2 The licensee must monitor that email address daily and acknowledge receipt of any complaints received to the complainant.

3.3 The licensee must print out all noise complaints received and place them in a noise complaints register that the licensee must produce to a Licensing Inspector upon request.

3.4 The licensee must document at the time of receipt any noise complaint received by telephone or in person and place the documented record of the complaint in the noise complaints register.

4 Director’s review

The Director on their own initiative may review noise issues pertaining to the licensed premises, and notwithstanding compliance by the licensee with the foregoing, the licensee shall implement such noise mitigation measures as the Director in their discretion may notify to the licensee in writing at any time as having become in the Director’s view a reasonable requirement in the circumstances then prevailing.

STATEMENT OF REASONS

BACKGROUND

3. DCOH Pty Ltd (**the licensee**) holds liquor licence 80100274 (**the licence**) over its premises that trade as The Frontier Hotel (**the hotel**), which has operated since the 1970s and is an established Darwin live music venue. The hotel is situated in a mixed tourism, residential and commercial area at the northernmost point of the Central Darwin Zone.¹ On Fridays, Saturdays and Sundays the hotel presents live music on an al fresco deck on the north side of the premises (**the hotel's deck**).
4. Following noise complaints by residents from three apartments in three nearby streets located between approximately 100 and 200 metres from the hotel's deck, on 11 December 2024 a delegate of the Director Liquor Licensing (**the Director**) accepted a complaint that the licensee had contravened s 93 of the Act, which provides:

A licensee must not cause or permit its employees or patrons to cause undue or unreasonable noise on or in the licensed premises that affects the amenity of the neighbourhood.
5. The complaint specifies the single ground set out at s 160(1)(a) of the Act that the licensee or the licensee's employee contravened a provision of the Act. It is not in dispute that if the Commission finds that the licensee contravened s 93, this ground is made out, the complaint should be upheld, and the Commission can take appropriate disciplinary action against the licensee.
6. On 11 February 2025 the Director's delegate referred the complaint to the Commission.

THE HEARING

7. The matter proceeded as a public hearing on 31 March 2025. Mr Kulda appeared on behalf of the Director, accompanied by Senior Compliance Officer Mr Paull. Mr Sanders of counsel instructed by Ms Chin appeared on behalf of the licensee, accompanied by Mr Walsh, the licence nominee and Ms Mienert, the licensee's finance and operations manager. Mr Sproule, one of the complainants, also attended and participated in the hearing.

SCOPE OF THE HEARING

8. In its written submissions that were helpfully provided in advance of the hearing, and developed by Mr Sanders during the hearing, the licensee contended that as the complaint specified the period between September 2024 and November 2024, the Commission should generally not have regard to evidence concerning events outside this period.
9. The Commission does not agree. Section 166(4) of the Act provides:

The Commission may hear a matter not referred to it but which arises from a matter that was referred to it.

¹ Northern Territory Planning Scheme, Part 5, clause 5.9.2

10. The Commission considers that it would be artificial and not in the interest of the administration of the Act when conducting a hearing concerning an alleged continuing pattern of conduct by the licensee, to confine itself to consideration of events that occurred within a period that ended four months before the hearing.
11. The Commission distinguishes the circumstances of this matter from those in *Pint Club Disciplinary Action pursuant to the Liquor Act 2019* LC2020/042 (18 January 2021) (***PINT Club No. 2***). In that case the Commission declined to consider evidence of noise after the period specified in the complaint that had been referred to it by the Director because the Director had refused to accept further complaints that had been lodged by residents of the neighbourhood. As the Commission explained in that case, to enlarge the scope of that hearing would have undermined the authority of the Director, whose power to refuse to accept a complaint is not subject to review by the Commission.² By contrast, in the current case, after accepting the complaint based on evidence provided by residents of the neighbourhood, the Director's officers encouraged the complainants to continue to document instances of what they considered to be undue and unreasonable noise emanating from the premises.³
12. Had the Commission determined to decline to consider evidence of noise emissions by the licensee after 1 December 2024, it would have been open to the complainants to make fresh complaints against the licensee, which in turn would have been inconvenient and costly to both the complainants, the licensee, the office of the Director and the Commission. In the view of the Commission, an underlying purpose of Part 7 Divisions 3 and 4 of the Act is to quell disputes between members of the community and licensees. In this instance, the Commission considers that advancement of this purpose is best served by dealing with all of the available evidence concerning the disputed matters. Mr Kulda submitted that in these proceedings the Commission should enlarge the scope of the hearing so as to "draw a line" and finalise the dispute between the complainants and the licensee. The Commission accepts that submission.
13. The Commission is unable to identify any actual prejudice to the licensee arising from the enlargement of the scope of the hearing. The licensee was provided with all of the evidence in support of the complaint well in advance of the hearing. Indeed, a substantial portion of the evidence produced and tendered by the licensee itself was of events in January, February and March 2025.
14. The Commission has determined to exercise its discretion conferred by s 166(4) to have regard to evidence of noise emanating from the premises from 1 December 2024 until the date of the hearing.

THE LAW OF NOISE AND NUISANCE

15. The Commission maintains its view in *PINT Club No. 2*⁴ regarding the application of s 93 of the Act, as follows (citations omitted):

² *PINT Club No. 2* at [31] to [33]

³ Exhibit 1, p 42 file note by Senior Compliance Officer Paull, 28 January 2025

⁴ At [22]

[T]he relevant standard is derived from the common law tort of nuisance. The Commission was not referred to and has not identified any decisions of the superior courts of the Northern Territory concerning the tort of nuisance caused by noise. However, the Court of Appeal of Western Australia recently considered the elements of nuisance in dealing with a noise complaint by a resident of an apartment building adjacent to licensed premises in a suburb of Perth. The Commission considers that the following authoritative statements of the court in that case provide useful guidance to the Commission in determining noise complaints under the Act:

To constitute a nuisance, the interference with the plaintiff's use or enjoyment must be both substantial and unreasonable...

The test of unreasonableness is objective. The reasonableness enquiry involves a balancing exercise between the defendant's right to use his or her land freely, and the right of the plaintiff to enjoy his or her land without interference. The reasonableness requirement thus reflects the need for give and take between neighbours living within a community...

Among the factors relevant to whether interference is unreasonable are the nature and extent of the harm or interference, the social or public interest value in the defendant's activity, any hypersensitivity of the user or of the use of the plaintiff's land, the nature of established uses in and character of the locality, whether all reasonable precautions were taken to minimise any interference, and the type of damage suffered...

THE BURDEN AND STANDARD OF PROOF

16. The Commission also adopts the approach it has previously applied regarding the applicable standard of proof in dealing with noise complaints (citations omitted):⁵

[T]he Commission considers that it should apply the “Briginshaw test”...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”.

17. In addition, the licensee submitted that the Commission could not be satisfied to the requisite standard that the complaint should be upheld because, firstly, there was only evidence of allegedly excessive noise on a small number of days within the period specified in the complaint; and secondly, because only three people had complained about the noise out of the hundreds of people who reside in the locality. The Commission accepts the Director's submission that whereas an isolated instance of allegedly excessive noise would be insufficient to support a noise complaint under the Act, evidence that establishes “a pattern of behaviour” or a “business practice” can be sufficient. In this matter, the Commission has had regard to whether or not the evidence

⁵ Northern Territory Liquor Commission, *Disciplinary action against PINT Club* (LC2019/059, LC2019/121), 17 March 2020 at [72] – [76] (*PINT CLUB No. 1*) at [23]

it has received supports a finding that there has been a pattern of behaviour such that the complaint is made out.

THE NOISE MANAGEMENT FRAMEWORK GUIDELINE

18. The Commission has previously had regard to the Northern Territory Noise Management Framework Guideline (**the Guideline**)⁶ when considering noise complaints.⁷ In a recent case dealing with noise emanating from a beer garden that had caused disturbance to residents of the neighbourhood, the Commission stated:⁸

The applicable provision is at paragraph 3.4.7 of the Guideline (“Recommended project specific assigned noise levels for indoor entertainment venues”), which recommends that until 23:30, the noise level at “a sensitive noise receptor” (in this case, [the complainant’s] back door) be limited to 5dB(A) in excess of background noise.

19. For the reasons given in *Pint Club No. 1*,⁹ the Commission reached the view that for music at licensed premises regularly played in an outdoor area, the standard set at paragraph 3.4.7 of the Guideline (**the indoor entertainment venue standard**) is applicable, rather than the Guideline’s outdoor entertainment venue standard. For the same reasons, the Commission now considers that the indoor entertainment venue standard is applicable to music played on the al fresco deck of the Frontier Hotel.

20. Table 3.6 of the Guideline estimates the Rating Background Level (**RBL**) for “Urban residential” premises (which include residences in a Central Business zone) as 45dB(A) or more during daytime, and as 40 dB(A) or more in the evening (until 2330 hours). These levels are typical of urban residential background noise, but will of course vary. The Guideline posits that the actual background noise level at a sensitive noise receptor be measured, and music or other entertainment be limited so that its noise levels at the receptor be no higher than 5dB(A) above the background noise level.

21. Although in its written submissions the licensee referred the Commission to the Guideline and endorsed some of the general principals set out in it, it is noteworthy that the licensee did not allude to any of the Guideline’s specific standards.

22. Shortly after the commencement of the hearing, the Chairperson put the parties on notice that if the complaint were upheld, the Commission would be minded to take disciplinary action by adding a condition to the liquor licence that would require substantial compliance with the indoor entertainment venue standard. Although, as will be seen below, the witness called by the licensee disparaged the indoor entertainment venue standard as being “impossible” to meet, in their submissions neither the licensee nor the

⁶ Accessed at https://ntepa.nt.gov.au/data/assets/pdf_file/0004/566356/noise_management_framework_guideline.pdf

⁷ For example, see *PINT Club No. 1* at [74] – [75]

⁸ *Complaints against 2SCCP PTY LTD t/a Jump Inn* [2024] NTLiqComm 36 (**Jump Inn No. 1**) at [101] to [102]

⁹ At [72] – [76]

Director contended that if the complaint were upheld a condition derived from the indoor entertainment venue standard was inapplicable or should not be imposed on the licensee.

23. The Commission considers that the indoor entertainment venue standard should be given substantial weight in both assessing and limiting noise emanating from the Frontier Hotel.

AGENT OF CHANGE PRINCIPLE

24. The Guideline adopts the “Agent of Change” principle, which it explains as follows:

To provide the balanced approach to entertainment venue noise management the NT EPA [Environment Protection Agency] has adopted the “agent of change” principle. The “agent of change” is the person or developer/entity that creates a change by building a residential development close to a venue with music or is a venue that introduces music close to residential or other sensitive noise receptor uses.

The agent of change principle determines responsibility for entertainment music noise management. That is, where changed conditions are introduced into an environment, (for example through a new use, or changed operating conditions), the reasonable expectations of the existing land users should be respected. This applies to both venue operators and residents.

- For an existing sensitive noise receptor (normally a resident), this means the continued protection of amenity... in the event of a change to an existing entertainment venue’s operation or the development of a new venue. In these circumstances, the burden of any remedial or mitigation measures, such as noise attenuation or modified operating practices, falls upon the venue operator – the agent of change, and
- For an existing entertainment venue operator, this means that where a venue is currently compliant with relevant noise attenuation standards and its operation does not change, new residential or other noise sensitive development (nominally within a 50 metre radius of an existing entertainment venue) should not lead to new compliance costs for the venue operator. The onus of any remedial or mitigation measures in this instance, falls upon the new resident, owner or developer – the agent of change. The agent of change principle ensures the following:
 - It recognises that entertainment venue music is an important part of the Territory’s culture and economy
 - It protects existing music entertainment venues from the encroachment of noise sensitive residential uses (sensitive noise receptors)

- It ensures that noise sensitive residential uses are satisfactorily protected from unreasonable levels of live music and entertainment noise, and
- It ensures that the primary responsibility for noise attenuation rests with the agent of change.

25. The Commission endorses this statement and has applied the Agent of Change principle in this case.

THE NORTHERN TERRITORY PLANNING SCHEME

26. The Commission also considers that it should have regard to the Northern Territory Planning Scheme (**NTPS**) in its consideration of the complaint. Both the licensed premises and the complainants' residences are within the Darwin Central Business zone (**CB Zone**), the prescribed purpose of which is to:

Promote an active and attractive mixed use environment that maximises its function as the commercial, cultural, administrative, tourist and civic centre for the surrounding region that is integrated with high density residential development.

27. The fourth listed prescribed CB Zone outcome stipulates that public bar premises within the zone:

- (a) Encourage diversity and contribute to day and night activity within the zone; and
- (b) Are designed and operated *in a manner that is considerate of the character and amenity of surrounding uses, having regard to the mixed use nature of the zone* [emphasis added].

28. The tenth listed prescribed CB Zone outcome is:

Developments are designed and operated in a manner that avoids unreasonable loss of amenity for surrounding premises, having regard to the close proximity between residential and entertainment uses, and the overall mixed use nature of the zone.

29. In its written submissions, the licensee relied on the following observation by Member McCrimmon in *TEHG Property Pty Ltd v NT Liquor Commission* [2024] NTCAT 3 at [79]:

There is some truth to the [licensee's] submission that residents choosing to live in this area would ordinarily expect and accept the noises of nightlife as an incident of living in such a location.

30. That case concerned premises in Mitchell St, in the heart of the Darwin CBD entertainment precinct. The Commission considers that the above observation has somewhat less force in relation to the current matter, which concerns premises at the edge of the CB Zone in a locality with a comparatively higher concentration of residential properties.

THE EVIDENCE

Agreed facts

31. The Commission finds the following facts, which were not in dispute:

- a. The noise the subject of the complaint emanates from the hotel's deck, when live amplified music is played on Fridays, Saturdays and Sundays between about 16:00 hours and 22:00 hours.
- b. The licensee has not previously been the subject of disciplinary action.
- c. Complaints about the noise of music from the hotel have been made from time to time since September 2019.
- d. On 11 December 2024 Principal Compliance Officer Verity accepted the complaint, alleging contravention of the Act over a period from on or about 6 September 2024 until on or about 1 December 2024.

Documentary evidence

32. At the hearing the Commission admitted the following documents into evidence:

Exhibit 1: Director's brief of evidence: ref. LG2025-004

Exhibit 2: Bundle of 24 folders of recordings 21 September 2024 to 2 Feb 2025

Exhibit 3: Bundle of 18 recordings and two sound level reports October 2024 to Dec 2024

Exhibit 4: Responses by neighbourhood residents to survey conducted by licensee

Exhibit 5: Email from Mr Cleary (nearby resident), 3 March 2025

Exhibit 6: Audio-visual recording from Mr Grealy's balcony, 16 March 2025

Exhibit 7: Frontier Hotel architectural drawings of proposed improvements to hotel's deck, January 2025

Exhibit 8: Audio-visual recording from Mr Grealy's balcony, 24 February 2025

Exhibit 9: SoundAdvisor Noise Monitoring Solutions brochure

Exhibit 10: Bundle of TripAdvisor and Google reviews for Frontier Hotel and Alatai Holiday Apartments

33. Oral evidence was given under oath or affirmation by Mr Sproule (complainant), Mr Paull (Senior Compliance Officer, Licensing NT) and Mr Walsh (licence nominee).

34. It is convenient to firstly review the evidence of the complainants.

Mr Sproule

35. Mr Sproule's residence on Hood Tce is somewhat further away from the hotel's deck than the residences of either Mr Grealy or Mr Potter. The Commission summarises Mr Sproule's evidence, which comprised both material in the documentary exhibits and his oral testimony, as follows.
36. Mr Sproule and his wife have lived in their Hood Tce apartment since 1995. He had no problems with noise from the Frontier Hotel until the licence built "the new deck", "which goes halfway into the carpark". This occurred in about 2023 or 2024, without any consultation with neighbouring residents.
37. The noise from the band that plays on weekends on the end of the hotel's deck "comes straight through the wall" of the Sproule residence and annoys both him and his wife. As Mr Sproule is retired, he likes to spend more time in his lounge room, which, together with his balcony, is where the noise is most intrusive. He has complained about the noise at least half a dozen times, without ever receiving a response. On the most recent of these occasions, he spoke by telephone to a bar attendant at the Punters Bar (which opens out onto the hotel's deck). The young woman who answered said, "I know who you are and have been instructed not to talk to you". Mr Sproule has resorted to going out on Fridays, Saturdays and Sundays to get away from the noise.
38. On 6 November 2024 Mr Sproule submitted a written complaint to Licensing NT about noise from the Frontier Hotel. He subsequently provided recordings of the music he made from his residence on Friday 20 December 2024 and Friday 24 January 2025.
39. Mr Sproule does not know either Mr Grealy or Mr Potter, the other two complainants. He only became aware that he was not the only person to complain about the noise when he read the brief of evidence that the Commission sent him in advance of the hearing.
40. In cross-examination, Mr Sproule denied having a heightened intolerance to noise. He does not want the licensee to be stopped from playing music, but he does want steps taken to reduce the impact of the noise on his household.
41. Mr Sproule was an impressive witness. During the hearing he made appropriate concessions, responded thoughtfully to questions, and participated in a constructive and measured manner.
42. Mr Grealy and Mr Potter did not attend the hearing, and because the licensee was not afforded the opportunity to test their evidence by cross-examination, the Commission treats any contentious aspects of their evidence with caution.

Mr Grealy

43. Mr Grealy, who has lived at his Finniss St apartment for ten years, had previously complained to Licensing NT about noise from the Frontier Hotel on five occasions between September 2019 and May 2021. Licensing NT responded to these complaints by bringing them to the attention of the licensee and encouraging the licensee to address them.

44. On 22 November 2024 Mr Grealy lodged a Liquor Complaint against the licensee in the prescribed form with Licensing NT, in which he alleged that because of the noise from music on Friday, Saturday and Sunday evenings “I can’t even hear my own TV, I can’t enjoy sitting on my balcony. If I want to invite friends over I can’t.”
45. On a recording made by Mr Grealy on 20 December 2024 in his living room, the sound of live music coming through the open doorway of the adjoining balcony is of a similar volume to the sound of a man on television talking to camera. An unseen person, who the Commission infers is Mr Grealy, says “impossible to look at television”, a remark that is consistent with the impression the Commission formed from viewing and listening to the recording.
46. The Commission received into evidence recordings Mr Grealy made with his mobile phone of music from the hotel deck on his balcony and in various rooms of his apartment on 18 occasions between 21 September 2024 and 24 February 2025. He also permitted Licensing NT officers and an employee of the licensee to make recordings and take sound measurements on his balcony on various occasions.

Mr Potter

47. On 27 September 2024 Mr Potter, the owner of his then residence in McMinn St, wrote to Licensing NT complaining about “extremely loud” noise coming from a live band at the Punters Bar on Friday and Sunday evenings “from approximately 6pm until 10 pm”, which had “been going on for months” and was “making it difficult to relax, enjoy general life and sleep”. On 5 December 2024, Mr Potter wrote again to Licensing NT: “as a result of the noise pollution, we decided to move out of our residence at... McMinn St, Darwin. The excessive music was ongoing until our final night at the property on Friday 29 November.” He has since rented the property out. Mr Potter stated that he had kept a journal of the noise in October and November 2024, which was in storage boxes. He did not provide this material, or any recordings he may have made, to Licensing NT.

Mr Paull

48. Licensing NT Senior Compliance Officer Paull, who has held that position for 17 years, gave oral evidence to supplement the material in Exhibit 1, which included a statutory declaration made by him to which was attached his correspondence with the complainants and the licensee, together with his file notes dating back to September 2019 in relation to this matter. The Commission received into evidence recordings and sound measurements Mr Paull had made using a mobile phone on the licensed premises, in nearby streets and at complainants’ homes, on Saturday 5 October, Sunday 6 October, Friday 11 October, Saturday 19 October and Friday 13 October 2024.
49. The Commission accepts Mr Paull’s explanation that due to competing work commitments, he and his team did not have the capacity to attend the premises on the other Fridays, Saturdays and Sundays during the three month period specified in the complaint. The Commission also accepts Mr Paull’s evidence that Licensing NT does not have at its disposal a sound level meter of the type recommended in the Guideline.¹⁰

¹⁰ See Guideline, Guidance Document Number Two, 2.2.2.1

50. Mr Paull commended Mr Walsh for responding to the complaints in an appropriate and open manner with Mr Paull.

Mr Walsh

51. The Commission summarises the oral evidence of Mr Walsh, the licence nominee and General Manager of Punter's Bar, as follows. When Mr Walsh commenced at the Frontier Hotel in 2019, live music was regularly performed on the hotel's deck. The deck was extended into the hotel carpark in 2023. The band has always played from the end of the deck, overlooking the carpark. The same band plays every weekend. They own their own audio equipment, which the licensee stores on its premises during the week. The licensee does not have a sound system of its own. When the band plays on the hotel's deck, the speakers are always set up to face away from the street, towards the Punters Bar.

52. The licensee has engaged architects to upgrade the hotel's deck by installing a roof and some vertical screens at the end of the deck. Mr Walsh has consulted with Licensing NT about these plans, and has been advised that they do not constitute a material alteration requiring the Commission's approval. The upgrade of the deck will provide shelter from the elements for people on the deck and will include acoustic shielding. The licensee has not engaged an acoustic engineer to advise in relation to the planned upgrade.

53. When Mr Walsh attended Mr Grealy's apartment in March 2025 to record the noise from the hotel's band and measure it with a Protech QM1589 Compact Digital Sound Level Meter that he had caused to be purchased for this purpose,¹¹ the noise from the band was not so loud that it interfered with his ability to have a normal conversation with Mr Grealy.

54. Mr Walsh stated that he was unaware of the indoor entertainment venue standard. He asserted that due to variables such as wind and traffic it would be impossible to comply with a condition that sound emissions from the licensee's premises be limited so that the noise received at the complainants' residences is no more than five decibels above background noise.

55. Mr Walsh denied instructing staff at the Punters Bar to decline to talk to Mr Sproule, and was unable to account for the rebuff Mr Sproule received when making his most recent complaint. He offered, however, to give Mr Sproule his phone number.

56. The Commission acknowledges that Mr Walsh, who was under no compulsion to give evidence, nevertheless elected to subject himself to the rigours of cross-examination. Much of his evidence was uncontentious, but on occasion Mr Walsh was defensive and argumentative, and his evidence fortified the Commission's pre-existing concern that despite being aware of repeated noise complaints, the licensee has not yet taken steps that have mitigated the noise emanating from the premises.

¹¹ Exhibit 6

Mr Cleary

57. The licensee also tendered without objection an email from Mr Francis Cleary to Mr Walsh dated 3 March 2025.¹² None of the parties requested that Mr Cleary be made available for cross-examination, and he did not attend the hearing.

58. Mr Cleary lives across the road from the Frontier Hotel in McMinn St. He is a professionally qualified and employed audio engineer with 40 years experience. Mr Cleary, who emphasised that he does not consider the music from the Frontier Hotel to be intrusive or excessive, took sound measurements on Sunday 2 March 2025 and Monday 3 March 2025 “with a professionally calibrated phone app, and using the correct A weighting as referenced by the NT EPA”. The Commission is satisfied that, with one exception discussed below, the sound measurements made by Mr Cleary reasonably approximate measurements taken in accordance with the Guideline.

Evidence of noise levels

59. None of the sound measurements made by the parties and admitted into evidence was made using a sound level meter of a type recommended in the Guideline, and none of the sound measurements was made in full compliance with the procedures set out at paragraphs 3.4.9.1 and 3.4.9.2 of the Guideline, which state:

- The measurement point to measure the project specific effective noise level shall be located within a habitable room of a noise sensitive receptor with doors closed and windows open only if it is the only means of ventilation.
- All measurements of music noise or background noise shall be made using ‘F’ or ‘S’ time-weighting¹³
- The measurement shall be made of at least 15 cumulative minutes of music audible at the measurement point
- Significant extraneous noise shall be excluded, and
- The measurement shall be made at a time when the greatest intrusion of music noise into the sensitive noise receptor is likely to occur

60. The Commission has been provided with only indirect evidence of the level of background noise at the complainants’ residences.

61. Regrettably, the recordings and sound measurements made by Licensing NT officers, which were contained in Exhibit 2, were not sufficiently annotated to enable the Commission to be satisfied when and where they were made, and, in some instances, whether or not live music was being played at the time. The complainants’ recordings,

¹² Exhibit 5

¹³ That is, “the time-weighting characteristics of a sound level meter as specified in Australian Standard 1259 – Sound Level Meters, published by the Standards Association of Australia” (the Guideline, 3.4.4)

which were also contained in Exhibit 2, did not include any sound measurements. Consequently, the evidentiary value of these items is limited.

62. The Commission does however consider that when considered together the following sound measurements are of particular evidentiary significance for the purpose of considering this complaint:

a. Audio-visual recordings annotated with average, minimum and maximum sound measurements made by the licensee in the street, on:¹⁴

- i. Sunday 13 October 2024 at 1923 hours in McMinn St with clear sound of band playing: average 81 dB(A)
- ii. Friday 13 December 2024 at 2117 hours in Finniss St: average 62 dB(A)
- iii. Sunday 15 December 2024 at 1632 hours in Finniss St: average 52 dB(A)
- iv. Friday, 20 December 2024 at 2020 hours in McMinn St with clear sound of band playing: average 74 dB(A)
- v. Friday 20 December 2024 at 2023 hours in Finniss St with clear sound of band playing: average 67 dB(A)

b. Mr Cleary's sound measurements, which are summarised as follows, including the time period of each measurement taken. Mr Cleary helpfully annotated each of the screenshots he made with a caption identifying where it was made and whether music was playing. Mr Cleary did not state whether the measurements he made inside his apartment were taken with doors and windows shut:

- i. Rock song 1, 7 m from bandstand, 4.4 sec: average 86.6 dB(A)
- ii. Rock song 2, 7 m from bandstand, 7.8 sec: average 82.6 dB(A)
- iii. Rock song 1, on Mr Cleary's balcony, 1 m 20 sec: average 80.4 dB(A)
- iv. Rock song 2, on Mr Cleary's balcony, 13.4 sec: average 67.2 dB(A)
- v. Rock song 1, inside Mr Cleary's apartment, 1 m 48 sec: average 79.4 dB(A)
- vi. Rock song 2, inside Mr Cleary's apartment, 12.4 sec: average 43.8 dB(A)¹⁵
- vii. Ambient noise (no music), on Mr Cleary's balcony, 4.0 sec: average 59.0 dB(A)
- viii. Ambient noise (no music) inside Mr Cleary's apartment, 6.8 sec: average 52.7 dB(A)
- ix. Ambient noise inside Mr Cleary's apartment, on Monday 3 March 2025, 24 sec: average 50.8 dB(A)

c. The audio-visual recording made by the nominee on 16 March 2025 at 1330 hours on Mr Grealy's balcony, showing a Protech QM1589 Compact Digital Sound Level Meter measuring decibel levels of between 55 and 60 dB(A) while live music was playing, dropping to 46.9 dB(A) when the music stopped.¹⁶

¹⁴ Exhibit 3

¹⁵ This level appears to be anomalously low when compared to the other eight measurements made by Mr Grealy. The Commission notes that the recording time for this measurement is significantly shorter than the recording time for the measurement recorded for the noise level inside Mr Cleary's apartment for "Rock song 1".

¹⁶ Exhibit 6

FINDINGS

63. The Commission makes the following findings.
64. Between September 2019 and May 2021 Mr Grealy complained to Licensing NT about annoying and intrusive noise emanating from the premises on five separate occasions. Licensing NT responded by engaging constructively with Mr Grealy and the licence nominee, but did not escalate these matters to a formal complaint.¹⁷ The licensee took no effective action to address these complaints.
65. Noise complaints against the licensee were made to Licensing NT by three residents in three different streets in the vicinity of the premises on 27 September 2024 (Mr Potter, McMinn St),¹⁸ 6 November 2024 (Mr Sproule, Hood Tce)¹⁹ and 22 November 2024 (Mr Grealy, Finniss St).²⁰ The complaint made by Mr Sproule was independent of the other two complaints. The Commission has heard no evidence and makes no finding as to whether Mr Grealy and Mr Potter are known to each other, or whether they were aware of each other's complaints.
66. All three complainants subjectively experienced the noise as being excessive, were substantially annoyed by it, and honestly believed it to be undue and unreasonable.
67. The Commission notes the statement by Mr Potter that he moved out of his home because of the noise, but as this complainant did not make himself available for cross-examination, the Commission makes no positive finding that this was the sole or a substantial reason for his decision to relocate.
68. Based on the evidence of noise levels summarised at paragraph 62.b) above, the Commission is satisfied that the difference between background noise levels on Mr Cleary's balcony and noise levels from live music played on the hotel's deck is between approximately 8 dB and 21 dB.
69. On the available evidence the Commission is unable to make a dB-specific finding regarding the difference between background noise levels and the noise levels from live music played on the hotel's deck inside Mr Cleary's home with doors and windows closed.
70. The Commission considers that the evidence at paragraph 62.a) above is consistent with and corroborates Mr Cleary's measurements, namely that the noise from the live music on the hotel's deck could be heard in the nearby streets at a level of between approximately 67dB(A) and 81dB(A).
71. The Commission finds that the noise level measured (albeit only for a few seconds) by the licensee on the complainant Mr Grealy's deck on 16 March 2025 fell by between

¹⁷ Exhibit 1, pp 35 – 36

¹⁸ Exhibit 1, pp 17 – 18

¹⁹ Exhibit 1, p 19

²⁰ Exhibit 1, pp 20 – 21

8dB(A) and 13 dB(A) when the band stopped playing. That is also broadly consistent with the Commission's findings based on Mr Cleary's sound measurements.

72. The Commission is satisfied that when the band was playing, noise levels on the complainants' balconies and inside the adjoining room with doors and windows open were more than 5 dB(A) greater than background noise.

73. On the available evidence the Commission is unable to make a positive finding that noise levels inside the complainants' residences with doors and windows shut were more than 5 dB(A) greater than background noise when the band was playing.

CONSIDERATION

74. In *PINT Club No 1*, the Commission, which included Mr Goldflam and Ms Stephenson, two members of the current panel, participated in an experiment in which they stationed themselves at a complainant's residence and listened to recorded rock music played from the beer garden of licensed premises some 240 metres away. The music was being professionally measured, and the outdoor sound level at the complainant's residence was found to vary between 55 dB(A) and 63 dB(A).²¹ With the music playing, the indoor sound level at the same premises in a room with a partially open window was measured at 51 dB(A).

75. The Commission made the following findings:²²

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.

76. In *PINT Club No. 2* the Commission held (at [21]) that despite the difference in terminology between the "undue and unreasonable noise" standard in s 93 that "affects the amenity of the neighbourhood", and the standard expressed in s 160(1)(m)(iii) of causing "annoyance or disturbance" to certain persons "in the vicinity of the premises", these two provisions refer in essence to a single standard, and mean the same.

77. The Commission did not conduct a similar experiment in the current case. However, the Commission accepts the evidence it has received that the measured noise levels at residences in the vicinity of the premises are at least as high as the noise it assessed in the PINT Club experiment. The Commission found that the noise from the PINT Club

²¹ *PINT Club No 1*, at [33]

²² *Ibid*, at [83]

was such as to cause annoyance or disturbance. It follows that it is open to the Commission to now draw the inference that similarly, the noise from the Frontier Hotel is undue and unreasonable.

78. In considering this issue the Commission has also had regard to the Guideline. Although the Commission has not made a positive finding that the noise emitted from the premises is non-compliant with the indoor entertainment venue standard when applied to a room inside a neighbourhood residence with doors and windows shut, the Commission is comfortably satisfied that the noise is non-compliant with that standard when applied to a room in a neighbourhood residence with an open door or window looking out onto a balcony. The Commission considers that it would be unreasonable to require Darwin residents, who, at least in the dry season, enjoy a conspicuously al fresco lifestyle, to stay inside with their windows and doors shut in order to avoid annoyance and disturbance from a band playing on an al fresco deck 100 to 200 m away.
79. Notwithstanding the deficiencies in the evidence adverted to at paragraph 59, above, having considered the evidence and the Commission's consequent findings, the Commission is satisfied that since September 2024 the licensee has caused or permitted music to emanate from its premises on Friday, Saturday and Sunday afternoons and evenings that caused undue and unreasonable noise to be received at three residences in McMinn St, Hood Tce and Finniss St.
80. The Commission now turns to consider whether complaints from three residents in a densely populated part of Darwin, supported by evidence of recordings and sound measurements taken on selected days since September 2024 is sufficient to establish a contravention of s 93. The licensee submitted that in order to uphold the complaint the Commission must be satisfied that not only there was "undue and unreasonable noise", but that the noise was such that it "affects the amenity of the neighbourhood". The Commission accepts this submission.
81. Section 93 does not quantify or qualify how much or how the amenity of the neighbourhood must be affected before there is a contravention of the provision. This is in contrast to, for example, s 49(3) of the Act, which requires the Commission to assess whether the grant of a licence or authority would have a "significant adverse" impact on the community. Nevertheless, in accordance with the obvious purpose of s 93, the Commission construes "affects the amenity of the neighbourhood" to mean "adversely affects the amenity of the neighbourhood".
82. The term "amenity" is not defined in the Act, but the Commission considers it has the same meaning in the Act as it is given by s 3 of the *Planning Act 1999* (NT), which states:
- amenity**, in relation to a locality or building, means any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable
83. Although the noise was only measured on relatively few evenings, the Commission heard no evidence to support a finding that the occasions on which noise was recorded were anything out of the ordinary, and the licensee did not submit that the Commission should so find. It is common ground that live music is played by the same musicians on the hotel's deck every Friday, Saturday and Sunday evening. The Commission is satisfied that the noise of the live music playing on the hotel's deck constitutes a pattern of

behaviour that has adversely affected the amenity of the neighbourhood for at least four neighbourhood residents (Mr Sproule and his wife, Mr Potter and Mr Greal).

84. The Commission heard no evidence in support of the licensee’s suggestion that the complainants may be hypersensitive to noise, and makes no such finding. The Commission also heard no evidence that the complainants have colluded to concoct their complaints, and, in the case of Mr Sproule, is satisfied that his complaint was made independently of the other two complainants, the authors of which are unknown to him.
85. The licensee tendered comments posted on-line by patrons of the Frontier Hotel and another nearby short-term accommodation facility that did not include any complaints about the music emanating from the hotel’s deck.²³ The licensee also provided evidence that nine other neighbouring residents who responded to a letterbox-drop survey conducted by the licensee can hear the music but do not consider it to be excessive. Some of them indeed find it be pleasant or enjoyable.²⁴ All this evidence, which was admitted without objection, was adduced in support of a submission that the noise does not, when considered globally, adversely affect the amenity of the neighbourhood.
86. The Commission attaches very little weight to the on-line comments posted by holiday-makers and other transient visitors to the locality, the concerns, wishes and experiences of whom are obviously different from those of permanent residents of the neighbourhood.
87. The licensee submits that the evidence of three neighbours who are annoyed by the music is insufficient to support a finding that the amenity of the neighbourhood is adversely affected. By the same token, it would be similarly arguable that the letter-box survey evidence that nine neighbours are not annoyed by the music is insufficient to support a finding that the amenity of the neighbourhood is not adversely affected. The fact that a dozen residents in a neighbourhood have these differing views illustrates little more than that one person’s enjoyable music is another person’s annoying noise.
88. In the view of the Commission, more assistance in relation to the issue of whether or not the amenity of the neighbourhood is adversely affected can be found by having regard to the relevant provisions of the NTPS as set out at paragraphs 26 to 28 above. In the view of the Commission, the licensee has failed to meet the prescribed CB Zone outcome of operating “in a manner that avoids unreasonable loss of amenity for surrounding premises, having regard to the close proximity between residential and entertainment uses, and the overall mixed use nature of the zone”.
89. Finally, the Commission has also considered the application of the Agent of Change principle, as set out at paragraph 24 above. All of the complainants have been long-standing residents of the neighbourhood. The Commission accepts Mr Sproule’s evidence that the noise levels from the hotel’s deck became excessive when the deck was extended into the hotel carpark, which Mr Walsh confirmed occurred in 2023. As the Guideline states, “[i]n these circumstances, the burden of any remedial or mitigation measures, such as noise attenuation or modified operating practices, falls upon the venue operator.”

²³ Exhibit 10

²⁴ Exhibit 4

90. Having regard to all of these matters and to the Guideline's indoor entertainment venue standard, the Commission is reasonably satisfied that the amenity of the neighbourhood has been adversely affected by the undue and unreasonable noise emitted from the premises.
91. For these reasons the Commission upheld the complaint on the ground specified in it that the licensee or the licensee's employee contravened s 93 of the Act.

DISCIPLINARY ACTION

92. As the Commission has recently stated, "It is well established that the primary if not sole purpose of imposing civil penalties is deterrence".²⁵ The disciplinary action the Commission has determined to take is intended to mitigate the risk that there will be further noise complaints against the licensee by imposing an additional condition on the liquor licence (**the noise condition**) that will, firstly, reduce noise pollution and, secondly, establish a system to ensure that any ongoing neighbourhood concerns about noise are speedily and responsibly addressed.
93. Compliance with the additional condition will entail some cost to the licensee, significant additional work by Licensing NT, and the co-operation of the complainants. The Commission has given consideration to utilising its power to impose additional disciplinary action by directing the licensee to take the specific actions required to facilitate the work that Licensing NT will need to do in order to make the noise condition operational. However, the Commission, having heard from Mr Paull and Mr Walsh, is satisfied that, as he has in the past, Mr Walsh is likely to engage constructively with Licensing NT.
94. The noise condition is substantially derived from the indoor entertainment venue standard. Much as the Commission did in *Jump Inn No. 1*, the Commission requests the Director (subject to the agreement of Mr Sproule, Mr Grealy and Mr Potter, whose co-operation the Commission also requests), to make or cause to be made the following measurements, using the most accurate sound level meter that is reasonably available for the Director to use:
- a. the A-weighted background noise level in the front room of each of the complainants with a door or window to the adjoining balcony open, as measured over a period of at least 15 cumulative minutes in which significant extraneous noise is excluded between 16:00 hours and 22:00 hours on a day when there is no live music being played at the premises (**BN**);
 - b. the A-weighted noise level over a period of at least 15 cumulative minutes of music of the band playing on the hotel's deck on a Friday, Saturday or Sunday between 16:00 hours and 22:00 hours as measured in the front room of each of the complainants with a door or window to the adjoining balcony open (**N1**); and
 - c. the A-weighted noise level over the same period of at least 15 cumulative minutes of music of the band playing on the hotel's deck on a Friday, Saturday or Sunday

²⁵ *Complaint against 2SCCP Pty Ltd t/a Jump Inn* [2025] NTLiqComm 7 (**Jump Inn No. 2**) at [68]

between 16:00 hours and 22:00 hours as measured 4 metres from the front of the stage on the hotel's deck (**N2**).

95. The Commission requests the Director to fix the approved maximum sound pressure level (**ML**) as follows:

- $N2 - N1$ = the difference between the level of noise at the point of emission, and the point of reception (**D**).
- $ML = BN + 5dB(A) + D$

96. The Commission suggests that for the purpose of determining which of the three complainants' residences to use for the purpose of fixing ML, the Director select the location at which the noise is received at the loudest level.

97. The Commission further requests the Director to measure the noise level in the front room of the selected complainant with a door or window to the adjoining balcony open while music is playing at the ML level, for the purpose of confirming that the noise level at the complainant's residence is 5dB above the background noise level. If it is not, then the ML should be adjusted accordingly.

98. The Commission notes that the licensee proposes to further extend the hotel's deck within the next twelve months. If and when these works are completed, the Commission requests the Director to re-measure N1 and N2 at the relevant complainant's residence, and to adjust the approved maximum sound pressure level accordingly.

99. The Commission suggests that before undertaking these works, the licensee give consideration to commissioning an acoustic report, and to incorporating noise mitigation measures into the works as recommended in the acoustic report.


100. The Commission commends the licensee for having sought advice from Licensing NT as to whether the planned works constitute a material alteration. The Commission notes, however, that the preliminary architectural drawings tendered by the licensee at the hearing appear to indicate that it is proposed to extend the hotel's deck into the existing carpark and garden area by an area of approximately 110 square metres, with seating for an additional 76 diners. On its face, these plans appear to constitute "a significant increase in the area of the premises used for the sale, supply, service or consumption of liquor" and also possibly "a significant change to the external appearance of the premises" constituting material alterations as defined by s95(1) of the Act, and requiring the prior written approval of the Commission.

101. At the hearing on 31 March 2025, having heard the evidence and submissions of the parties, the Commission pronounced that it had determined to uphold the complaint, indicated the nature of the disciplinary action it was minded to take, and heard further submissions from the parties. Having heard the further submissions, the Commission then requested the parties to undertake the steps required to put the noise condition into effect within one month, and gave leave to the parties to seek an extension of time to complete those steps. Accordingly, the Commission has ordered that the noise condition take effect from Friday 3 May 2025, or such later date as the Commission allows.

102. The sub-conditions headed “Noise complaint management” and “Director’s review” of the noise condition are in similar terms to conditions that the Commission has previously imposed on other licensees in similar circumstances.
103. The Commission is satisfied in accordance with s 165(1) of the Act that a ground for the disciplinary action exists and the disciplinary action is appropriate in relation to that ground.

NOTICE OF RIGHTS

104. Section 31(1) read with s 166(7) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
105. In accordance with s 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director, the licensee, Mr Sproule, Mr Grealy and Mr Potter.



RUSSELL GOLDFLAM
CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION

8 April 2025

On behalf of Commissioners Goldflam, Carson and Stephenson