

Director-General of Licensing

Decision Notice

MATTER:	COMPLAINT AGAINST LICENSEE
PREMISES:	PINT Club Incorporated Abala Road, Marrara
COMPLAINANT:	Senior Compliance Officer Scott Gooch
RESPONDENT:	Mr Darren Howard – Manager/Nominee
LEGISLATION:	Part VII of the <i>Liquor Act</i>
DECISION OF:	Director-General of Licensing
DATE OF DECISION:	31 January 2018

BACKGROUND

1. PINT Club Incorporated (the Club) is the licensee for a club liquor licence issued pursuant to the *Liquor Act* (the Act), which authorises the sale of liquor for consumption on and away from the licensed premises situated at Abala Road, Marrara. The nominee/manager for the liquor licence is Mr Darren Howard.
2. On 18 August 2017, a delegate of the Director-General of Licensing (the Director-General) pursuant to section 68(3)(a) of the Act, accepted a complaint lodged against the licensee for the Club. The complaint arose as a consequence of Mr Brendan Lawson contacting Licensing NT with regards to excessive noise as a result of music concerts held at the Club on 5 May 2017 and 23 June 2017. Mr Lawson also forwarded a petition signed by 10 residents of the Northlakes Estate Marrara and a 'Log of Events'. Statutory declarations subsequently sworn by Mr Lawson, Mr Terry Sinton, Mrs Leigh Sinton, Ms Elizabeth Campbell and Mr Edward Berry were also provided to Licensing NT in respect of the complaint. Each of those persons reside in Sunningdale Court, Marrara in the Northlakes Estate, located approximately 380 metres from the Club's premises.
3. On 18 August 2017, and in accordance with section 68(3) of the Act, the delegate notified the Licensee that a complaint had been received in relation to an alleged breach of section 67(3)(m)(i) of the Act. Namely, that the manner in which the Club's licensed premises had been used had caused annoyance or disturbance to persons residing in the neighbourhood of the premises.
4. The Club provided a substantial response to the complaint under cover of a letter dated 8 September 2017 from its legal representative Mr Ray Murphy. As a result of the acceptance of the complaint by the delegate, and in accordance with the Director-General's Guideline in respect of public hearings issued on 3 February 2017, the complaint against the Club was referred to a public hearing for further investigation.

PUBLIC HEARING

5. The public hearing in respect of the complaint was convened on 22 November 2017. At the commencement of the hearing Mr Murphy sought to tender additional documents into evidence, namely the Club's 'Noise Complaint Policy', a 'Noise Complaint Register Form', a 'Noise Monitoring Register Form' and a list of music events held in the outdoor area of the Club from 1 January 2017 to 22 July 2017. The Director-General determined that the documents were relevant to the substance of the complaint and to the Club's response to alleged noise disturbances with the result the documents were admitted into evidence.
6. Mr Lawson also sought to tender additional documents into evidence, namely the NT Environment Protection Authority's Noise Guideline for Development Sites as well as correspondence between government agencies and the local member for the Sanderson Electorate. After perusing the documents Mr Murphy objected to the new materials being tendered into evidence on the basis of lack of relevance to the proceeding before the Director-General and the lack of prior notice of the documents so as to enable his client to respond to the content of the materials.
7. The Director-General ruled the EPA Guideline to be inadmissible on the basis the Guideline relates to development sites and not to noise issues arising from existing premises, as is the case in respect of the complaint under consideration. The correspondence to the local member was also deemed to be inadmissible due to lack of relevance to the matters the Director-General must consider in determining the outcome of a complaint against a licensee.

Evidence of Mr Brendan Lawson:

8. Mr Lawson was then called to give evidence in respect of the complaint. He acknowledged that he had lodged a statutory declaration with Licensing NT setting out the substance of his concerns relating to noise disturbances caused at his residence as a result of music concerts held at the Club. Mr Lawson stated that noise emanating from the Club as a result of recent concerts impacted on the amenity of the Northlakes residential area, including at his home address.
9. Mr Lawson also provided to Licensing NT, prior to the hearing, a letter signed by 10 Northlakes residents all of whom reside in Sunningdale Court and neighbouring Carnoustie Circuit. The letter states that the signatories have experienced and been impacted by excessive levels of noise emanating from the Club and requests that a formal investigation be conducted with a view to reducing the level of amplified music which has intruded on the amenity of the residential area. The letter also states that the events which have been associated with the excessive noise were concerts on the nights of Friday 5 May and Friday 23 June 2017 which were held since the recent development of a new outdoor stage area on the Club's premises. In particular, the residents who signed the letter seek to have the level of amplified music, which is directly attributable to the outputs of headline acts appearing as part of an expanded outdoor concert program being conducted by the PINT Club, reduced or re-directed so as not to impact on the amenity of the residential area.
10. Mr Lawson also submitted a document titled "Log of Events" affecting xx Sunningdale Court, Marrara. The document details Mr Lawson's observations in respect of noise disturbances experienced as a result of the concerts held at the Club on 5 May and 23 June 2017 and diarises his personal contact with staff of the Club seeking to have the noise issues addressed.

11. Mr Lawson stated that, during the concerts, the constant repetitive percussion from the bass has a physical impact on eardrums and diaphragm leading to ringing in the ears and migraine headaches which becomes evident when there are lapses between noise emissions. He stated that the bass resonance permeates his entire house even with windows, drapes and doors closed and there is no relief from the noise disturbances. Mr Lawson stated that during the concerts he is unable to enjoy social conversations or entertainment within his home due to constant interference from external noise and that intrusion of noise into bedrooms prevents sleep. He added that the extended duration of the noise from the time of set-up and sound testing around 10 am until conclusion of concerts at 11 pm has a compounding effect creating angst for residents who are subjected to nuisance noise without respite throughout the day and night.
12. Mr Lawson stated that he was extremely disappointed with the response from the management of the Club to his complaints and, in his view, the Club's manager clearly has the commercial interests of the Club ahead of any consideration for the peace of the neighbours. He also noted his annoyance that the system and complaint process appear to put the rights of the nuisance maker ahead of the legitimate right to the undisturbed use and enjoyment of long-time residents. He stated his and Mrs Lawson's quality of life has been impacted by a recent commercial decision by the Club's management designed to increase patronage through the staging of events which manifestly change the nature of business conducted at the Club.
13. Mr Lawson expressed his disappointment that the Club was making no genuine attempt to resolve the noise issues that he first raised in May 2017 or to address the on-going concerns of nearby residents. In response to questions from Mr Murphy, Mr Lawson confirmed that he regarded the noise emanating from concerts at the Club to be excessive and that he did not believe the nominee, Mr Howard, was treating his complaints seriously. Mr Lawson acknowledged that the Marrara Sporting Complex, including TIO Stadium, regularly held major recreation and sporting events that sometimes included musical entertainment and often attracted large crowds. He stated that whilst he could sometimes hear noise from those events at his residence the disturbance was far less than that caused by concerts held at the Club. Mr Lawson stated that he had not been disturbed by noise from TIO Stadium events to the point of lodging any formal complaint.
14. Mr Lawson also referred to disturbances caused by the Terrorfest concert held at the Club on 22 July 2017, which included performances by a number of heavy metal bands. He noted that licensing inspectors had visited his residence on the night of that concert as part of the investigation into the initial noise complaints against the Club. He stated that whilst the inspectors were in his house he needed to raise his voice to speak with them due to the noise emanating from the concert. Mr Lawson also referred to the Careflight Gala Ball held at the Club on 26 August 2017 and stated that the event had also caused noise disturbance at his residence from the arrival of a helicopter, public address announcements and live music.
15. Mr Lawson stated that whilst he has lived in Sunningdale Court for many years the issues with noise disturbances from the Club had only arisen recently when the Club started to hold outdoor concerts that attracted large numbers of patrons.

Evidence of Mr Edward Berry:

16. Mr Berry resides at xx Sunningdale Court, Marrara, and has done so for the past 25 years. He submitted a statutory declaration in support of the noise complaint against the Club. Mr Berry stated that his residence is situated approximately one kilometre from the Club's premises¹ and there are no houses or buildings between his house and the Club.
17. Mr Berry's complaint relates to excessive music/noise levels from the Club during a number of recent functions held between 5 May 2017 and 23 June 2017 and commencing from approximately 6.00 pm. He stated that the noise on those particular evenings has caused undue disturbance to him to the point that he was unable to hear the television or speak with people outside on his patio. He added that when he is inside his residence during the concerts he has had to close all windows and then turn up the television to full volume to drown out the noise emanating from the Club.
18. Mr Berry noted that a Rugby League Wold Cup match had been held at Marrara recently and that had not caused any noise disturbance at his residence. He stated that he was disturbed by noise from concerts at the Club when he was outside in his yard or on the patio. When he was inside it was necessary to close the roller shutters on the windows and further it was still necessary to turn up the volume on his television so as to hear it above the concert noise and to speak at louder levels than normal when conversing with his wife.
19. Mr Berry stated that the level of noise disturbance was similar for the concerts held on 5 May and 23 June 2017 and also similar on the night of the Terrorfest concert held on 22 July 2017. He agreed that the noise disturbances were relatively recent and that previously the activities of the Club had not caused any concern or noise disturbance at his residence. Mr Berry stated that he was unaware that he could complain about the noise coming from the Club prior to discussing the issues with his neighbour Mr Lawson.

Evidence of Ms Elizabeth Campbell:

20. Ms Campbell is an associate professor with Flinders University (NT) and a Speech Pathologist, with NC Consulting. She has resided at her current address of xx Sunningdale Court, Marrara, since 2001. Ms Campbell swore a statutory declaration dated 6 October 2017 in support of the complaint against the Club in which she stated that noise levels from the Club have been excessive, very disturbing and completely incompatible with comfortable living. She noted that her home is approximately 350 metres from the Club's premises and separated only by the 13th green of the golf course and a cricket and soccer pitch.
21. Ms Campbell stated that whilst she could not recall the specific dates, there were three occasions around June/July 2017 where the noise level was completely unacceptable in terms of volume, length of time the concerts ran and how late the concerts concluded. She recalled that at least one of the concerts involved heavy metal bands during which the noise could be described as completely deafening. Ms Campbell stated that on two occasions she returned home from being out when concerts were taking place and it felt like the whole house was vibrating. On at least one occasion she had to close all the windows and switch on the air conditioner to get some relief from the noise, noting that this was during the dry season when cooling from the air conditioner was not required.
22. Ms Campbell stated that noise emanating from the Terrorfest concert was the most disturbing in terms of the volume, duration and the time the concert ended. Noise from the concert was audible at her home from 6.00 pm until 10.30 pm and the music was considerably louder than

¹ Mr Berry's residence at xx Sunningdale Court is in fact located considerably closer than one kilometre from the Club's premises. The actual distance is approximately 400 metres.

for previous concerts. Even with the doors and windows closed and the air conditioner operating she could still hear the music inside her house and needed to yell to be heard over the music. Ms Campbell added that she grew very tired of the noise disturbance on that night and could not enjoy the company of visitors she had that evening.

23. Ms Campbell stated that having lived in the same location for 16 years she was well acquainted with and usually coexisted happily with the noise in the area, including military and civilian aircraft noise from the airport, sports events at the Marrara Sporting Complex including large events such as the AFL games when crowd noise can be clearly heard at her home. She stated that none of those events have been anything like the recent noise level coming from concerts held at the Club. Whilst aircraft noise was comparatively loud it only lasted for a short duration and not ongoing as distinct the disturbances from the concerts that occurred over a number of hours. Ms Campbell stated that after the third concert event at the Club she actually discussed with her husband the possibility of selling the house and moving to a different location as the noise levels from the Club were unbearable.
24. Ms Campbell noted that in addition there had been several occasions around 7.00 am on a weekend morning when the Club's loud speaker system was used to broadcast music, presumably while a staff member was working cleaning up or preparing the Club for an event.
25. Ms Campbell noted that up until the time Mr Lawson had spoken to her and her husband she was unaware that they had any rights in regard to complaining about what she and her husband considered to be an unacceptable disturbance in the neighbourhood.

Evidence of Mr Terry Sinton:

26. Mr and Mrs Sinton lodged statutory declarations in support of the complaint against the Club. They were unable to attend the public hearing in respect of the complaint due to them being absent from Darwin on the hearing date. Mr Sinton requested that the matters set out in the affidavits be taken into account by the Director-General in determining the outcome of the complaint.
27. Mr Sinton stated that he and his wife have resided at xx Sunningdale Court, Marrara, for nearly 15 years. He submitted his statutory declaration as a follow up to a petition that he signed dated 27 June 2017 and as a formal complaint about the very loud music emanating from the outdoor area at the Club. Mr Sinton stated that he has been subjected to intense noise pollution on a regular and frequent basis, resulting from outdoor music events held at the Club. The events, which include initial tuning and set up procedures, regularly run for many hours, for example the Sunday afternoon event held on 1 October 2017 lasted from approximately 2.00 pm until 8.00 pm.
28. Mr Sinton submitted that the sound emanating from the music events, particularly the lower frequency noise, is loud and penetrating. He noted that his residence is situated approximately 300 metres from the Club across an open sports field. Musical events occur regularly on the first Sunday of every month, as well as other random days for example the Choir Boys concert on Saturday 30 September 2017 and a heavy metal concert in July. He stated that the effect of the noise pollution, with occasional amplified expletives from presenters, is highly intrusive to his and his wife's personal lifestyle at Marrara and that they should not and have no wish to be included in the audience of these events.
29. Mr Sinton added that the disruption is so severe that outdoor activities at his residence are severely restricted during the music events and he is forced to mitigate the effects by leaving home or by withdrawing inside his house, closing up the windows and doors and, of necessity, turning on the air conditioners. He noted that on the occasion of the extra special concerts,

this had little effect with the noise and vibrations still penetrating into the house to such an extent he could not hear the television and sleep was impossible.

Evidence of Mrs Barbara Sinton:

30. As indicated above, Mrs Sinton submitted a statutory declaration as a follow up to a petition that she signed dated 27 June 2017. Her complaint concerns the very loud music that comes from the outdoor venue of the Club within the Marrara Sports Complex. She stated that the noise disturbance has become unbearable this year since the outdoor venue was constructed with amplifiers pointing directly to her residence and neighbouring properties. She added that during the outdoor concerts can hear everything, including the presenters, and their language is often appalling. She has made phone complaints to the Police and the Club with no effect and noted that the Club had informed, in response to one of her complaints, that there were no houses near the Club's premises. In her view the management of the Club have little consideration of their location in proximity to a residential area and the behaviour of sound waves.
31. Mrs Sinton stated that as a golfer she was aware that the noise from concerts at the Club can be heard loudly all over the golf course. She noted that live music is played on the first Sunday of the every month and, in addition she has been subjected to random events such as the Choir Boys concert in June, and a heavy metal performance in July. Mrs Sinton acknowledged that there are other random loud intrusive events in the neighbourhood, such as a concert following the AFL Final on 30 September 2017, however the loudness of the noise from the concerts is persistent, intrusive with no means of avoiding the disturbance.
32. Mrs Sinton stated further that she is entitled to a quiet environment in her home and should not be subjected to industrial strength noise that penetrates inside her home for hours on end. The disturbances from the concerts prohibit her from enjoying the outside areas of her residence or listening to or watching what she chose. Mrs Sinton concluded by stating that sleep is impossible whilst the concerts are on, particularly with penetrating lower frequencies, and that she should not have to wear earplugs and earmuffs around her own home.

Evidence of Mr Scott Gooch, Senior Compliance Officer, Licensing NT:

33. Mr Gooch was tasked with investigating the complaints lodged by the residents of Sunningdale Court regarding noise disturbances caused by live music concerts conducted at the Club. He stated that he first contacted Mr Lawson on 26 June 2017 regarding the complaint of excessive noise emanating from the Club, following which Mr Lawson provided details of his complaint.
34. On 29 June 2017 Mr Gooch attended the Club with Senior Compliance Officer David Neall and discussed the complaints with the nominee for the premises Mr Darren Howard. Mr Gooch also conducted an inspection at the rear of the premises and noted the position of a stage that was pointing in the direction of the Northlakes Estate. Mr Howard informed Mr Gooch that in order to reduce any noise concerns by the Northlakes residents he would consider putting in place a temporary stage at the opposite end of the rear open area, facing away from the residential area for the Terrorfest concert scheduled for 22 July 2017.
35. On Saturday 22 July 2017, Mr Gooch and Mr Neill attended the Club at approximately 6.40 pm to observe and assess the Terrorfest concert which was to feature a number of heavy metal bands. On arrival at the premises Mr Gooch noted that a temporary stage was being utilised by the bands. He remained at the Club until around 7.40 pm and then drove to Sunningdale Court. Whilst standing in Sunningdale Court, Mr Gooch assessed the level of noise coming

from the concert at the Club. He stated that the music, and particularly the bass, was clearly audible. He then returned to the Club and continued to observe the live concert.

36. At around 9.30 pm, following a telephone conversation with Mr Lawson, Mr Gooch and Mr Neill attended at Mr Lawson's residence. Mr Gooch stated that whilst standing in a bedroom on the upper floor towards the rear of the house he could hear the bass sound from the concert with the windows both opened and closed. On returning to the lounge room downstairs he could again hear the bass sound which he stated was clearly audible.
37. Shortly afterwards Mr Gooch and Mr Neill returned to the PINT Club and continued observations of the live concert. At around 10.15 pm Police Officers arrived at the Club and advised Mr Gooch that they were responding to a noise complaint. On being advised that Mr Gooch was at the Club for the same purpose, the Police Officers left the Club advising Mr Gooch that a record would be made of their attendance. Mr Gooch and Mr Neill remained at the premises until approximately 11.00 pm when the music had finished and the crowd was slowly leaving.
38. In response to questions from Mr Murphy, Mr Gooch stated that he could not hear any music whilst driving to Sunningdale Court however the music was clearly audible when he got out of the car, but not so loud that he had to raise his voice to speak with Mr Neill. Mr Gooch did not assess the noise level to be excessive for a Saturday night. He also noted that the sound level increased as the concert progressed with the final band being the loudest of the night.
39. In respect of his observations whilst at Mr Lawson's residence, Mr Gooch stated that he could hear the music clearly but did not have to raise his voice to speak with Mr Lawson. He reiterated that he could hear the music inside the house with the windows opened and closed. He noted that the television was on downstairs and he could hear that over the music. Whilst the Police Officers who attended the Club on the night advised him they were responding to a noise complaint they did not advise who had made the complaint. Mr Gooch stated that the Police Officers did not comment on the level of noise at the time and left him and Mr Neill to conduct further investigations.
40. Mr Gooch confirmed that his investigation involved contacting the 10 residents who had signed the petition relating to the noise complaint. In response to a question from Mr Murphy, Mr Gooch confirmed that he did not contact any other residents in the neighbourhood other than those who signed the petition. He stated that he could not recall how many complaints had been lodged with Police following the Terrorfest concert but thought there may have been two or three complaints. He was not aware whether Police had taken any action or directed the management of the Club to take any action in response to those complaints. Mr Gooch confirmed that neither he nor Mr Neill conducted any sound level checks on the night of the Terrorfest concert.

Evidence of Senior Compliance Officer David Neill:

41. As noted above, Mr Neill was involved in the investigation of the noise complaint and, as a part of that investigation, he attended the Club with Mr Gooch on the evening of 22 July 2017 to observe the Terrorfest concert. In his statutory declaration sworn on 6 November 2017 and in his evidence at the hearing Mr Neill essentially corroborated the evidence and observations presented by Mr Gooch.
42. Of particular relevance, Mr Neill stated that when he attended at Sunningdale Court that night he noted that the music from the concert could be heard and that the bass was clearly audible. He states that when he visited Mr Lawson's residence he was escorted to various rooms within

the house. He noted that the music emanating from the Club could be clearly heard in each room.

Evidence of Mr Darren Howard, Nominee/Manager for the Club:

43. Mr Howard stated that he has held the position as General Manager of the Club since 16 December 2016. He acknowledged that the Club had conducted music events throughout 2017, as indicated on a list of events tendered into evidence. The list indicated that the Club had held a total of 20 concerts and music events between January and July 2017.
44. Mr Howard noted that the Club had been holding Sunday afternoon music sessions, called the First Sunday Blues, for many years with these events being held on the first Sunday of each month. The sessions commence around 3.00 pm and usually conclude between 7.00 pm and 8.00 pm and occasionally around 9.00 pm. He noted that the trading hours for the sale of alcohol at the Club ended at 10.00 pm on Sundays².
45. Mr Howard stated that the Club engaged a sound technician for the First Sunday Blues sessions as it did for other concerts, except those where the band engages their own sound technician. He stated that the sound system was supplied by the sound technician and he was responsible for setting up the equipment and controlling the volume. Mr Howard stated that the Club had received no complaints regarding the First Sunday Blues sessions during his time as General Manager. Mr Howard acknowledged that sound checks were often conducted earlier in the day however these were not prolonged. He stated that, in his view, the maximum level at which the sound was set was reasonable.
46. Mr Howard noted that the First Sunday Blues sessions were held outside the clubhouse however a number of the other concerts held in 2017 were held indoors, for example the Elvis concert held on 21 April 2017 was held indoors with free entry for Club members. He noted that concert ran from 7.00 pm until 10.30 pm. He stated that all music events held at the Club during the year ended at or before 10.30 pm with the exception of the Terrorfest concert.
47. Mr Howard acknowledged that there was a delay of some days before he contacted Mr Lawson regarding his initial complaint to the Club regarding noise disturbances. He stated that he received a note from a staff member regarding the complaint but was not sure what the complaint was about. He stated that Mr Lawson was the only person who had contacted the Club to complain about noise disturbances. He was aware there was a complaint after the Choir Boys concert held on 23 June 2017 but he was not aware of the identity of the complainant.
48. Mr Howard stated that when he did contact Mr Lawson he was obviously upset about noise disturbances at his premises. He conceded frankly that after speaking to Mr Lawson he formed a view he was just a “grump” and that he did not treat the complaint particularly seriously. He acknowledged that was a mistake and, as the person responsible for the management of the Club, he should have taken a more conciliatory approach. Mr Howard admitted, with the benefit of hindsight, that he did not handle Mr Lawson’s complaint well.
49. Mr Howard agreed that the Terrorfest concert was louder than any of the other concerts held at the Club previously and that he was aware of complaints received after that concert. He stated that on the night of that concert he drove to Sunningdale Court to assess the noise levels from the bands. He stated that he could not hear the music whilst in his car however it was audible once he stepped out of the car.

² The conditions attached to the liquor licence for the Club do however allow for the trading hours to be extended to 02:00 hours the following day in conjunction with entertainment.

50. In Mr Howard's view, whilst he could hear the music whilst standing in Sunningdale Court, he did not regard the noise level as excessive. He noted that the bands playing at the Terrorfest concert were not to his taste and the performances included a heavy bass sound and a lot of screaming and yelling by band members. In response to a query as to why he would organise an event of that nature at what is essentially a family oriented members' club he stated that holding the Terrorfest concert at the Club was a last minute decision when the original venue for the concert was unable to host the concert and the bands had already been booked. Mr Howard stated that the Terrorfest concert is an annual event normally held at The Chippo, a live music and entertainment venue. The event organisers were desperate for a venue for the headline acts when The Chippo closed in April 2017.
51. Mr Howard agreed that the Terrorfest was different to the usual type of entertainment held at the Club but he reluctantly agreed to host the event due to the lack of an alternative venue. He noted that the concert was originally planned to run until 1.00 am however he insisted that the entertainment cease at 11.00 pm. Mr Howard noted that neither the licensing compliance Officers or the Police Officers who attended the Club on the night of the Terrorfest concert requested that the sound be turned down, an indication in Mr Howard's view that the noise levels were not sufficient to warrant a direction to turn the volume down.
52. Mr Howard advised that the Club had recently prepared and implemented a 'Noise Complaint Policy' in response to the complaints from Northlakes residents. The Policy requires that all noise complaints received by the Club are to be recorded in the Noise Complaint Register and brought to the attention of the Club Manager or the shift supervisor. The policy also requires the Club's staff to regularly monitor and record sound levels at two hour intervals during music concerts, both at the Club and in Sunningdale Court.
53. Mr Howard stated that the noise level monitoring process had been utilised during a concert held at the Club on 20 November 2017 and sound level recordings were taken at the Club and in Sunningdale Court. Whilst the original policy had specified that sound levels in Sunningdale Court were to be kept below 75 decibels (dB) that had subsequently been reduced to 65dB as that was considered a more reasonable maximum sound level. A table showing the results of the sound checks was tendered into evidence. The sound checks were conducted by checking the decibel reading at the Club for music played and comparing those readings to readings recorded at the same time in Sunningdale Court. The results were used to determine the maximum level of sound that could be generated at the Club without the sound exceeding a reasonable level in the residential area. The exercise produced the following results:

Sound tests conducted at 5.30pm to 5.38pm on 20.11.2017			
Location	Background	Pint Club	Sunningdale Crt
Noise Level	44dB(A)	105dB(A)	66dB(A)
Noise Level	44dB(A)	100dB(A)	63dB(A)
Noise Level	44dB(A)	95dB(A)	59dB(A)

54. Mr Howard acknowledged that there had been a change in the manner that the Club conducted its business since he had taken over as General Manager. He stated that when he commenced at the Club it was in a precarious financial position and the decision was made to conduct more fund raising events, including concerts, in an attempt to attract more people to the Club and to improve its poor financial position. He stated that the First Sunday Blues sessions were popular with members of the Club with around 100 people attending and that the live concerts that

were open to the public had proven to be very popular with approximately 500 patrons attending the Choir Boys concert. In addition, a recruitment drive had resulted in the Club increasing its membership base to 1,800 members.

55. In response to a question from the Director-General, Mr Howard acknowledged that he had not advised Licensing NT prior to the Club holding concerts that were open to the general public, as is required by the licence conditions attached to the liquor licence. Mr Howard conceded that he should have advised Licensing NT in advance of the events that were open to the general public.

Evidence of Mr Daniel Lade:

56. Mr Lade is a sound technician and is regularly engaged by the Club to set up and monitor the sound systems used for music concerts at the venue. Mr Lade noted that whilst there are TAFE courses available for sound technicians, the industry is relatively new and there are no formal qualifications required for sound technicians. Mr Lade acknowledged that he is not an acoustics engineer however his job does require him to have some knowledge of sound equipment and noise level monitoring devices.
57. Mr Lade stated that he had been engaged for numerous concerts held at the Club and for all those events he used a hand held monitoring device to record and manage sound levels. The monitoring is carried out at the mixing console which is located away from the stage. A maximum sound reading of 95dB is preferred at the location of the console. Mr Lade stated that the sound level and the distance over which sound travelled depended on a number of factors including the air temperature, wind direction and the number of patrons at the event. Mr Lade stated, by way of example, that the sound at the Adam Harvey concert, a country music event, reached a maximum reading of 98dB however that was only for a short time of between two to three minutes. He stated that crowd noise also contributes to overall noise levels when music is being played at concerts.
58. Mr Lade noted that for the Choir Boys concert held on 23 June 2017, the band provided their own sound system and sound engineer. He was at the concert and did some sound checks himself however he did not make any record of the sound levels. He recalls that the music peaked at around 103 to 105dB. He stated that the band wanted the levels raised to around 110dB and that the general level of noise was around 95 to 100dB.
59. Mr Lade stated that concerns about noise disturbances were discussed prior to the Terrorfest concert due to the bands that had been engaged and the genre of the heavy metal music. He stated that the sound check on that day was limited to 30 minutes whilst normally sound checks were conducted for an hour or more. Mr Lade noted that there were 11 or 12 bands performing on the night, comprising local bands except for the last performance. He stated that the overall sound level on that night was around 98dB peaking at 105dB. He noted also that the speakers were placed on isolation pads to limit the impact of the bass sound.

Submissions presented on behalf of the Club:

60. As noted above, Mr Murphy provided a substantial response to the complaint, on behalf of the licensee, in his letter dated 8 September 2017. Mr Murphy referred to the submissions made in that letter in presenting his submissions at the hearing. Mr Murphy submitted that the noise the subject of the complaint must be excessive for the complaint to be made out. In support of this submission he noted that the word 'noise' appears only once throughout the Act, namely at section 6(2)(e) which prescribes the public interest criteria to be considered when granting a liquor licence and states that noise emanations from licensed premises must not be excessive.
61. Mr Murphy submitted further that the Director-General may, if the complaint is made out, vary or impose license conditions in which case any condition imposed would be restricted to

conditions designed to prevent only excessive noise from bands playing at the Club rather than a condition prohibiting bands in totality. For the Director-General to be satisfied that the complaint is made out, the Director-General must find that the use of the Club has caused an annoyance or disturbance. Mr Murphy submitted that the noise complained of must cause an annoyance or disturbance on an objective basis, rather than on a subjective basis, and that the appropriate test is whether a reasonable person would be annoyed or disturbed by the noise.

62. The use of the phrase 'disturbance caused to persons' clearly requires that more than one person must be annoyed or disturbed. Mr Murphy submitted that it is trite to say that the greater the number of persons who are annoyed or disturbed the more likely it is that the annoyance or disturbance is objectively rated as excessive. He noted in this case that Mr Lawson had produced a petition signed by 10 people including himself, all of whom assert that the noise from the bands playing at the Club constitutes annoyance or disturbance.
63. Mr Murphy stated that there are at least 14 dwellings in Sunningdale Court and another 79 houses in Carnoustie Circuit. He submitted that at best, 10 out of 93 households were disturbed enough to have signed the petition. Mr Murphy submitted that 10 residents can hardly be described as a consensus of those residing in that area and therefore can hardly be a reliable basis upon which it may be objectively held that the noise from the bands playing at the Club was excessive.
64. Mr Murphy acknowledged that bands were playing at the Club on 5 May 2017, 22 June 2017 and 22 July 2017 and on each of those occasions the following measures were implemented by the Club to ensure that the noise from the concerts did not become excessive:
 - the Club engaged its own sound engineer, Daniel Lade and required each of the bands playing at the premises use the Club's sound equipment, thereby maintaining direct control over the volume of the music being played at the Club on those occasions;
 - the Club limited the time that the bands were playing (including tuning and set up) from 3.00 pm to 10.30 pm; and
 - Mr Howard was physically present at the premises on each of the three occasions that the bands were playing to ensure that the noise did not become excessive.
65. Since receiving notification of the complaint further measures have been put in place to minimise the risk of the noise being considered excessive. Those measures include:
 - implementation of a noise complaints register and the directions and training for the Club's staff with regards the noise complaints register procedure. Under that procedure staff will be required to contemporaneously record complaints in the register particularising the time and nature of complaint and the complainant's details; and
 - the recording of sound levels at two hourly intervals, both at the Club and at Sunningdale Circuit, during the times that bands are playing.
66. Mr Murphy acknowledged on behalf of the licensee that the Terrorfest concert held on 22 July 2017 is relevant to the investigation. He noted that Licensing NT staff had attended the Club that night and were able to make their own assessment as to whether the noise generated by the bands was excessive so as to constitute an annoyance or disturbance. He confirmed that the same procedures were implemented by the Club on that night as for other concerts and the volume of music being played and the duration of the concert were the same on that occasion as for the previous concerts that gave rise to the initial complaints.
67. Mr Murphy noted that the compliance Officers who attended the Club on 22 July 2017 remained at the premises throughout the entire event, leaving only to attend Sunningdale Court and Mr Lawson's residence to make an assessment of the noise levels from the band at those

locations. He noted that neither of the compliance Officers expressed the view that the noise was undue or excessive, either at the Club or at Mr Lawson's residence or at all. In addition, the compliance Officers spoke to the Police Officers who also attended the Club that night with regard to a noise complaint. The Police Officers did not express the view that the noise was undue or excessive either at the Club. He noted also that one of the compliance Officers made comment to the Club Manager that the noise from cars racing at the Hidden Valley drag strip could be heard even whilst the band was playing.

68. Mr Murphy noted that Police Officers have specific powers under the *Summary Offences Act* whereby a Police Officer who considers the noise at premises to be undue can then give a direction for the noise to be stopped or abated. The fact that the Police received a noise complaint and attended the Club on 22 July 2017 and did not direct that the music either stop or that the volume be turned down make it plain, in Mr Murphy's submission, that the volume of the music did not constitute undue noise assessed on an objective basis.
69. As for the two previous concerts complained of, the management of the Club does not know and cannot say whether Police received any noise complaints on those occasions. However, it can be confirmed that Police did not attend or contact the Club to give a direction to stop or abate the noise on those nights or on any other occasion. Mr Murphy submitted that the only inference that can be drawn for this is that the Police, if they did receive any complaints, did not consider that the music being played at the Club constituted undue noise so as to warrant their intervention.
70. Mr Murphy noted that Mr Gooch and Mr Neill, in conducting their observations of the concert held at the Club on 22 July 2017, were best placed to make an independent and objective assessment of the noise generated and the potential for it to impact on the residents of Sunningdale Court. Both noted that whilst they could hear the music whilst at Mr Lawson's residence they were able to speak to each other at a normal volume and in a reasonable manner. Mr Neill stated that he could hear the television in the background at Mr Lawson's home. This contrasted with the evidence of Mr Berry who stated he could not hear his television over the noise generated from the concerts at the Club.
71. Mr Murphy submitted that the complaint has not been made out as the music from the bands playing at the Club was not excessive and could not, on an objective basis, constitute an annoyance or disturbance to persons residing in the neighbourhood of the Club. In the alternative, if the music from bands playing at the Club is found to constitute an annoyance or disturbance, he submitted that the disturbance was of a minor nature given duration of the concerts, the time when the music ceased and the relatively small number of persons affected.
72. In terms of an appropriate penalty Mr Murphy submitted, taking account of the measures now in place at the Club to minimise the risk of the music being played in a manner that constituted excessive or undue noise, it was open to the Director-General, pursuant to section 68(5)(a)(ii) of the Act, to find that although a ground exists for making the complaint it does not warrant any disciplinary action to be imposed.

PRELIMINARY ISSUE:

73. Both in his written response to the complaint and during the course of the hearing, Mr Murphy raised a jurisdictional issue in respect of the standing of the residents of the Northlakes Estate who had lodged complaints as to whether those residents actually reside in the neighbourhood where the Club's premises are located so as to give them standing to lodge a complaint against the Club.

74. Mr Murphy noted that the nearest residential property to the Club is located approximately 300 metres away in Sunningdale Court in the Northlakes Estate. Between the Club and that residential property is the Darwin Cricket Club's pitch and oval and the Darwin Golf Club's fairway. Mr Murphy submitted that given the distance between the Club and those dwellings the nexus to the neighbourhood of the Club is not made out. In addition, Mr Murphy noted that Carnoustie Circuit and Sunningdale Court are zoned SD (single dwelling) residential whereas the Club is zoned OR (organised recreation). He submitted that given the different use or purpose of those areas, as reflected in their zoning under the Northern Territory Planning Scheme, that the nexus to the neighbourhood in which the Club is located is not made out.
75. In my view, those submissions must be rejected. In respect of applications concerning liquor licences the scheme under the Act for considering such applications provides a mechanism allowing for the lodgement of objections to an application by specified classes of people and organisations. Section 47F(3) of the Act limits the classes of persons who may object to an application to those persons who reside in, work in or hold tenure over land in the neighbourhood where the premises the subject of the application are located.
76. However, the matter under consideration is a complaint made pursuant to section 68 of the Act. Section 68 provides that "*a person may make a complaint against a licensee*". There are no residential or neighbourhood restrictions on the classes of people who may lodge a complaint against a licensee. The reason why the Act does not restrict the categories of persons who may make a complaint against a licensee to persons residing in the neighbourhood of the licensed premises is patently obvious. Patrons from many disparate neighbourhoods may frequent a particular licensed venue. In addition, Licensing NT Compliance Officers regularly lodge complaints against licensees, as in this case where Mr Gooch was the complainant. It would be an absurd result if the only persons who could complain about the manner in which a licensee conducts his or her business were those who resided or worked in the neighbourhood of the licensed premises, as opposed to members of the general public, Compliance Officers and Police Officers who attend licensed premises.
77. For the reasons set out immediately above Mr Murphy's submissions regarding the residential status and standing of the complainant and witnesses in terms of the neighbourhood in which the Club is located must fail.

ASSESSMENT OF THE COMPLAINT

78. In the context of this complaint, there is no issue that the noise disturbances complained of by a number of residents of Sunningdale Court and Carnoustie Circuit emanated from the Club. No evidence was presented on behalf of the licensee indicating that the noise complained of came from another venue. In addition, Mr Howard confirmed that in 2017 the Club determined to hold additional music concerts and events in an attempt to raise revenue and to increase the membership numbers. He also agreed that a number of those events were held outdoors on the grounds surrounding the club house so as to cater for larger numbers of patrons, both members and non-members, at the events. Mr Howard confirmed that the decision to hold more concerts, including concerts open to the general public, was a direct result of the Club's attempts to increase its revenue base.
79. It must be noted that the licence conditions attached to the liquor licence for the Club specifically authorise the Club to hold fundraising events, including events that are open to the general public. The 'Club Conditions' included in the licence allow the sale of liquor to non-members of the Club at a club fundraising or promotional event open to the general public, provided that there are to be no more than five such events within a six month period and

provided that the licensee has given written notice of the proposed function or event to the Director-General at least seven clear days before the function or event is held.

80. Whilst that licence condition allows for events such as music concerts open to the general public it was apparent during his evidence at the public hearing that Mr Howard was not fully aware of the terms of the licence condition and that prior notice of publicly accessible events, including the three concerts which gave rise to the complaints, was not provided to the Director-General.
81. Mr Howard also candidly acknowledged that the management of the Club, including himself, have been unresponsive and to some extent dismissive of Mr Lawson's initial complaints about noise disturbances at his residence. There can be little doubt that Mr Lawson's increasing frustration was exacerbated by the fact that no one at the Club appeared to take his complaint seriously or, more importantly, took any steps to address the issues of which he complained.
82. At the public hearing the Club submitted a recently drafted 'Noise Complaint Policy' which was prepared in response to the complaints from neighbouring residents regarding concerts held outdoors at the Club. The Policy makes reference to the implementation of a Noise Monitoring Register whereby sound levels are to be recorded at two hourly intervals when live music is played in the Club's outdoor areas with sound level recordings to be made at the Club and in Sunningdale Court. The Club has also initiated a Noise Complaint Register in which all noise complaints are to be contemporaneously recorded and brought to the attention of the Club Manager.
83. Those mitigating initiatives implemented by the management of the Club in response to the noise complaints from nearby residents are encouraging and, if properly and continuously enforced will likely go some considerable way to minimising the risk of future complaints. Having said that, the fact that the Club has only recently implemented a noise complaint reporting and abatement policy leads to the inevitable conclusion that the Club has come to the realisation that music concerts held at the Club, and in particular those that are held outdoors, have in fact impacted on the quiet enjoyment of at least some of the residents of the Northlakes Estate.
84. The residents who attended the public hearing were consistent in their evidence to the effect they had resided in the Northlakes Estate for many years and, until recently, had no issues with disturbances from the Club which has also been located at the Marrara premises for many years. There is little if any doubt that the complaints received in July 2017 were a direct result of the Club hosting additional concerts in the outdoor areas. This is not a case where the complainants 'have come to the nuisance', such as for instance where a person moves in next to an airport and then complains about aircraft noise. Both the PINT Club and the Northlakes residents have lived in relatively peaceful co-existence for many years with the recent complaints arising directly as a result of changes to the type and frequency of concerts held at the Club, including the construction and more frequent use of the outdoor stage area.
85. Mr Murphy's submission that whether noise generated by a particular licensed venue is the cause of annoyance or disturbance needs to be assessed on an objective rather than a subjective basis is acknowledged. It is trite to state that what one person may find as an intolerable noise disturbance another person will regard as enjoyable loud musical entertainment. However, in this case a total of 10 residents have complained in writing stating that they have been disturbed in their homes by noise emanating from live music concerts held at the Club. In the context of noise complaints received by the Director-General under the Act,

the fact that 10 residents have gone to the trouble to formally complain represents a significant number of complainants.

86. In my view the residents who have participated in the investigation of the complaint through their appearance at the public hearing, in providing statutory declarations and in signing the petition instigated by Mr Lawson 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. In that respect I agree with Mr Murphy's submission that the greater the number of people complaining of noise disturbances, the greater the likelihood that the complaints are of substance, as opposed to a sole person making the same type of complaint.
87. It is acknowledged that a large percentage of the residents who live in Sunningdale Court and Carnoustie Circuit have not lodged any complaints in respect of noise disturbances emanating from the Club. Why that would be the case is a matter of speculation. It may well be that some residents are unaware there is a complaint process under the Act to deal with such issues. That was the case for Mr Berry and Ms Campbell until Mr Lawson informed them of the complaint process, following which they lodged formal complaints. It may also be the case, as submitted by Mr Murphy, that the majority of the residents have not been disturbed by the concerts held at the Club, or at best not sufficiently disturbed so as to prompt them to go to the trouble of lodging a complaint.
88. In this instance I am satisfied that a significant number of people have, at least on a subjective basis, been disturbed by noise emanating from concerts held at the Club. None of the residents who appeared at the public hearing indicated any on-going animosity towards the existence of the Club itself, nor the fact that the Club has for many years held music concerts. The residents who did appear and give evidence at the hearing made considerable effort in their engagement with the Compliance Officers who investigated the complaint. Those efforts included meeting with the investigating officers, preparing formal statutory declarations and presenting their evidence at the public hearing, including the often daunting prospect of being open to cross examination. Mr Lawson, to his credit, invited the Compliance Officers into his home on the night of the Terrorfest concert to demonstrate to the officers, the level of noise disturbance he says he and his wife have endured when outdoor concerts have been held during 2017.
89. None of the complainants who appeared at the hearing indicated that they were overly sensitive to noise issues or that they were prepared to object to any minor disturbances experienced from events at the Club. The residents who gave evidence consistently stated that whilst some of the louder concerts were under way they were required to close up windows and doors, turn on air conditioners (despite the fact cooling was not required), speak at louder than normal volumes and turn up the volume so that they could hear their televisions. Their evidence was also consistent in stating that, whilst brief noise disturbances are a fact of living in a mixed use community, the duration of disturbances during a concert presents an on-going and almost continuous disturbance.
90. Mr Howard himself expressed some reservations regarding the Terrorfest concert held at the Club on Saturday 22 July 2017, the event that caused the most significant complaints from the residents. The Terrorfest concert included 11 or 12 heavy metal bands playing from around 6.00 pm until the concert concluded at 11.00 pm. Mr Howard's evidence was that it was unlikely that the Club would hold similar heavy metal concerts in the future.
91. The Compliance Officers who attended the Club that night both noted that the music volume was very loud at the Club. They also stated that they could clearly hear the music from the roadside at Sunningdale Court. They could also clearly hear the music, and predominantly the bass, inside of Mr Lawson's home including in the bedrooms, despite the fact the doors and windows were closed. The Compliance Officers did not find the noise excessive to the point

of directing the management of the Club to turn down the volume on the night. However, the Compliance Officers were on duty that night, they were not, for example, trying to enjoy a quiet night of television or reading a book. The consistent evidence of the residents who attended the hearing was that the noise disturbance impacted significantly on their ability to enjoy their homes in a peaceful environment. I am not persuaded that the residents who complained are overly sensitive to noise disturbances or that the motivation for the complaints was anything other than an attempt to have their genuine concerns addressed.

92. In all the circumstances I am satisfied that the music concerts held at the Club on 5 May 2017, 23 June 2017 and 22 July 2017 did result in noise disturbances such as to constitute a ground for complaint as prescribed by section 67(3)(m)(i) of the Act. That is, the manner in which the licensed premises has been used has caused annoyance or disturbance to persons residing in the neighbourhood where the Club's premises is located. I am satisfied, on the basis of the evidence presented by the residents during the course of the investigation and the public hearing, that the complaint is made out and that the identified music concerts held at the Club did result in noise disturbances to some of the residents of the Northlakes Estate.
93. Part VII of the act deals with the enforcement provisions for liquor licensees. The object of that Part is to create mechanisms for the enforcement of the requirements of the Act. Section 65(2) of the Act states that the objective is to be achieved by empowering the Director-General to deal with a complaint against a licensee, enter into an enforceable undertaking with a licensee or by taking disciplinary action against a licensee. In this instance I have determined that the appropriate course is to take disciplinary action against the licensee, with a view to ensuring that the disciplinary action results in a change of practice on the part of the management of the Club so as to minimise, if not prevent, future occurrences where concerts and entertainment held at the Club cause noise disturbances that impact on the quiet enjoyment of the homes of nearby residents.
94. Section 68(5) of the Act sets out the actions that the Director-General may take following the investigation of a complaint. Those actions include, at section 68(5)(b)(iii), giving the licensee a written notice of the intended disciplinary action. Section 67(2) of the Act sets out the types of disciplinary action that may be taken following the investigation of a complaint including:
- varying the conditions of the licensee's licence or imposing additional conditions;
 - suspending the licence;
 - cancelling the licence;
 - imposing a monetary penalty on the licensee;
 - directing the licensee to take, or refrain from, a specified action; or
 - disqualifying the licensee from holding a licence for a specified period.
95. I acknowledge and agree with Mr Murphy's submission, that the complaints relate only to disturbances from concerts held at the Club and not from the general activities and functions of the Club. In those circumstances the suspension or cancellation of the liquor licence in totality is not the appropriate disciplinary action. In addition, unless there are changes to the manner in which the Club controls the noise emanations from concerts held at the premises a suspension of the liquor licence would have little or no effect in addressing the issues that gave rise to the complaint.

96. Similarly, the imposition of a fine would no doubt impact on the Club's financial position however a fine will not address the on-going potential for future disturbances to occur. In the circumstances of this complaint I am satisfied that the appropriate disciplinary action is for the liquor licence conditions to be varied so as to include additional measures to be implemented in respect of entertainment events held at the Club so that they do not impact on the amenity of the residents who live in close proximity.
97. 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. I intend to impose a new condition for the liquor licence that will require the Club to actively enforce the 'Noise Complaint Policy', including the maintenance of a Noise Complaint Register and the two hourly monitoring and recording of noise levels.
98. In addition, as noted elsewhere in this decision notice, the current liquor licence for the Club includes a 'Club Condition' which specifically authorises the Club to hold fundraising events that are open to the general public. That authority is subject to specific preconditions that need to be met prior to the event being held as well as conditions regarding the frequency of such events and the abatement of noise during events:

Club Condition

Where the Licensee shall be a club or association incorporated under the Associations Incorporation Act or a manager of premises being operated as a club, the restriction of sales of liquor to members and guests shall not apply to the following events and circumstances:-

- (iv) A club fundraising or promotional event open to the general public, provided that there shall not have been more than five such events at the licensed premises within the six month period immediately preceding any such event or promotion, and provided that the Licensee shall have given written notice of the proposed function or event to the office of the Director-General at least seven clear days before the holding of the function or event, and no person on behalf of the Licensing NT shall have notified the Licensee that the holding of the proposed function or event is not consented to by the Director-General.*
- (b) Liquor may be sold or supplied to persons attending all such functions or events as above described until 2.00am of the morning following the commencement of such function or event. Without in any way limiting the generality of the need for compliance with the Liquor Act and the conditions of the licence, while any function or event as above described is in progress the Licensee shall regard the issues of adequate security and undue noise abatement as prime concerns.* (Emphasis added).
99. Part (b) of the Club Condition allows the licensee to sell alcohol to persons attending fund raising events until 2.00 am the following morning, noting that the trading hours under the liquor licence allow liquor sales until 2.00 am on Friday and Saturday evenings only. I intend to amend that licence condition to clarify that whilst the sale of alcohol may continue until 2.00 am on the specified days, any live entertainment conducted outside the Club house is to cease at 11.00 pm on Friday and Saturday nights and by 10.00 pm on any other night. Beyond those hours the licensee, via direction from the management committee of the Club, is to ensure that that it adheres to the requirement that undue noise abatement is treated as a prime concern so far as the behaviour of patrons staying on after concerts is concerned.

100. It is apparent from the frank admission made by Mr Howard during the course of the public hearing that the Club did not give the required notice to the Director-General prior to the three concerts that are the subject of this complaint. Of significant concern is the fact that Mr Howard appeared to be unfamiliar with the conditions associated with the conduct of events that are open to the general public, despite that fact he had been in the position as nominee/manager for the liquor licence for a period exceeding six months when the first concert that attracted complaints was held. The notice requirement is included in the licence conditions for a legitimate regulatory purpose, namely to allow the Director-General to consider the type of events proposed to be conducted, including details of the expected patron numbers, any additional security services that may be required, the noise abatement measures that will be in place etc.
101. Advance notice of large events also provides the Director-General with the opportunity to consult stakeholders such as NT Police, Department of Health and the local council to seek their views on proposed events. The notification requirement also provides the Director-General with an opportunity to ensure that that proposed event does not exceed the maximum number of events of that type that are permitted in a six month period. With those considerations in mind I do not consider the breaches in this instance to be trivial or minor breaches of an administrative nature only.
102. The fact that Mr Howard did not provide advanced notice to the Director-General of the proposal to hold events open to the public on 5 May 2017, 23 June 2017 and 22 July 2017 constitutes a breach of the licence conditions and a resultant breach of section 110 of the Act. In respect of the breaches admitted to by Mr Howard, I intend to issue a formal warning pursuant to section 68(5)(b)(ia) of the Act. Whilst a formal warning is considered by some to be a light penalty, the manager/nominee and the management committee of the Club are now on notice that they must comply strictly with the conditions of the Club's liquor licence. Future breaches of the requirement to provide notification of fundraising events open to the general public to the Director-General will inevitably lead to a harsher penalty, including the prospect of outdoor live entertainment being banned completely.
103. Whilst Mr Howard, in his capacity as the nominee/manager under the liquor licence, has obligations in respect of compliance with the Act and the licence conditions, similar obligations also fall on the members of the management committee. Liquor licence condition 10 deals specifically with the obligations of the management committee and provides that it must exercise effective supervision and control over the Club's manager to ensure that no breaches of the Act or the conditions of the licence occur. It is apparent in this case that the management committee has failed to meet its obligations in that regard on at least three occasions when events open to the public have been held and the Club's manager has failed to provide advance notification to the Director-General.
104. The failure of the management committee in that regard is a breach of licence condition 10 which also constitutes a breach of section 110 of the Act. For that breach, I intend to impose a penalty of a formal warning addressed to the management committee. Again, the management committee is now on notice that breaches of a similar nature in the future are likely to result in additional penalties including the curtailment or banning of outdoor concerts and entertainment events.

DECISION

105. On the basis of the reasons set out above, I have determined that the licensee for the PINT Club liquor licence has used the licensed premises in a way which has caused annoyance or disturbance to persons residing in the neighbourhood of the premises contrary to section 67(3)(m)(i) of the Act. On the basis that ground of complaint has been made out, I intend to take disciplinary action against the licensee by varying the licence conditions attached to the Club's liquor licence in accordance with section 67(2)(b) of the Act.
106. The variations referred to in the preceding paragraph will include the addition of a new condition requiring the licensee to comply with the provisions of its recently implemented 'Noise Complaint Policy'. The licence conditions will also be varied to stipulate that any live entertainment conducted in the outdoor areas of the Club is to cease at 11.00 pm on Friday and Saturday nights and by 10.00 pm on any other night.
107. In respect of the admitted failure by the nominee/manager to comply with the notification requirement contained in clause (iv) of the Club Condition, I find that breach of the licence conditions has been made out. For that breach of section 110 of the Act, I intend to issue a formal warning to the nominee/manager pursuant to section 68(5)(b)(ia) of the Act.
108. I have also determined that the management committee of the Club has failed to exercise effective supervision and control over the club's manager to ensure that no breaches of the Act or the conditions of this licence occur, as required by condition 10 of the Club's liquor licence. That breach also constitutes a breach of section 110 of the Act. For that breach I intend to issue a formal warning to the management committee, also pursuant to section 68(5)(b)(ia) of the Act.
109. Section 69 of the Act provides that, on completing an investigation into a complaint about a licensee, the Director-General is to provide the licensee with written notice of the disciplinary action proposed to be taken against the licensee. The notification must also invite the licensee to make written submissions in response to the proposed action within the time specified in the notice. The required notices will be forwarded to the nominee/manager and the management committee immediately following the publication of this decision notice.

REVIEW OF DECISION

110. Section 120ZA of the Act provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. A decision to take disciplinary action against a licensee pursuant to section 69(3) of the Act is included in the Schedule and is therefore a reviewable decision. A decision to vary licence conditions and to impose additional licence conditions, as is the case with this decision, constitutes a decision to take disciplinary action pursuant to section 69(3) of the Act and is therefore a reviewable decision.
111. However, section 69(1) of the Act provides that, on completing an investigation into a complaint about a licensee, the Director-General may give the licensee written notice that the Director-General proposes to take disciplinary action against the licensee. Section 69 of the Act also provides that, prior to taking the disciplinary action contemplated, the Director-General must notify the licensee of the proposed disciplinary action and invite the licensee to make a written submission in response to the proposed action within a specified period, being not less than 28 days after the notice is given.

112. In accordance with the relevant provisions of the Act, the proposed disciplinary action will not be taken until such time as the Director-General has notified the licensee and considered the response, if any. As a consequence, the entitlement for the licensee to seek a review of the decision by the NT Civil and Administrative Tribunal will not arise until a final determination has been issued by the Director-General.
113. A decision to issue a formal warning to a licensee, pursuant to section 68(5)(b)(ia) of the Act, is not disciplinary action as defined by section 67(2) of the Act, nor is it included in the Schedule to the Act. As a result that component of this decision is not reviewable.

Cindy Bravos
Director-General of Licensing

31 January 2018