

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Dinah Beach C.Y.A
Licensee:	Dinah Beach Cruising Yacht Association
Licence Number:	81404283
Proceeding:	(Noise) complaint pursuant to s 48(2) of the <i>Liquor Act</i>
Complainant:	Mr George LaSette
Coram:	Mr John Withnall
Date of Hearing:	27 May 2004
Date of Decision:	29 September 2004
Appearances:	Mr G LaSette, Complainant Mr C Blair, for the Licensee

1. This is a “bundled” decision constituting the outcome of separate hearings by the Commission into two time-separated complaints of Mr George LaSette in relation to noise emanating from the premises of the Dinah Beach Cruising Yacht Association (“the Club”). Mr LaSette resides in a purpose-built residence on what is otherwise in use by him as a commercial/industrial block immediately adjoining the Club premises. There is no suggestion that Mr LaSette’s residential use of part of his block is not a consent use.
2. The second hearing took place on 27 May 2004, now some four months ago. I announced at the conclusion of that hearing that the likely result would be at least the imposition of a decibel limit for “receiving” premises in line with other noise-producing licensed premises in Darwin. The proscribing of live or amplified entertainment after midnight was also presaged.
3. I gained the impression at the conclusion of the hearing that the Club would be immediately looking to attenuation strategies to avoid the imposition of any blanket closing time for live entertainment, and would be consciously attuned to defusing the potential for any further complaint. I therefore adopted a wait-and-see approach to ascertaining the nature and degree of determinative decision-making that the situation might require.
4. I am now told that Mr LaSette has lodged another complaint. Although the new complaint is not yet before the Commission for determination, obviously the earlier complaints standing for decision are now in urgent need of a determinative outcome being formally recorded.
5. The problem for any adjudicating body in relation to an allegation of excessive noise is the high degree of subjectivity involved. Each individual has a different disturbance threshold, and the gross decibel level does not necessarily reflect the irritation level. Likewise, reducing gross decibels does not necessarily reduce the irritation. Bass vibration is often the major irritating element. Such vibration can be part of an overall sound level well below any reasonable ceiling level, and the irritant factor can often survive clear compliance with quite modest upper decibel limits. If one is not attuned to the nature of a particular noise, its mere audibility at all can prompt an irritated reaction. As Mr LaSette says, even a tinkling piano can wake him up.
6. Some imposed compromise is now unavoidable. The Club can no longer expect to operate without noise emanation limits, and Mr LaSette cannot expect the Club to have to operate inaudibly.

7. Although not proved in any formal way, Mr LaSette claimed to have taken a reading of 95dB on his premises when a band was playing at the Club. Any reading within one's residence anywhere near that level, even anywhere in the eighties range, is unacceptable. The decibel scale is not a linear one, and a level of 95 dB has the capacity to be subjectively heard as being twice as loud as a level in the middle of the 80-90 dB range, and 85 dB twice as loud as 70-80 dB. Given that even a level of 75 dB has the capacity to seem twice as loud as the level of traffic in Mitchell Street on a Friday night, according to measurements presented to the Commission in relation to other matters, the unacceptability of anything like the level claimed by Mr LaSette is obvious.
8. The Club's contention that their noise levels are in line with OHS safety levels is irrelevant; we are dealing with nuisance, not safety.
9. In the result, I propose to vary the Club's licence conditions by the addition of a "noise condition" as flagged at the conclusion of the hearing. Such new condition will be in the following terms:

The licensee shall not permit or suffer the emanation of noise from the licensed premises of such nature or at such levels as to cause unreasonable disturbance to the ordinary comfort of lawful occupiers of any enclosed residential premises. Without in any way limiting the generality of such restriction, the maximum noise emanating from the licensed premises as measured within any enclosed premises where a person resides, however temporarily, shall not exceed in any event:

65dB(A) from 11:00 – 23:00 hours; and
60dB(A) from 23:00 -- 02:00 hours.

Notwithstanding the compliance by the licensee with this requirement, the licensee shall effect such further or other sound attenuation as the Commission in its discretion may notify the licensee in writing at any time as having become a reasonable requirement in the considered view of the Commission in circumstances then prevailing, provided always that the licensee shall be entitled to request a hearing in relation to any such requirement of the Commission.

10. Some notes on the Commission's thinking in relation to the foregoing condition may provide the respective parties with some guidelines for the Commission's ongoing expectations in relation to the application of the new condition.
11. The actual dB(A) levels are taken from the *Environmental Protection Act* of South Australia and its appurtenant *Information Sheet on Environmental Noise* dated 22 July 2002 in respect of premises classified as 'predominantly commercial'. The levels are more generous than previous drafts of equivalent NT regulations now withdrawn, and are in line with levels the Commission believes will eventually be mandated by local noise pollution regulations when finalised. The requirement of the above condition is actually a little more generous to the licensee than similar conditions in some other Darwin CBD liquor licences in the restriction of its application to "enclosed" premises receiving the noise, ie. to locations inside residential buildings. We are not concerned with how much noise a venue makes, only with how much it allows to escape.
12. As we have recently remarked, the Commission fully appreciates the unsatisfactory nature of setting specific dB levels without an accompanying codification providing for standards for calibration of measuring instruments, adjustments for impulsiveness and tonality, representative assessment periods and the like. We simply do not have the resources for such a project. Any future complaint to the Commission based on an excessive dB reading will therefore be dealt with, in terms of the exactitude of evidence required in a given case, by reference to a common-sense consideration of the balance of probabilities, vide *Briginshaw -v- Briginshaw*, 60 CLR 336.
13. The real issue in the new condition for both licensee and disaffected neighbour alike is the general proscription of unreasonable disturbance of ordinary residential comfort. The issue

will of course always be that of reasonability of complaint, and in this regard the specific dB limits within the specified periods are intended to be taken as a direct guideline to reasonability of volume levels. On the one hand the licensee is to realise that there are now specific limits on upper levels of escaping sound, and on the other hand potential complainants are to realise that any level under the limit is unlikely to be found by the Commission to be unreasonable in terms of volume. We are dealing with nuisance, not mere audibility. However, the licensee needs to realise that the generality of the condition does allow for complaints outside any consideration of maximum volume, such as unacceptable *content* of sound, for instance, even within the dB limits. Again we emphasise though, that it will always be a question of reasonability by normal community standards, and the time of night of the type of disturbance alleged will be a major consideration for the Commission in dealing with any future complaint.

14. This leaves the licensee in the position of having to make a judgment call as to the type of entertainment it puts on, how located, its session times, and the level of amplification. A breach of the condition will expose the licence to possible penalties. It perhaps needs to be emphasised that the Club is not being singled out for this sort of attention; it is becoming an increasingly common situation for Darwin entertainment venues. Eventually the situation will be controlled by Government noise pollution regulations. Until then, the Commission must impose and administer its own noise controls.
15. The Director of Licensing is directed to refer any and all future applications by the Club for temporary late trading extensions to the Chairman for determination. This requirement will also be made a condition of the licence.

John Withnall
Chairman

29 September 2004