

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Licensee:</b>	Deemat Pty Ltd
<b>Premises:</b>	Katherine Hotel
<b>Licence Number:</b>	80101789
<b>Proceeding:</b>	Complaint Pursuant to Section 48(2) of the Liquor Act Conduct of Premises Relating to Excessive Noise
<b>Heard Before:</b>	Mr Richard O'Sullivan (Chairman) Mr Philip Timney Mr Walter Grimshaw
<b>Date of Hearing:</b>	4 October 2011
<b>Appearances:</b>	Mr Michael Whelan for the Licensee Inspector Mark Wood for the Director of Licensing Mr Mark Baker for the Katherine Motel (Complainant)

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## Background

- 1) On 24 November 2010 the Northern Territory Licensing Commission ("the Commission") convened a Hearing into conduct by the Licensee of the Katherine Hotel, Deemat Pty Ltd, alleging a breach of Section 110 of the *Liquor Act* ("the Act") related to a noise condition placed on the Licensee. This condition states:

*"Noise levels emanating from any part of the premises must be such as to not cause unreasonable disturbance to the businesses or ordinary comfort of the lawful occupiers of neighbouring premises or to any other persons in the vicinity."*

- 2) In relation to the Hearing on 24 November 2010 the Commission determined to adjourn the Hearing for a period of three months to allow the Licensee time to explore options for the installation of an effective sound barrier between the Katherine Hotel and the complainant at the time, the Katherine Motel. That decision dated 16 December 2010 reads:

*"The Commission has determined to adjourn the current Hearing for a period of three months to allow the Licensee to explore the options for the installation of an effective sound barrier across the laneway between the Hotel and the Motel."*

*The Commission is aware there may be constraints preventing this occurring, such as planning, building approvals and fire safety requirements. However it expects the Licensee to fully and properly explore this option. In the event that the noise issues have not been resolved within three months the Commission will be left with little option other than to impose a further condition on the liquor licence prohibiting or significantly curtailing the conduct of entertainment in the Garden Bar area of the Hotel premises.*

*The Licensee needs to be aware that if the problems are not resolved there is the very real prospect of a decision being made to ban entertainment in the Garden Area, and particularly the day time karaoke. The Commission reiterates the concern expressed at the conclusion of the 2008 Hearing in respect of the type of patrons the Hotel is trying to attract and the motivation behind the provision of karaoke*

*entertainment so early in mid week days and at virtually at the same time as the Hotel opens for the sale of alcohol.*

*The Commission requests that the Director of Licensing forward a further report to the Commission advising whether the noise issue has been resolved to the satisfaction of the parties by the end of March 2011. In the event that the issues are not resolved the Commission will reconvene the Hearing to determine what measures it will need to take to ensure that the Licensee complies with the noise condition contained in its licence."*

- 3) Subsequent to this a report was presented to the full Commission meeting on 3 May 2011. A formal minute of the Commission's determination in respect of the report was as follows:

*"Commission determined that greater certainty of due and legal processes would be achieved if the panel that made the 16 December 2010 reconvened the Hearing to determine an approach to the complaint."*

- 4) The complaint is based on an email of 31 March 2011 by Mr Baker of the Katherine Motel sent to Inspector Wood advising that there had been no construction of the sound proofing barrier. On this date Mr Baker also complained that karaoke was still under way at 2.30pm in contravention to the agreement that parties had reached that would see karaoke discontinue at 2.00pm on each of its days of operation, being Wednesdays, Thursdays and Fridays.

## **The Hearing**

- 5) At the Hearing Inspector Wood advised the Commission that the barrier wall had been constructed but that Mr Baker still had a live complaint and that karaoke was continuing after 2.00pm and was causing disruption to his business.
- 6) Mr Whelan, on behalf of the Licensee, stated that the building works were complete and had cost his client approximately \$20,000 but as yet the Certificate of Compliance for the works had not yet been received and could not therefore be tendered at the Hearing.
- 7) A further complaint by Mr Baker of the Katherine Motel was tabled (Exhibit 1) at the Hearing and detailed ongoing noise issues despite the barrier wall being in place and including that karaoke was being played after the agreed time limit.
- 8) Mr Baker was granted leave to address the Commission on the letter tabled before it relating to ongoing noise issues. He advised that the barrier wall had not altered sound levels experienced by his premise to any discernible level. In relation to his most recent correspondence tabled at the Hearing he stated that the noise from karaoke is the number one issue and is a pure volume issue.
- 9) Mr Whelan stated that in terms of noise levels being experienced by the Motel, to properly evaluate whether noise levels emanating from the premises were causing unreasonable disturbance, some objective and verifiable testing would need to be done to determine the actual impact. He stated that karaoke and live music is part of the licence appeal to many clients and that the closure of karaoke and live music would jeopardise the livelihood of the business.
- 10) He stated that the Licensee would be prepared to honour the gentlemen's agreement for closure of karaoke at 2.00pm.

## **Consideration of the Issues**

- 11) The Commission considers the noise complaint before it to be one which is hard to assess with any veracity and in the absence of any recently recorded sound levels. It also determined that the complaint letter tabled at the Hearing referred to as Exhibit 1 could not be considered as a new complaint as the Commission was convened to consider complaint

matters raised in May 2011 and the report submitted to the May 2011 full Commission meeting. However, the Commission notes that the material included in this letter is consistent with the complaint under consideration and indicates ongoing alleged noise disturbance.

12) The Commission determined to proceed and make orders by way of Direction should parties agree.

## **Decision**

13) The Commission then sought and received agreement from parties that its function would be as a Direction's Hearing under which it would impose Directions binding both parties. These Directions, in accordance with the procedures agreed to, are that:

- The master volume for the conduct of karaoke be turned down on the days of its operation, ie Wednesdays, Thursdays and Fridays each week.
- The Licensee strictly conforms with the earlier reached agreement between the disputing parties and closes down karaoke at 2.00pm.
- These conditions are to be honoured for a three month period following which the Commission will assess, following any report presented from Licensing Inspectors, whether a more formal evaluation of noise level is required.
- In making the above Directions the Commission is aware that the juke box operating in the courtyard of the Katherine Hotel already has a noise governor determining the output volume which if exceeded automatically turns off the juke box music.

Richard O'Sullivan  
Chairman

24 October 2011