

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: THE GROOVE

LICENSEE: Mr Paul Bayetto

LICENCE NUMBER: 80505105

PROCEEDING: Hearing to Consider a Complaint, Lodged under Section 48(2) of the *Liquor Act*, that the Licensee of The Groove breached Section 110 of the Act by not Complying with the Licence Conditions in relation to "Noise Control" and "Entertainment".

HEARD BEFORE: Mrs J Large (Presiding Member)
Mr J Brears
Mrs K Williams

DATE OF HEARING: 5 November 2007

APPEARANCES: Mr P Bayetto, Licensee
Ms P Joy, Joint Owner
Mr G Lye for Director of Licensing

BACKGROUND

- 1) On 6 July 2007, Ms Daniela McMahon of 1 Verbena Street, Nightcliff, lodged a complaint pursuant to section 48(2) of the *Liquor Act* (the Act). The complaint alleged breaches, under Section 110 of The Act, of the liquor licence "Noise Control" and "Entertainment" conditions for The Groove.
- 2) The complaint cited three (3) occasions on which the breaches to the licence conditions occurred, namely 5 May 2007, 27 June 2007 and 29 June 2007.

HEARING

- 3) Mrs Daniela McMahon and Mr Brad McMahon gave evidence that their residence is about 500 metres from The Groove licensed premises and on the night of 5 May 2007 between approximately 7.30 pm and 10.30 pm, when a band, Neo, was performing at The Groove, the noise was incredible. Mr McMahon phoned The Groove and asked to speak to the proprietor. Instead he spoke to two different females and became very angry with their response to the complaint about the music and the refusal to turn the volume levels down.
- 4) On the night of 27 June 2007 both Mr and Mrs McMahon stated that The Groove hosted two bands which again resulted in a very loud and unwelcome noise. The noise continued until between 10.00 pm and 11.00 pm. Mr McMahon phoned the Police who attended the premises and for a time there was a decrease in the noise levels but later it increased
- 5) The witnesses asserted that on both these occasions it was difficult to have a conversation or to listen to the television in their home and they had to close all windows and put on the air conditioning to alleviate the distress caused by the level of noise. The witnesses said that they experienced problems with their young children getting to sleep due to the noise. They described the music being played as “rock” music, which included guitars and drums, and was amplified through big speakers in a sound system.
- 6) Despite being aware that there was a five piece band, Double Entendre, playing at The Groove on 29 June 2007 night, neither Mr nor Mrs McMahon had any recollection of any noise problems on that night.
- 7) Mrs Louise Jorgensen resides at No 2 Phoenix Street in Nightcliff which is about 80 metres from The Groove. Mrs Jorgensen gave supporting evidence for the night of 27 June 2007 when she found it hard to sleep due to the loud rock music. She stated that the noise continued until 11.00 pm and was amplified guitars and drums with vocals through a microphone. She had been annoyed on many occasions and several years ago had made a formal complaint about the noise and access. On that occasion a resolution was reached to her satisfaction. Mrs Jorgensen did not remember any problems on the nights of 5 May 2007 and the 29 June 2007.
- 8) Mr Graham Tribe and Mr Mark MacKenzie, Licensing Inspectors, stated that they attended The Groove on 27 June 2007 and found the noise excessive and the music was amplified through the Mall area. At 8.55 pm, they stood at the Progress Drive end of the Nightcliff mall and they could not conduct a normal conversation due to the noise emanating from The Groove. They spoke to a person near the sound equipment and the music was turned down. They then spoke to Mr Bayetto, Licensee, about the licence conditions who replied:

“Yes it has to be acoustic – I didn’t think it would be this loud. I got a variation for tonight”

- 9) Mr Bayetto in response to the complaint explained that the entertainment on 5 May 2007 was part of the final concert for the Seabreeze Festival. The rock band Neo was playing but only for the last one hour and fifteen minutes and was finished by 10.30 pm on a Saturday night. He was unaware that the noise was causing a problem for the nearby residents and maintained that if someone had approached him about the problem between 5 May and 27 June there might not have been a problem on the latter date.
- 10) Mr Bayetto accepted that there was a problem on 27 June and agreed that the Ghostwriters performance was over the top. It was louder than anticipated and although he tried to manage the noise levels he had difficulties with the guys on the stage turning levels up. He believed that there was some confusion about the temporary variation to the licence that was approved because it did mention amplified music.
- 11) Letters from various arts and music organisation were submitted in support of The Groove.

CONSIDERATION OF THE ISSUES

- 12) The “Noise Control” and “Entertainment” conditions included in the liquor licence for The Groove state:

“Noise Control: The Licensee shall not permit or suffer the emanation of noise from an area of the premises of such nature or at such levels as to cause unreasonable disturbance to the ordinary comfort of lawful occupiers of any residential premises.

Entertainment: Light entertainment in the form of live acoustic music and poetry performances are permitted and shall at all time be ancillary in nature to the provision of restaurant services on Wednesday, Thursday and Friday nights from 20:00 hours to 22:00 hours.”

- 13) It is very clear, from the evidence before us by all the witnesses and admitted by the Licensee, Mr Bayetto that the music on the night of 27 June 2007 was very loud and did cause unreasonable disturbance to occupiers in the nearby residential premises. We, also, accept the evidence given by Mr and Mrs McMahon that on the night of 5 May 2007 the noise emanating from The Groove was at an unacceptable level and they tried to complain to the proprietor of The Groove. There is no evidence provided to show there was a noise problem on the night of 29th June 2007.

14) We find that the incidents on the nights of 5 May and 27 June 2007 are in breach of the 'Noise Control' condition of The Groove liquor licence. However, we do take note of Mr Bayetto's statement that if he had been advised that there was a problem on the night of 5 May then the incident on 27 June would not have come about. Therefore, we have considered the two incidents as one breach of the liquor licence noise condition.

15) The breach of the "Entertainment" condition of The Groove's liquor licence is harder to determine. The evidence by Mr and Mrs McMahon is based on the fact that the music emanating from The Groove is amplified music and not 'acoustic music' as required under the licence conditions. A definition of acoustic music was tendered by the Director of Licensing, namely:

"Wikipedia – Acoustic music refers to music that solely or primarily uses instruments which produce sound through entirely acoustic means, as opposed to electronic means. Given that electronic instruments are a very recent invention in the history of music, almost all musical instruments are acoustic and subsequently almost all music. The term "acoustic" is a retronym, coined after the advent of electric instruments, such as the electric guitar, Hammond organ and the synthesiser.

Acoustic music may still be amplified using electronic amplifiers. However, these amplification devices must be separate from the amplified instrument and need to reproduce the natural sound accurately.

Following the popularity of the MTV Unplugged television show, acoustic (though in most cases still electrically amplified) performances by artists who usually rely on electronic instruments have been colloquially referred to as 'unplugged' concerts".

16) Although we know that electric guitars and drums were played on the nights of 5 May and 27 June and an amplified system was used we have no evidence before us as to whether the musical instruments were plugged into the amplified system or the amplification devices were separate from the amplified instrument. Added to this the Approval for the Temporary Variation to the licence provision on the 27 June 2007 states that it is for an Acoustic Music Show but included a condition that *"Live or amplified music shall cease at 23:00 hours."* This wording appears to allow amplified music for this night.

17) Whether or not the music on the nights of 5 May and 27 June can be classified as amplified, the Entertainment Condition in The Groove's Liquor Licence requires only "light entertainment" and the music performed by Neo and Ghostwriters could not be described as "light". The noise problems, caused by the type of music played, was exacerbated by the use of amplifiers at the show. Mr Bayetto in his letter to the Director of Licensing dated 23 July 2007 stated the following in regards to the Ghostwriters performance:

"I in fact was under the impression when we booked this act that it was a quieter, more acoustic show."

- 18) Further, he admitted at the hearing that Ghostwriters was over the top. Taking into account all of the above we are of the view there has been a breach of the Entertainment Condition of the Liquor Licence held by The Groove.
- 19) At the end of the Hearing the Commission requested that, prior to any decision being made on penalty, the Director of Licensing and the Licensee have discussions on whether there needs to be any change to the conditions of the licence to clear up the ambiguity of the wording of "acoustic" or alleviate the problems that have been experienced by Nightcliff residents in the past.
- 20) In an e-mail received from Mr G Lye, representing the Director, it was stated that in general the wording and the entertainment provided at The Groove was satisfactory and it was only when rock and roll bands bring with them the amplified music/electric guitars and vocalists whose singing is also amplified that attracted the complaints.
- 21) He, also, offered for consideration, that if the terms of the Condition were to be changed, the prohibiting of any loud music in the form of Rock and Roll or Heavy Metal and using drums, drum kits or electric guitars be included in the Entertainment Condition. The Licensee of The Groove would be able to apply for a Temporary Variation or Special Licence for any events outside of the conditions of the licence. The Commission feels that such an inclusion is too prescriptive and that a more general limitation of the use of amplifiers would be appropriate. It is noted that other venues, for example The Lane Cafe in Alice Springs use the positioning of their amplifiers and erection of sound barriers to alleviate the problem for nearby residents.
- 22) During the discussions with Mr Bayetto it was requested by the Licensee that the Entertainment Condition of the licence be amended to delete the provision of entertainment on Wednesdays and Thursdays and substitute light entertainment on Saturdays. We have accepted that this is a reasonable amendment to make to the Condition.
- 23) We have been unable to find any recent precedents for the penalty to be imposed for a breach of the Noise and Entertainment Conditions of a licence. We feel that any resident in the Territory should be able to enjoy the comfort of their home without disturbance and disruption caused by noise generating from a nearby licensed premises. It is the responsibility of the Licensee to ensure that this happens which is why such conditions are included in a Liquor Licence.
- 24) After consideration of all the evidence the Commission feels that a suspension of the licence would be appropriate. Because of the interrelationship between the noise and the entertainment we have concluded that there should only be one suspension for both breaches. Taking into account Mr Bayetto's good reputation, which is supported by letters from various Arts and Cultural organisations, and his willingness to ensure that

procedures are put in place in the future to alleviate the problem we have decided that any suspension should be suspended for a period of time.

DECISION

25) The Commission has determined that:

- (a) The Groove liquor licence should be suspended for a period of three (3) days. This three (3) day suspension will be suspended (deferred) for a period of twelve (12) months from the date of this decision. If there are no further breaches of the Noise or Entertainment licence conditions in that period then the “suspended suspension” will be null and void. If another breach of these licence conditions occurs within this period of twelve months, the whole three days of the suspension will apply at a date then determined by the Commission in addition to any other penalty imposed by the Commission at that time.
- (b) In accordance with Section 49(4)(a) of the *Liquor Act* the “Entertainment Condition” of The Groove liquor licence to be amended as follows:
 - inclusion of an additional sentence –

“Any amplification of the light entertainment is to be such that it does not cause any unreasonable levels of noise to permeate beyond the parameters of the Nightcliff Mall”; and
 - deletion of Wednesday and Thursday and addition of Saturday.

26) The Commission advises that prior consultation by the Licensee with nearby residents may prevent any further complaints of a similar nature and notes that the Licensee may apply for a Temporary Variation or Special Licence for any events that are outside those provided for in the conditions of his licence. The outcomes of any consultations may be used in support of an application for a variation or special licence.

Mrs J M Large
PRESIDING MEMBER

17 December 2007