

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	DARWIN RAILWAY SPORTS & SOCIAL CLUB
LICENSEE:	Darwin Railway Sports & Social Club Inc
LICENCE NUMBER:	81401142
NOMINEE:	Kane Stewart
PROCEEDING:	Complaints Pertaining to Alleged Breaches of Section 110 of the <i>Liquor Act</i>
HEARD BEFORE:	Mr Richard O'Sullivan (Chairman) Ms Cynthia-Lee Bravos Mr Walter Grimshaw
DATE OF HEARING:	28 November 2011
APPEARANCES:	Mr Jack Lewis, Counsel for the Licensee Inspector Mark Wood for the Director of Licensing

BACKGROUND

- 1) Following acceptance by the Director of Licensing of two complaints lodged against the Licensee of the Darwin Railway Sports & Social Club ("the Club") alleging breaches of Section 110 of the *Liquor Act* ("the Act") on 17 June 2011, the Northern Territory Licensing Commission ("the Commission") determined to conduct a Hearing into the complaints.
- 2) The Commission also determined to review the licence conditions imposed in the Commission decision dated 4 April 2011.

HEARING

- 3) On 28 November 2011, the Commission conducted a Hearing into this matter at the Commission's Hearing Room in Darwin. Licensing Inspector Mark Wood appeared on behalf of the Director of Licensing and Mr Jack Lewis appeared on behalf of the Licensee.

- 4) Inspector Wood laid two complaints before the Commission pertaining to alleged breaches of Section 110 of the Act. In summary, the complaints were that:
 - on 17 June 2011, the Licensee breached the Noise Control Condition of its Liquor Licence; and
 - on 17 June 2011, the Licensee breached Condition 15 of its Liquor Licence.
- 5) In support of the complaints, Inspector Wood submitted that on 17 June 2011 at about 10.30pm Licensing Inspectors Te Whata and Lawless attended the residence of Ms Harris, which is located across the road from the Club. Upon entering Ms Harris' property, the Licensing Inspectors could hear a live band playing at the Club. Both Licensing Inspectors formed the view that the noise emanating from the Club was loud and could be deemed intrusive.
- 6) At about 11.00pm, the Licensing Inspectors left the residence of Ms Harris and a short time later, they noticed that the band had ceased playing. At about 11.10pm, Licensing Inspector Lawless entered the Club whereupon he was unable to locate the visitors register nor was he challenged by any person to sign-in.
- 7) In further support of the complaints, Inspector Wood tendered the Hearing Brief (Exhibit 1).
- 8) Mr Lewis advised the Commission that the facts as detailed by Inspector Wood were admitted.

SUBMISSIONS ON PENALTY

- 9) Inspector Wood submitted that should the Commission find the complaints proven, that a warning would be an appropriate penalty.
- 10) Inspector Wood further submitted that a direction should also be given that the Visitor's Book should be kept near the entry door of the Club.
- 11) Mr Lewis called Mr Stewart, the Nominee of the Licence who gave evidence that on the evening of 17 June 2011, he had made attempts to have the band that was playing reduce the level of its sound as he considered the noise excessive. Mr Stewart advised that the band was playing as a result of a special request from a staff member for their birthday celebrations and that the band will not be playing at the Club in the future. Mr Stewart apologised to the Commission for the inconvenience that has been caused.
- 12) Mr Stewart further advised the Commission that the window louvers in the premises had yet to be replaced with solid glass panels, however, a quote had now been accepted and that work was expected to commence in January 2012 at a cost of \$10 450. The glass to be installed is some 10.5ml thick and will consist of two panes with resin encased in between. In the meantime, the window louvers have been boarded up.

- 13) Mr Stewart also advised that the Club had now engaged a professional sound engineer who monitors and regulates the sound levels of bands playing at the Club. The sound engineer has recommended that a false acoustic ceiling be installed to further reduce noise. A quote has been obtained and the installation will amount to \$8 800.
- 14) Mr Stewart commented that membership of the Club had risen from 1200 members in April 2011 to 1400 members in November 2011 and that an increase in revenue is expected as a result. Additionally, the Club has also been provided with financial assistance towards the cost of the solid glass panel installation. As such, Mr Stewart advised the Commission that it is expected that the louver window replacement and the installation of the false ceiling will be completed by April 2012.
- 15) Mr Stewart advised that a reduction in trading hours had also now been imposed by the Club and that trading hours were now 4pm until 11.30pm on weekdays, 12pm until 1.30am the following day on Saturdays and 12pm until 10pm on Sundays.
- 16) Mr Stewart advised the Commission that the Club had endeavoured to engage in mediation with one of the original noise complainants, Ms Hedley through the Community Justice Centre, however, Ms Hedley had not opted to participate to date.
- 17) Mr Lewis submitted that the Club is providing an avenue for encouraging community connectivity and stability and is doing its utmost to reduce noise levels within its given resources.
- 18) Mr Lewis submitted that Commission should stand the matter over until April 2012 with reporting on progress to occur on a 2 monthly basis.

CONSIDERATION OF THE ISSUES

- 19) The Commission notes the relevant conditions of Liquor Licence 81401142 issued to the Licensee as being:

Noise Control

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

15. Visitor's Book To Be Kept

The Licensee shall keep and maintain a Visitor's book in a prominent and accessible place on the licensed premises at all times during which those premises are open for the sale of liquor.

- 20) Commission also notes that by way of correspondence from to the Director of Licensing dated 24 July 2011 as contained within the Hearing Brief, the Licensee advised at that time that it accepted that the band playing on the evening of 17 June 2011 was *"louder than an acceptable level"*.
- 21) The Commission further notes that folio 91 of the Hearing Brief contains an email dated 29 June 2011 from Ms Anna Stewart, the Secretary of the Club to Licensing Inspector Lawless in which she advises that the Club's Committee had now chosen to cease live music at 11pm on Friday and Saturday nights and 10pm on weeknights. Additionally the beer garden is vacated at 11.30pm Monday through to Friday and by midnight on Saturdays.
- 22) By way of the same correspondence referred to at Point 20 above, the Licensee advised the Director of Licensing that the Visitors' Register is maintained and kept on the bar at all times. The Licensee further advised the Director of Licensing that staff, Committee Members and Ordinary Members are trained to challenge anyone not recognised as a member to sign the register.
- 23) The Commission notes that Licencing Inspector Lawless, as declared in his Statutory Declaration dated 21 June 2011 contained within the Hearing Brief, states that he entered the Club through the main front doors and went to the centre of the premises afterwhich he then entered the beer garden area. Licensing Inspector Lawless states that he spent approximately 10 minutes inside the Club and was not challenged by any person to sign the Visitors Register.
- 24) The Commission notes that Licensing Inspector did not indicate that he traversed near the bar area of the club nor has any evidence been presented to the Commission that the Visitors' Register was not utilised by other patrons of the Club during the evening in question.
- 25) The Commission also notes that the facts as detailed by Inspector Wood are accepted by the Licensee.

DECISION

- 26) The Commission notes that Licensing Inspector did not sight the Visitors' Register on the evening of 17 June 2011, however, the Commission is of the view that the placement of the Visitors' Register on the bar area is sufficient to comply with the Licence Condition that the Visitors' Register be maintained in a prominent and accessible place. The Commission is of the view that on the evidence before it, a breach of Licence Condition 15 is not proven.
- 27) The Commission finds that a breach of the Noise Condition of the Licence Conditions is proven.
- 28) The Commission is mindful of the activity being undertaken by the Club to date in relation to the installation of the glass panels, the installation of an acoustic false ceiling, the engagement of a professional sound engineer, a self-imposed reduction in trading hours and a further self-imposed reduction in relation to the hours live music may occur.

- 29) The Commission is also cognisant of the fact that Ms Hedley is genuinely aggrieved at the level of noise emanating from the Club.
- 30) The Commission has reviewed the Noise Control Condition placed in the License as a result of its decision handed down on 4 April 2011 and considers it to be sufficient.
- 31) The Commission has determined that a written warning that the Licensee must comply with the conditions of the licence is to be issued to the Licensee by the Director of Licensing and maintained on the Licence file.
- 32) Additionally, on a two monthly basis from the date of this decision, the Licensee must provide a written report to the Director of Licensing as to the progression of works associated with the replacement of the louver windows with solid glass panels and the installation of an acoustic false ceiling.
- 33) A report from the Director of Licensing detailing the work undertaken is also to be provided to the Commission at the end of April 2012 for its consideration.

Richard O'Sullivan
CHAIRMAN

14 December 2011