

Liquor Commission of Western Australia
(Liquor Control Act 1988)

- Applicant:** The Guildford Association Inc.
(represented by Ms Christine Hughes and Mr Ben Allen)
- Respondent:** M.D. Holdings Australia Pty Ltd
(represented by Mr Peter Fraser, Dwyer Durack)
- Commissioner** Mr Eddie Watling (Deputy Chairperson)
- Date of Hearing:** 15 March 2011
- Date of Determination:** 18 April 2011
- Premises:** Stirling Arms Hotel, 117 James Street, Guildford
- Matter:** Application, under section 25 of the *Liquor Control Act 1988* for a review of a decision by the Director in relation to a variance in the conditions of the licence under section 117 of the Act.
- Determination:** The grounds of complaint have been established and the following additional conditions are imposed on the licence:
- 1 On days when entertainment is provided in the form of live bands, karaoke or DJ's presenting with or without karaoke (except days when entertainment is provided during the afternoon "Hangi Session") the following conditions apply:
 - Crowd controllers, licensed under the *Securities and Related Activities (Control) Act 1996* are to be employed at a ratio of two (2) crowd controllers for the first 100 patrons and one (1) crowd controller for each additional 100 patrons or part thereof from one hour before the commencement of the entertainment until 30 minutes after the entertainment ceases.
 - Two (2) Security personnel /crowd controllers, licensed under the *Securities and Related*

Activities (Control) Act 1996, are to be employed to patrol the car park, bottle-shop and the area surrounding the immediate vicinity of the licensed premises to monitor the behaviour of patrons arriving at and departing from the premises and to move on patrons congregating in the area or who have been refused entry to the premises from one hour before the commencement of the entertainment until 30 minutes after the entertainment ceases. While these personnel have no authority over the patrons away from the licensed premises their presence may assist in the orderly dispersion of patrons once they leave the premises.

- One (1) hour before the commencement of the entertainment, the sale of packaged liquor is restricted to drive through sales only to persons presenting in a vehicle with packaged liquor sales to cease at 9.00pm.
- Patrons are prohibited from entering or re-entering the premises from 10.00pm.
- Any patron observed consuming liquor in the streets or car park is to be refused entry to the premises on the night.

2 The Respondent is to maintain a register of complaints from local residents detailing the date of the complaint, the name and address of the complainant, the nature of the complaint and any steps taken by the Respondent to resolve the complaint.

3 The Respondent to arrange and meet with representatives of the Applicant, with an invitation extended to the City of Swan and the local police, to review the impact of the operation of the hotel on the local neighbourhood, on a quarterly basis.

Introduction

1. On 17 June 2009, The Guildford Association Inc. (“the Applicant”) lodged a complaint under section 117 of the *Liquor Control Act 1988*, (“the Act”) against M.D. Holdings Australia Pty Ltd (“the Respondent”), the licensee of the Stirling Arms Hotel, Guildford on the grounds of regular occurring anti-social behaviour by patrons of the hotel.
2. Following an unsuccessful attempt by inspectors of the Department of Racing, Gaming and Liquor to mediate the complaint, the Delegate of the Director of Licensing upheld the complaint and imposed the following conditions on the licence:
 - (i) On days when entertainment is provided in the form of bands, karaoke and DJs presenting in conjunction with karaoke, the sale of takeaway packaged liquor is restricted to drive through sales only to persons presenting in a vehicle;
 - (ii) The restriction referred to above applies from 1 hour before entertainment commences until 1 hour after the entertainment ceases, or until close of business, whichever is the earlier, but does not apply on days when entertainment is provided during the afternoon “Hangi session”;
 - (iii) All broken windows on the Meadow Street side of the licensed premises are to be repaired by 30 November 2010.
3. Pursuant to section 25 of the Act, the Applicant has sought a review of the Delegate’s decision on the basis that the Applicant is of the view that more stringent conditions should have been imposed on the licence in order to rectify the problems emanating from the premises.
4. A hearing to determine this matter was held on 15 March 2011.

Preliminary Matters

5. At the hearing before me, Mr Fraser expressed reservations about the eligibility of the Applicant to lodge a complaint under section 117 of the Act on the basis that section 117(2a) provides that a complaint must be signed, unless the Director otherwise approves, by three unrelated adults (including the complainant).
6. Section 117(2) of the Act sets out who may lodge a complaint with subsection (d) stating:

A person claiming to be adversely affected by the subject matter of that complaint who –

- 1) Resides, works or worships;

- 2) Attends, or is a parent of a child who attends, a school; or
 - 3) Attends, or is a patient in, a hospital in the vicinity of the licensed premises concerned.
7. I am satisfied that the complaint lodged is valid under sections 117(2)(d) and 117(2a) of the Act for the following reasons:
- section 5 of the *Interpretation Act 1984* describes the term person as any word of expression descriptive of a person includes a public body, company or association or body of persons corporate or unincorporated; and
 - confirmation in the opening paragraph of the Director's determination, dated 15 October 2010 that the application was accepted under section 117(2a) of the Act.
8. Mr Fraser referred to the initial submission lodged on behalf of the Respondent on 24 September 2010, in which it is contended that there had been a denial of procedural fairness due to the fact that a request on 3 March, 2010 for a copy of the register of complaints compiled by the Applicant and a copy of the Inspector's Reports compiled by the Licensing Authority on 3 March, 2011 had not been met. Therefore, the Respondent had not been provided with the opportunity to respond to material taken into account by the Licensing Authority when proposing a variance to the licence conditions.
9. Similarly a request on 6 September, 2010 for a copy of the Applicant's submissions dated 29 June, 2010 was not met until being received (10 September, 2010) by covering letter dated 7 September, 2010. A copy of the register of complaints referred to in 8 above was also provided at this time.
10. In addition, time extension requests on 9 September, 2010 and 15 September, 2010 resulted in only one additional week being granted to review the quantity of material relied upon by the Licensing Authority and this proved to be too restrictive to enable the Respondent adequately to respond to matters raised. Therefore the Respondent had been denied natural justice.
11. Having examined all of the papers I am satisfied that there has been no denial of procedural fairness due to the nature of the proceedings up until that time, including each party participating in two mediation sessions. The initial 3 March, 2010 request for a copy of the register of complaints compiled by the Applicant was in fact on the same date as the second mediation meeting, by which time it is apparent from the material before me, that the issues were clearly known.

12. Further, the submission from the Respondent dated 30 June, 2010, indicates a clear understanding by the Respondent of the issues being addressed with an offer being made to introduce voluntary conditions should the Director be of the opinion that the complaint is made out.
13. The relevant material was made available on request by the Respondent by letters from the Director dated 7 September, 2010 and 16 September, 2010 following which two requests by the Respondent for time extensions (total three weeks) were granted and a third dated 15 September, 2010 refused. The Director's determination was reached on 15 October, 2010.
14. As the Commission's hearing of the matter constitutes a re-hearing of all the material available to all parties and both parties have had that material since 16 September 2010, I consider that sufficient time has been provided for the preparation of submissions. No request was received by the Commission from the Respondent for an extension of time in the lead up to the Hearing.
15. Accordingly, the complaint should proceed to be determined in accordance with the requirements of the Act.

Attempts at Mediation by the Department of Racing, Gaming and Liquor

16. In all, two mediation meetings were held, the first on 6 August, 2009 and the second on 3 March, 2010.
17. While all of the issues listed in the complaint were addressed by all parties, they were not resolved, however, a consensus was achieved as to a number of steps that could be taken by the local council to assist with deterring anti social and unruly behaviour of people who remain in the vicinity of the hotel. These steps included changes to lighting in the area, road configuration changes and the option of CCTV coverage.
18. On 11 May, 2010 the Delegate of the Director of Liquor Licensing wrote to the Applicant and the Respondent advising that attempts to negotiate or conciliate an agreed outcome had failed and therefore the complaint would be determined on the papers without the need for a hearing. Parties were given until 4 June, 2010 to provide final submissions. This deadline was later extended to 30 June, 2010.

Submissions by the Applicant

19. The Applicant in its complaint lodged 10 June 2009 alleges that the Guildford Hotel and its patrons are responsible for anti-social behaviour and disorderly conduct occurring frequently in the vicinity of the licensed premises. This includes patrons of the hotel engaging in street fights, abusive language, urinating in the hotel car park, street littering and dangerous driving.
20. There is a noise nuisance both from unruly patrons and the music from the venue particularly at the front of the venue where sound systems have been observed outside the building.
21. In addition to disorderly conduct by patrons of the hotel, it is alleged that the external rubbish bins at the hotel are overflowing with rubbish, which poses a health risk and four car bodies litter the car park of the hotel which present a fire risk. In general there is a low presentation and management of the environs of the hotel.
22. Overall, residents are concerned for their safety and the safety of school children returning home through residential streets in the afternoons.
23. On 29 June, 2010 the Applicant lodged a concluding submission reiterating the original complaints and stating that despite the processes, including the mediation sessions, there had been no enduring reduction in adverse events, nor had there been any willingness or capacity by the hotel management to accept responsibility for the negative impact on both the immediate and wider community, or other local commercial activities.
24. The Applicant suggested a number of actions that should be taken, including upgrade of the hotel car park, introduction of management procedures to direct departing patrons away from residential streets and restriction of commencement times for stripper shows to no earlier than 7.00pm.
25. The requirement for noise control and an acceptance by the hotel of its responsibility for the behaviour of its patrons were other matters listed in the Applicant's responsive submission.
26. The basis of the Applicant's application for a review of the Director's decision is that the Applicant did not believe that the conditions imposed by the Director would alone lead to a reduction in anti social behaviour to levels that might reasonably be expected around licensed premises and which might be said to reasonably reflect the adage "give and take".
27. The Applicant's representatives made the point that they were not anti hotel and in fact recognised the role that the Stirling Arms had played in the history

of Guildford. There were other hotels/taverns in the area and the Applicant on was very accepting of the way in which they operated as a part of the historic and social fabric of Guildford.

28. The need to lodge the complaint followed three years of ongoing anti social activity associated with the operation and management of the Stirling Arms Hotel. There had been no problems prior to the change in licensee in 2008.
29. The Applicant challenged a number of the claims made by the Respondent in its submissions, particularly the application and effectiveness of voluntary management practices stated to have been introduced by the Respondent and the capacity of the Respondent to understand, accept and undertake the culture change necessary for the required improvements.
30. It was further submitted that it is the Applicant's view that compliance with restrictions on bottle shop sales could not be authenticated unless the bottle shop is physically and observably closed during the relevant hours. The concerns that the Respondent would be unreasonably restricted do not appear to be reflected in the operations of the other two local hotels, each closing their bottle shop between 8.30pm and 9.30pm;
31. The Applicant contended that prior to and during the 18 months progression of its complaint, it is amply demonstrable that the Respondent is either not willing or not capable of managing the premises to a satisfactory standard that could address the concerns of the Applicant or the WA Police.
32. The fact that the Respondent has advised of a wide range of initiatives reportedly put into place since the complaint was lodged, and that these initiatives had contributed either in no way or marginally to improve the situation, demonstrated that the hotel management was not capable or prepared to address the situation in a way that would rectify the problems.

Submissions by the Respondent

33. On 8 July 2009, the Respondent lodged a response to the notice of complaint and advise of a range of actions that had been taken to address the issues that had been listed by the Applicant, in particular the contracting of security personnel to monitor the street and car park, restrictions on bottle shop sales and a voluntary 10.00pm lockout during times of functions.
34. The Respondent also advised of initiatives taken in regard to litter in the streets and the car park and explained the circumstances of the car bodies in the hotel car park.

35. The Respondent had also sought the earliest possible opportunity to meet with the Applicant in order to settle the matter through conciliation or negotiation.
36. On 30 June 2010, the Respondent lodged a concluding submission and outlined steps already taken to address disorderly conduct, excessive noise levels, dangerous driving, anti social behaviour and littering by patrons.
37. Actions taken included an enforced 10.00pm lockout at times of functions, additional contracted security and new management initiatives to identify and rectify any potential trouble
38. Other new initiatives included the introduction of plastic drinking cups at times of functions, policies restricting the sale of jugs of alcohol and the serving of shooters and spirits, increased security surveillance and upgraded litter and rubbish removals.
39. The Respondent advised of a voluntarily restriction on the sale of alcohol from its bottle shop with the sale of beer and ready to drink beverages restricted to single and package sales only at all times. The hotel did not sell carton beer or ready to drink beverages to anyone at any time.
40. On Wednesday and Saturday evenings and other times at the discretion of the Respondent, the Stirling Arms Hotel will only allow people in vehicles to purchase alcohol from the bottle shop that come through the drive through.
41. In its submission, the Respondent advised that it has taken significant steps to address each of the issues that are the subject of the complaint; however, there is no real evidence that many of those issues are associated with the hotel.
42. It was stated that there are many other factors that need to be taken into consideration in assessing the cause of and responsibility for any anti social activities that might be occurring in the area – not just the operations of the hotel.
43. Also, there remains some question as to the validity of the data collection as observations by individuals whose views are being expressed through the Applicant's complaint have no way of being tested. Those individuals are not named, nor are there any details of where they reside in relation to the Stirling Arms Hotel.
44. Reports from the Police and Department of Racing, Gaming and Liquor Inspectors make no attempt to identify whether those congregating in the area at the times reported in the complaint are patrons of the hotel or have migrated from other areas.

45. The Respondent maintains a strict zero tolerance policy with respect to unruly behaviours on or around its premises. A register is kept by the Respondent of persons who have been refused entry to the hotel.
46. It is the Respondent's current policy to refuse persons entry to the Stirling Arms Hotel if a person:
- a. is identified as having been an instigator of any fight within the hotel or its vicinity;
 - b. is identified as having used or sold illicit drugs within the hotel or its vicinity;
 - c. is identified acting in drunken, indecent, disorderly, unruly or quarrelsome behaviour; and
 - d. is identified as consistently refusing a request by the Respondent to comply with a safety directive.
47. The Respondent has taken a number of steps to address the issues identified, including liaising with relevant bodies such as the Taxi Control Board, Midland Police and the Department of Indigenous Affairs.
48. Other initiatives taken by the Respondent and referred to in the initial responsive submission to the complaint were reiterated.

Determination

49. From the material presented through written submissions, mediation reports and at the Hearing, I am persuaded that there are grounds for the complaint that has been lodged. There is sufficient material from all parties to indicate that there have been ongoing anti social problems associated with the Stirling Arms Hotel and its operations.
50. In particular, there is strong evidence that the regular events organised by the hotel are the basis for the congregation of people in the vicinity, whether they are patrons of the hotel or not, which in turn creates an environment that often leads to anti social behaviour.
51. While Police and Department of Racing, Gaming and Liquor reports indicate that there are no issues with the internal management of the hotel, the fact remains that the current operations of the hotel are a significant contributing factor to the anti social behaviour that is being experienced in the locality.
52. The voluntary introduction by the Respondent of a range of measures to address the issues indicates recognition of the problems which exist. While

the Applicant has acknowledged that the Respondent's actions had marginally improved the situation, from the material before the Commission it is apparent that the anti social problems in the locality of the Stirling Arms Hotel remained at the time (15 October, 2010) the Director imposed a variance of the conditions.

53. In reviewing the Director's decision, in what has been a re-hearing of the material, I am of the view that a further variance of the conditions is warranted in order more effectively to rectify the current impacts on the amenity of the locality as a consequence of the operations of the Stirling Arms Hotel.
54. The variance of the conditions is aimed at what has been demonstrated as the primary basis of the anti social behaviour, which are those times that functions in the form of live bands, karaoke and DJ's presenting in conjunction with karaoke, are operated by the hotel.
55. I have therefore determined that the grounds for the complaint have been established and the following additional conditions are imposed on the licence:
 - 1 On days when entertainment is provided in the form of live bands, karaoke or DJ's presenting with or without karaoke (except days when entertainment is provided during the afternoon "Hangi Session") the following conditions apply:
 - Crowd controllers, licensed under the *Securities and Related Activities (Control) Act 1996* are to be employed at a ratio of two (2) crowd controllers for the first 100 patrons and one (1) crowd controller for each additional 100 patrons or part thereof from one hour before the commencement of the entertainment until 30 minutes after the entertainment ceases.
 - Two (2) Security personnel /crowd controllers, licensed under the *Securities and Related Activities (Control) Act 1996*, are to be employed to patrol the car park, bottle-shop and the area surrounding the immediate vicinity of the licensed premises to monitor the behaviour of patrons arriving at and departing from the licensed premises and to move on patrons congregating in the area or who have been refused entry to the premises from one hour before the commencement of the entertainment until 30 minutes after the entertainment ceases. While these personnel have no authority over the patrons away from the licensed premises their presence may assist in the orderly dispersion of patrons once they leave the premises.

- One (1) hour before the commencement of the entertainment, the sale of packaged liquor is restricted to drive through sales only to persons presenting in a vehicle with packaged liquor sales to cease at 9.00pm.
- Patrons are prohibited from entering or re-entering the premises from 10.00pm.
- Any patron observed consuming liquor in the streets or car park is to be refused entry to the premises on the night.

Condition 1 is aimed at what has been demonstrated as the primary basis of the anti social behaviour, which are those times that functions in the form of live bands, karaoke and DJ's presenting in conjunction with karaoke, are operated by the hotel. The employment of the prescribed number of security personnel will enable better management of the hotel vicinity at times when people are known to congregate, while the condition requiring the bottle shop to be closed at 9.00pm on occasions when there is a function at the hotel is directed at impacting on the incidence of alcohol consumption outside the licensed premises. A condition limiting bottle shop sales to persons in vehicles only is not considered a sufficiently effective measure to remove or reduce the availability of liquor which can be consumed in the areas around the licensed premises. The closure of the bottle shop at 9.00pm will also reduce the amount of activity in the confined bottle shop/main entrance area at times of functions. The 10.00 pm lockout will restrict patrons from leaving the licensed premises and consuming alcohol in the car park and other nearby areas and then returning to the hotel, plus it will deter the migration of people who may have consumed alcohol elsewhere and then seek late entry to the premises. Those observed consuming liquor in the car parks are to be refused entry to stop this practice.

- 2 The Respondent is to maintain a register of complaints from local residents detailing the date of the complaint, the name and address of the complainant, the nature of the complaint and any steps taken by the Respondent to resolve the complaint.

Condition 2 is to enable close monitoring of any future complaints and the processes applied to address them.

- 3 The Respondent to arrange and meet with representatives of the Applicant, with an invitation extended to the City of Swan and the

local police, to review the impact of the operation of the hotel on the local neighbourhood, on a quarterly basis.

The role played by other authorities such as the City of Swan, and the WA Police will be critical to addressing many of the causal aspects of the anti social behaviour being experienced in the vicinity of the Stirling Arms Hotel. Therefore I believe it appropriate to place an onus on the Respondent to regularly consult with those authorities and the Applicant in applying a consolidated and combined approach to resolving issues as they arise.

56. It became apparent during the hearing that there are structural/design issues associated with the operation of the hotel, particularly at times of functions, therefore I am of the view that the Respondent should seek to remedy this situation by taking action to improve the amenity of the car park areas and the bottle shop drive through/main entrance area of the premises. I strongly urge the Respondent to take such action.

57. I have considered the Applicant's request that the regularly held adult shows not be allowed to start prior to 7.00pm as against the current start time of 4.00pm on the basis that the advertising of these events is clearly visible to children leaving nearby schools at the end of a school day. I do not consider that a case has been made for such a condition, although am concerned as to the style and appropriateness of some of the reported advertising techniques for these events. This will remain a matter for ongoing monitoring by the Licensing Authority.



EDDIE WATLING
DEPUTY CHAIRPERSON