

**Liquor Commission of Western Australia**  
**(*Liquor Control Act 1988*)**

**Applicant:** Philip and Kathryn Rogerson

**Respondent:** DK Hospitality Pty Ltd

**Commission:** Dr Eric Isaachsen (Presiding Member)  
Ms Elanor Rowe (Member)  
Ms Kirsty Stynes (Member)

**Premises:** The White Star Hotel, 72 Stirling Terrace, Albany

**Matter:** Application pursuant to section 25 of the *Liquor Control Act 1988* for review of a decision by the Delegate of the Director of Liquor Licensing to dismiss the complaint lodged under section 117 against the licensed premises.

**Date of Hearing:** On papers

**Date of Determination:** 31 January 2020

**Determination:** The application for review is dismissed and the decision of the Delegate of the Director of Liquor Licensing is affirmed.

**Authorities referred to in determination:**

- Hancock v Executive Director of Public Health [2008] WASC 224
- Palace Securities Pty Ltd v Director of Liquor Licensing (1991) 7 WAR 241

## **Background**

1. On 9 April 2018, three unrelated parties lodged a complaint (“Complaint”) under section 117 of the *Liquor Control Act* 1988 (“the Act”) against The White Star Hotel, 72 Stirling Terrace, Albany. The Licensee is DK Hospitality Pty Ltd and the directors are David Steytler and Katie Sweetnam. The business operates under a tavern licence (number 6020012245).
2. The complainants were Philip and Kathryn Rogerson of the Albany Foreshore Guest House, 86 Stirling Terrace, Albany; Annie Tietz-Coulet of 2/76 Proudlove Parade, Albany; and Adriana Fernandez-Goncalves and Giuseppe Lacerenza, both of 1/76 Proudlove Parade, Albany.
3. Submissions were received from both the complainants and The White Star Hotel, and on 8 August 2019, pursuant to sections 13 and 16 of the Act, the Delegate of the Director of Liquor Licensing determined the application on the basis of the written submissions of the parties. The Complaint was dismissed.
4. On 1 September 2019, an Application for Review (“Review Application”) of the Decision of the Director was lodged pursuant to section 25 of the Act by Philip and Kathryn Rogerson (“Applicants”).
5. The Review Application form was accompanied by a detailed five-page letter as well as four attachments – a copy of a local press article and three guest complaints.
6. Submissions were subsequently received from the Applicants and the Respondent in the review process.
7. The Applicants requested that the review application be determined on the papers. Subsequently, on 23 October 2019, the Applicants sought a hearing in place of the initial request. A response was sought from the Respondent. After consideration of the request, the response and the delay due to the unavailable dates of the parties, the Commission decided to determine the review application on the papers.

## **Section 117 Complaint**

8. The Complaint outlined the disturbance caused to the neighbourhood by the noise emanating from the licensed premises and disorderly conduct occurring frequently in the vicinity of the licensed premises.
9. The noise was evident during the evening trading hours emanating both from the band room at the front section of the hotel and from the outdoor entertainment area at the rear of the hotel. Noise from the outdoor area was particularly evident in the rooms at the rear section of the guest house.
10. The disorderly conduct on Stirling Terrace was noted to be most prominent late in the evening and said to be caused by patrons departing The White Star Hotel. This was more evident in the front rooms of the guest house.

11. Guests staying at the guest house had provided written comments to the management of the guest house as to their experiences with noise during their stay. This covered different days of the week and hours of operation of the hotel.
12. Subsequent to 9 April 2018, there were numerous emails through to November 2018 between the Applicants and the Respondent in relation to the ongoing issues of noise and disorderly conduct.
13. John Hassell, Inspector, Department of Local Government, Sport and Cultural Industries arranged a mediation meeting on 26 November 2018 which both parties attended. A number of initiatives were agreed. However, the goodwill only lasted seven days before the parties resumed exchanging emails containing claim and response without any satisfaction being obtained by either party.
14. The greatest disagreement between the parties related to the issue of disorderly conduct. The Applicants were insistent that all the disorderly conduct on Stirling Terrace was caused by patrons of The White Star Hotel. The Respondent responded that Stirling Terrace is the location of several entertainment and hospitality venues as well as being subject to pedestrian traffic between other similar venues which operate at later hours than The White Star Hotel. The Albany Police and officials from the City of Albany were independent observers of instances of disorderly conduct on Stirling Terrace being entirely unrelated to patronage of The White Star Hotel.
15. The Great Southern District WA Police Liquor Enforcement Supervisor, Sergeant Michael Russell, and the City of Albany also noted that during the summer period of 2018 / 2019 there were not any significant issues of concern with the conduct of The White Star Hotel under its licence.
16. Inspector Hassell produced an Investigation Report ID 61180 dated 6 March 2019. This covered:
  - a) Noise Observations;
  - b) Comments / Observations by Police;
  - c) Observations by City of Albany;
  - d) Observations by other nearby residents;
  - e) Mediation Meeting November 2018;
  - f) Conditions on the Licence; and
  - g) Conclusion.
17. The final paragraph was: *“Based on what the Town of Albany and the Albany Police have stated, the S117 complaint should be dismissed, with consideration to having some of the conditions that Six Degrees have on their Extended Trading Permit put on the liquor licence of The White Star Hotel.”*

### **Submissions and Responsive Submissions from the Applicants regarding the Review Application**

18. The Review Application reiterates that the noise from the licensed premises is excessive and that the residence of the Rogersons at 86 Stirling Terrace is also a Guest House and the section 117 complaint also relates to the detrimental effect on the business.
19. The Applicants understand that Inspector Hassell recommended that The White Star Hotel premises should be subject to the same onerous liquor licence conditions applied to Six Degrees, located at 70 Stirling Terrace. This is a much smaller premises immediately next door to The White Star Hotel.
20. The Applicants are dissatisfied with the City of Albany's response that it is not concerned that the level of noise is unreasonable, when guests at the guest house have submitted written complaints stating that band noise is preventing them from sleeping.
21. Crowds congregate outside the guest house after the midnight close of the hotel's trading. Inspectors from the Department of Local Government, Sport and Cultural Industries were stated to have recommended The White Star Hotel provide crowd control after closing time, and the Applicants state that these recommendations were dismissed.
22. It was submitted that the issue of possible sound proofing of the guest house was discussed at the mediation meeting on 26 November 2018 with an offer made by David Steytler to contribute to the cost of sound reducing windows for the guest house. This has not occurred with David Steytler not yet experiencing the problems from inside the guest house.
23. The Applicants have replaced all the windows in the guest house, however the Heritage Council of WA will not permit the installation of standard modern windows. The current windows are capable of opening on warm nights that allows guests to experience the cool breezes.
24. It is submitted that David Steytler has approached only his direct neighbours to ascertain the level of disturbance to them. He has not approached the residents from directly opposite The White Star Hotel nor more distant residents on Mount Clarence who also suffer from the amplification in the open beer garden of the hotel.
25. With regard to the issue of "undue disturbance" the submission was that the noise from the hotel patrons at midnight on Friday would be regarded by a reasonable person as "undue", as would the amplification of the music provided by the DJ in the open area beer garden.

### **Submissions and Responsive Submissions from the Respondent regarding the Review Application**

26. The Report (Investigation ID 61180) by Inspector Hassell covered the Investigation dates of 24 - 26 November 2018 and it did find that noise came from the hotel, however noise from other sources was at times greater than that coming from the hotel. In addition, the Investigator stated in his report: *"the anti-social behaviour was not coming from patrons at either Six Degrees or the White Star"*.

27. The guest house is located in the centre of an entertainment precinct at which patrons from Six Degrees, The White Star and Due South patrons crossing the footbridge all meet on their way to a nearby nightclub on weekend nights. It is not unexpected that there is a level of disturbance in such a proximity.
28. The conditions imposed on the licence of Six Degrees was in relation to their approved application to trade beyond midnight which is not the case for The White Star Hotel. In addition, Six Degrees and The White Star Hotel are very different businesses and their operations are not identical, therefore applying the conditions relating to one licence to another licence, without consideration of the individual circumstances, is not appropriate.
29. The three attached letters of complaint from the guests were focussed on the disturbance and distress caused by anti-social behaviour and noise from patrons on the street in the vicinity of the guest house. None of the complaints provided refer in any way to noise from music.
30. The White Star Hotel has always employed crowd controllers until 12.30 am not just in response to the mediation meeting of November 2018. On a voluntary basis The White Star Hotel places its crowd controllers further down the street, some 50 metres from the hotel, to move patrons on from the front of the guest house.
31. The Respondent's offer to contribute towards sound reducing windows has not been actioned. The two parties have been unable to create the opportunity for the Respondent to experience the alleged problem at first hand from within the Applicants' premises. It is unreasonable to be asked to financially contribute without having witnessed the alleged problem. In addition, there is no evidence provided by the Applicants that noise attenuation measures have been taken at the guest house.
32. It is submitted that crowd noise and music will be associated with the common and ordinary use of a hotel located within an entertainment precinct. Other hospitality venues immediately adjacent to the hotel do not have concerns with the operations of the business. No submissions have been made in relation to the review by the other parties who supported the original complaint.

### **Determination and Reasons**

33. Section 25(2c) of the Act provides that when conducting a review of a decision made by the Director, the Commission may have regard only to the material that was before the Director when making the decision.
34. In conducting a review pursuant to section 25 of the Act, the Commission is not required to find an error in the Director's decision and is required to undertake a full review of the merits of the materials before the Director and make its own determination based upon those materials (*Hancock v Executive Director of Public Health [2008] WASC 224*).

35. Pursuant to section 25(4) of the Act the Commission may:
- a) affirm, vary or quash the decision;
  - b) make a decision in relation to any application or matter than should, in the opinion of the Commission, have been made in the first instance;
  - c) give directions as to any questions of law reviewed, or give directions to the Director, to which effect will be given; and
  - d) make any incidental or ancillary order.
36. Advancing the objects of the Act, as set out in section 5, is also relevant to the public interest considerations (refer *Palace Securities Pty Ltd v Director of Liquor Licensing (1991) 7 WAR 241*). The primary objects of the Act are:
- a) to regulate the sale, supply and consumption of liquor; and
  - b) to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and
  - c) to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
37. The Commission has considered:
- a) all of the materials before the Delegate of the Director when making the decision; and
  - b) all written submissions filed by the Applicants and the Respondent in the review proceedings before the Commission.
38. Essentially the issue is whether the Applicants have satisfied the Commission that the complaint has been substantiated.
- Has the amenity, quiet or good order of the neighbourhood of the premises been frequently unduly disturbed by reason of activities at the licensed premises?*
39. The Applicants are clearly of the opinion that the activities at the licensed premises do meet this criteria and have made numerous complaints in this regard. However, there is no other evidence provided by them, or any other party, to sustain the claim as to the frequency of undue disturbance.
40. The second aspect is whether the activities occurring at the licensed premises are causally related to the claimed frequently undue disturbance. Instances of such a link have been made by the Applicants, however the evidence of the Albany Police, the City of Albany and Inspector Hassell of the Department of Local Government, Sport and Cultural Industries, does not support such a contention.
41. The Commission is of the view that the Applicants have not made their case with regard to the above issue.

*Has disorderly conduct occurred frequently in the vicinity of licensed premises and is it unduly offensive, annoying, disturbing or inconvenient?*

42. The Applicants' building and its associated business are located in the well-recognised entertainment precinct of Stirling Terrace in the City of Albany. The evidence is clear that the location of the hospitality venues and the pedestrian traffic between them has led to disorderly conduct occurring more often in particular sections of Stirling Terrace.
43. Independent sources report instances where the persons involved in the disorderly conduct had not been patrons of any of the hospitality venues. In addition, there is not any evidence of a consistent association with any particular venue (were prior attendance able to be confirmed).
44. There is no evidence of widespread community complaints to the Police or the City of Albany with regard to disorderly conduct, or the frequency of disorderly conduct, on Stirling Terrace.
45. The Commission is of the view that whilst instances of disorderly conduct have occurred on Stirling Terrace, they are not frequent nor are they capable of being associated with any one venue in the precinct.
46. The Commission is not satisfied that the Applicants have discharged their onus in establishing the validity of its section 117 complaint.
47. Accordingly, the Review is dismissed and the decision of the Director affirmed.



**DR ERIC ISAACHSEN**  
**PRESIDING MEMBER**