

In the matter of the Liquor and Accommodation Act 1990

In the matter of an application by
Deborah Jane Barratt for a general licence.

In the matter of premises **The Mill Inn Carrick**, Carrick.

Decision of the Licensing Board of Tasmania.

This application was heard at Launceston on the 4th December 2002.

Note: to avoid confusion, that the premises proposed to be licensed is “The Mill Inn, Carrick”, whilst the existing licensed hotel in the town is called “The Carrick Inn”.

The application was signposted on the property and advertised. The Applicant submitted a written application and supporting statement and attended the hearing of the matter before the Board.

Written submissions in favour of the licence application were received from Mr and Mrs Smith of the Carrick Roadhouse, on the basis of encouragement to the hospitality and tourism industry, and from J Peterson the Post Office Licensee on the same general basis. Neither were present to support their submissions.

Mr John D Taylor lodged a written submission opposing the application, and attended and gave evidence and made submissions.

M Gluth, Manager, Carrick Inn, lodged a written objection to the application.

Mr James McGrath, owner of the Carrick Inn lodged a written objection and appeared and gave evidence and made submissions.

The application falls to be considered in the context of the over-arching obligations of the Board to take account of the factors set out in s216 of the Liquor and Accommodation Act, and the criteria set out in the introduction to the Guidelines, and the provisions in item 1 of the Guidelines entitled “General Licence.

Section 216 states:

Policy to be followed when considering an application for a licence or permit

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- (1) *When considering an application for a licence or permit the Commissioner or the Board shall make a decision which, in the opinion of the Commissioner or the Board, will best aid and promote the economic and social growth of Tasmania by encouraging and facilitating the orderly development of the hospitality industry in the State.*
 - (2) *While, in coming to that decision, the Commissioner or the Board may have regard to any legitimate interests and concerns of any section of the community the Commissioner or the Board shall have greater*

regard for the legitimate interests and concerns of the community as a whole.

The Application

Mrs Barratt explained that she and her husband had recently purchased the freehold of the Mill site, after some time investigating businesses to buy in Tasmania. They felt the site has a lot of character, and potential benefit for the community generally and for tourists, with consequent enjoyment to them in running the business, and a likely fruitful return after applying their experience and hard work.

They stated they wished to introduce something into the area, something unique and different. They stated that they had plans for development of the entire premises (which are of some size and over a number of floors) and that their proposal necessitated the widest category of licence style so that they would not be hamstrung in applying the development and making alterations to ensure the business worked to meet their aims (ie provision of useable services, and a return to the owners).

For the ground floor they proposed a lounge bar. For the 1st floor they proposed a restaurant and wine cellar (described by them not to be a 'bottle shop', but something specialising in Tasmanian wines not otherwise easily available in the vicinity). For the 2nd floor they proposed a restaurant for functions or overflow from the restaurant on the 1st floor. For the 3rd floor, they had no immediate plans, it being unrestored at this stage.

Mr Barratt said that he perceived the property as a beautiful heritage listed property, with prior owners in the last 20 or so years to his knowledge not having made sufficient money from any commercial venture to be able to continue ownership or the ventures. He said he believed the use of the premises needed to be attractive to a broader range of consumers, to be viable. He said his wife and he had spent \$600,000 on the venture, and were keen to involve themselves in the community and in advertising to engage with the local people to encourage them back to Carrick and the Inn, rather than (as he stated they do at present) leaving them to go to Launceston for such services.

Mr Barratt said there needs to be diversity of services from the site to tap into the market, that he did not believe there was a shortage of a consumer market, but that providers of services needed to provide what consumers want.

Mr and Mrs Barratt said they envisaged employing 6 staff when the venture was up and running.

In response to letters of objections; they advised:

- The objections were founded solely on anti-competitive grounds, contrary to Guideline definition (d).
- That the objection by the people associated with the Carrick Inn was based on the incorrect assumption that locals travel to Launceston in any event, whereas the reason for this is that Carrick Inn does not attract tourists to visit due to a

fault in management, not because of a decline in the market. There is no decline in the market.

- That there are about 200 people living in the Carrick area and 400 in the Hadsphen area, and that most locals are not attracted to the Carrick Inn.
- They urged that the Board not give anti-competitive protection to incumbent licence holders.
- That the onus is on the objectors to show why the licence should not be granted once they as applicants had demonstrated a feasible plan.
- There was no foundation to assert, as the objectors did, that there was a declining market.
- That to acquiesce in a negative view of things to the effect that there is a declining market, and on that basis to refuse to grant a new licence was, perversely and in a self defeating manner, to actually create the circumstances to ensure there would be a declining market, and such a course should be resisted. They said to do so would be to “sit and watch it go to rack and ruin”
- That the licensing policy should encourage new industry entrants, and that the end winners would be the public with better facilities caused by the new entrants input to infrastructure and the heightened activity caused by competition.
- That Mr Taylor’s objections were based on a lack of understanding of the role of local government compared to the licensing board, and that the local government issues (such as occupancy loadings, traffic etc) had been dealt with in planning approvals and were not of any consequence at this present hearing.

The application documents also evidenced a comprehensive plan to provide food and entertainment as part of the overall strategy as enunciated above, to encourage locals and tourists to make the Mill Inn Carrick a vibrant and active area, somewhere for patrons to enthusiastic to visit.

The Carrick Inn objectors stated that their only concern was the off-licence component of the general licence, and that there were 6 premises able to provide that service in the vicinity/locality, and hence there was no need for the grant. We think this manner of objection misses the point about the whole application. It is not a matter of severing it into small components and say “that is satisfied by other premises”, but to look at the whole intended development, and the entire services to be provided. Does that meet the factors set out in s216?

The Board felt that this objection had a weighting towards trade protection, without a balancing assessment of the potential social and economic development likely from the development.

The applicants indicated, in any event, that they did not intend to operate a drive-through off premises liquor store, but that they desired the general licence (and the off sales entitlement which comes with that) to enable them to meet the likely demand they perceived their customers would have. In general they expressed that as being likely to be an add on to other sales, and more likely than not to be mostly the sale of wine, rather than mostly the sale of bulk (ie 9 litre) beer.

It is not in itself the purpose of the Guideline to restrain competition.

The Board looks at these matters from the public interest perspective. For example, will the introduction of the new business in the locality be likely to have the effect of improving services to the public, or will it introduce such wasteful competition that existing businesses and the intended new business will all have to operate at a lower level of service to survive, and hence the public are actually disadvantaged?

Business must expect to meet competition. The Liquor and Accommodation Act is not intended as a trade protective article. S 216 is concerned with requiring the Board to make a decision that will best aid and promote economic and social growth by encouraging and facilitating the hospitality industry. Not by protecting existing operators in one sector of that industry, notably the supply of liquor sector.

The “need” criterion is an express factor for consideration required by the Guidelines. The Board is able to take it into account, but concludes that it is not something which should tell against the application. The evidence was not such as would disentitle the applicants to the grant of a general licence either due to lack of supporting evidence or credibility in the objections.

The “need” criterion is intended, indeed required, to be interpreted to contribute to the goal express in s216 of the Act, of encouraging and facilitating the orderly development of the hospitality industry in Tasmania.

Refer to the *Regulatory Impact Statement: National Competition Policy Review of the Liquor and Accommodation Act, August 2002* (State Treasury Website).

The Board generally accepts the Applicant’s submissions and evidence. There are no factors in the Guideline definitions that indicate that the licence should not be granted.

The applicant appears to have clear plans for the development, capital to inject, and a desire and ability to raise the premises to a modern useful and functional tourist facility for the benefit of locals and the broader community.

In conclusion we are of the view that the Applicant has satisfied the burden of proof to demonstrate that there is sufficient need for the premises, and in the context, that the precise nature of the operation is clearly fleshed out. Taking account of s 216, and the Guidelines, the Board determines that the granting of the general licence would contribute to the aims specified in that section. We believe it will be a positive contribution, and we direct the grant of the licence.

Dated: 15th January 2003.

PA Kimber, Presiding Member.

WF Morris, Member

L Finney, Member.