

Licensing Board of Tasmania

In the Matter of an Application for
an Off-liquor licence under the
Liquor & Accommodation Act 1990

In the Matter of an Application by
Mr P Griggs relating to premises at
2 Gordons Hill Rd, Rosny
known as Eastern Shore Liquor

Decision of the Licensing Board of Tasmania

Mr Phillip Griggs, the Applicant, seeks the grant of an off-licence, conditional on surrender of his existing off-licence in the same locality. The move would be from 2 Bayfield St, Rosny Park to 2 Gordons Hill Rd, Rosny Park, some 200m across the carpark serving both premises.

This licence type is categorised as an off-licence under the provisions of s11 of the Liquor & Accommodation Act 1990, although for convenience, and having regard to assessment of licence fees, with the consent of the Applicant and as notified before the start of the hearing (without dissent from those present), if the criteria for issuance of an off-licence are met, the Board will determine to issue a Special Licence (Retail-Off). The terms of any licence granted will be limited by conditions to the same effect as s11 and in accordance with the guidelines (of January 1996).

We set out the section and the guideline:

S11 of the Act provides:

An off-licence authorises the sale of liquor-

(A) *in quantities of not less than 9 litres in respect of any one sale; or*

(B) *in the case of Tasmanian wine - in any quantity -*

between 8am and 6pm on any day (except Sundays) on the premises specified in the licence for consumption off those premises.

The Guidelines for grant of such licences provides:

The Board will not direct the grant of an off-licence unless the Board is of the opinion that the granting of an off-licence would be in the interests and concerns of the community in the neighbourhood where the premises to which the application relates are situated, and that the premises intended to be used under the licence are to be self-contained, in that the sale of liquor will not form part of any other retail business.

We take into account the reasons for decision *In the matter of an Application for an Off-Licence by J Tsinoglou* of July 1996, and the negative factors there mentioned with regard to the Board's exercise of discretion to grant such a licence. The Applicant was aware of that

decision and couched his application around meeting those hurdles. The Board remains of the same opinion as expressed in that decision, at the same time being conscious that it is under review in the Supreme Court pursuant to a writ of certiorari obtained by Mr Tsinoglou on the 14th August 1996. Until that matter is pursued to conclusion, and unless indicated to the contrary by the Superior Court of this State, we are not minded to change our opinion of the matters of policy in the decision expressed to be relevant. It remains our view that the matters of policy set out there are relevant and proper for the Board to take into account.

There is a stain in the matters of policy relevant to be taken into account. In one direction is the freedom of trade apparent from the legislation and the guidelines, and in the other direction is the policy, accepted by the Board as relevant, of limiting proliferation of off-licence type facilities.

The principal overriding matter of concern is the 'interests and concerns of the neighbourhood', and the charter set out in s216 of the Act:

Definitions:

Where, in these guidelines, the Board is to take account of the "interests and concerns of the community" that phrase means:

- (a) will have regard to representations made to the Board--
 - (I) by the council of the municipality in which the premises to which the application relates are, or are to be, situated; or,*
 - (ii) by any other person;**
- and*
- (b) will have regard to the extent to which businesses carried on under licences and permits in the area to which the application relates are satisfying the need intended to be satisfied by the Applicant.*
- and*
- (c) will determine whether the grant of the application is likely to have an adverse effect on the interests of the community in that area--*
- but will not have regard to--*
- (d) whether the business of any other licensee or permit holder may be adversely affected by the grant of the application;*
- or*
- (e) whether the business proposed to be carried on under the licence or permit would be successful.*

And s216 tell the Board that it:

"shall make a decision which 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."

We are also presently of the view that the decision in *Cheaper Liquor Company* (26th February 1993) represents the proper policy and direction to be taken into account. We do accept that we are free to depart from previous decisions, and that unless strong reasons exist, we should not depart from the policy evident in the guidelines. In this matter we do not need to depart from the guidelines, or the policy evident in the above reasons for decision.

The Evidence

The evidence before us was the written application submitted by the Applicant, supported by his viva voce evidence, support from present customers of the existing business, and opposition from proprietors of hotels in the vicinity (whether in the neighbourhood, yet to be acknowledged) and the Australian Hotels Association (Tasmanian Branch).

We do not recite all the evidence, and in such manner do not in any way mean to detract from it or show disrespect to those who attended the hearing. It is simply not necessary to set out the evidence verbatim for the purpose of giving reasons for our decision.

The factors in favour of granting the application are:

1. The local City Council indicated that the intended premises are zoned correctly for the use as a shop, no planning permit is required. The Council says that the premises would allow improved public access and safety, unloading facilities, and better car parking. They say that relocation to a designated peripheral road is consistent with Council's adopted strategy for Rosny Park, and would help reduce central traffic conflict in the area. Council's view is expressly relevant pursuant to the guidelines (definition, item (a)(I)).
2. The Applicant says the present area of public service is 90m². The proposed new site would have approx 300m². It should be noted that the figures *In re Tsinoglou* were from approx 300m² to approx 600m². We conclude there is a very real difference between the two applications. In the first, Mr Tsinoglou would have been establishing essentially a different business by the increase in size, from a moderately sized enterprise to a large enterprise. In this application, Mr Griggs would be moving from a small, cramped and relatively inefficient site, to one of reasonable moderate size, offering service expected by the public.
3. Occupational health and safety was a relevant criteria. The ingress and egress by vehicle and in person at the Applicant's existing site is clearly less than convenient, and possibly dangerous. At the new site, these problems would be overcome. It should be noted that the size of the public areas in the *Cheaper Liquor Company* application was (at both sites, pre and post application) approximately 300m².
4. The movement is from one end of a car park to the other end. To do so, the available new site is larger, and must be taken up by the Applicant or rejected and he would

then be obliged to stay where he is. Extra size would inevitably enable the Applicant to expand his business, and is undeniably a factor in his decision to move. Nevertheless, the benefits to his existing customers, in service to the public in convenient and safe acquisition of their liquor requirements, is still a significant factor in the move.

5. The new site will permit more convenient storage and wine tasting and liquor education facilities. The latter is not accepted by the Board as being a significant motivating factor for the requested change, but nevertheless represents a potential benefit to the community. That it might go hand in hand with the change, would not be determinative of this application, but is a relevant positive factor.
6. Existing facilities have, on the evidence, inadequate cool storage facilities for existing custom. The Applicant put forward that on occasions of peak demand, it was impossible to provide chilled beer. This made the business uncompetitive in a critical area, and hampered customer service.
7. In the new premises, the Applicant intends to employ 2 staff, rather than the existing one, which will increase safety and security, and customer service.
8. The existing licence would be surrendered on grant of a new one for the proposed premises.

The objection from the proprietors of the Foreshore Tavern at Lauderdale: these premises are outside of the locality. As such it is irrelevant to this application. The concerns expressed by Mr Young and Mr Metzler from the Foreshore Tavern are however acknowledged, and were adopted by the other hoteliers objecting. As such, they remain relevant consideration in this application.

The substance of the objections from other objectors was that they offer full service hotels, a number of bars, serve meals 7 days per week, offer accommodation to the public, and support the local community with financial sponsorship to clubs and societies. The proprietors of the Clarence Hotel, the Sun Valley Inn, and the AHA put forward this perspective.

During the hearing we put to the objectors (those running competing businesses) that they should advise us whether, if the application was successful, they (or any of them) would close their premises, or offer less service to the public. None of the objectors said they would close or offer less service.

The objectors were, quite rightly from an economic perspective, concerned at the intrusion into what they perceived as their domain of selling liquor to the public.

The Board acknowledges the substantial public service provided by many hoteliers in food, liquor service, entertainment, accommodation, and sponsorship. These are matters which operators embark on either out of philanthropic virtue, or as an enticement to the public to use their facilities for the benefit of their business success. In any event, the service is to the public good, and if a new licence (even by way of a movement of an existing business) is likely to restrict the ability of existing operators to provide such public service, such that ultimately less public service, in areas in which the public require service, is available, then that is relevant to the Board's discretion.

In this matter, the Board is not satisfied that less public service will arise if the application is granted. Indeed, there was no compelling evidence to that effect.

The concern of hoteliers and their representative body, the AHA, is acknowledged. At the same time, pressures on the income of hotel operators is inevitably going to arise from new facilities, innovative restructuring of existing facilities, and inevitable change to the face of the hospitality industry to meet changing public demand. In many instances, the new or revamped facilities will generate a greater share of existing income from the hospitality sector of the economy. In other instance, growth in that sector, or parts of that sector, will arise from new facilities.

This application is not simply another bulk retailer of liquor, when the public is well served. The Board sees this application as a sensible restructuring of an existing business, with attendant benefits to the public, and thereby to the proprietors. The Board will not stand in the way of such an endeavour.

The Board directs the grant of the licence, subject to the cancellation of the existing licence.

Dated: 4th December 1996.

PA Kimber
Presiding Member

L Finney
Member

H Voss
Deputy Member

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