

LICENSING BOARD OF TASMANIA

IN THE MATTER OF THE LIQUOR & ACCOMMODATION ACT 1990

IN THE MATTER OF AN APPLICATION BY RODERICK KENNETH CLINGELEFFER FOR A GENERAL LICENCE FOR PREMISES KNOWN AS “TASMANIAN RACING CLUB”, GOODWOOD ROAD, ELWICK

Heard at Sandy Bay, Thursday 17th August 2000.

REASONS GIVEN EX TEMPORE

We will direct the Commissioner to grant the licence as applied for and explain our reasons for that in the context of the application and objections.

First of all it is our obligation to consider the application in accordance with Section 216 and make a decision which in our opinion 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.

Sub-section (2) of Section 216 says that

“while in coming to that decision the Board may have regard to any legitimate interests and concerns of any section of the community the Board shall have greater regard for the legitimate interest and concerns of the community as a whole”.

That means we are not to be concerned solely or predominantly with the racing industry, nor with the hotel industry, nor with the hospitality industry. We are obliged to take account of, the entire community, whatever that is and however it functions and all of the bits and pieces that are associated with it.

So it is an interesting project when we are dealing with the gaming , wagering, toting, and liquor consumption. Thankfully it is not our job to be too concerned with the wagering and gaming component of it. Although that is one of the main reasons why the applicant seeks this licence, as a link into being able to extend it’s wagering business into the gaming business. Whilst the application is not put in that fashion, we see it as being the link to enable maximisation of the revenues of their existing

facilities, capital structure, existing buildings and their show piece premises (as more particularly specified in their application documents).

Whilst there will be an income from gaming it will assist them in maintaining or improving their membership. It will assist them in getting more members of the public to the premises, with a continuation of the racing focus. That is what the Applicant has been doing for 100 odd years and that is what they will undoubtedly continue to do in accordance with their constitution.

So in balancing what has been said in their own favour and the stresses they have put on the factors and taking account of the factors put against it – our view is they have put their application honestly and that is their principal intention.

The additional benefits they will also provide, will be to provide facilities in the hospitality industry. Those facilities will be the facility of providing liquor to people who want it. They will also provide food to people who want it and generally speaking where food is provided as an adjunct to a liquor licence application – that is a very positive factor. That limits the potential for harm associated with the consumption of liquor, which is one of our main focuses.

We have a different circumstance here in Tasmania from that which occurred in Victoria when there was a change in gaming. That money from gaming was directed towards the racing industry by the agreements that were made and the legislation that came forward. That appears not to have occurred here as explained to us by the applicant's representatives and as acquiesced to by the respondents. The Ministers expressions in his Visions 2000 document give a clear indication that, consistent with competition policy principles, – if you have assets and you do not use them, then the government is not going to fill up the difference with money from the public purse. He is saying (so the applicant interprets) that the government will give the Racing industry what they would normally receive taking account of what the industry should be earning with their assets. The gaming laws and the liquor prohibition (s4) laws are not there as an impediment for that purpose purely. They are there to minimize harm in the case of liquor consumption and in the case of gaming I presume they are there to maximise revenue taking account of the inevitable harm that will

arise but balancing it in the vision of the government as to what they think is a fair balance. As I say that is not our area of concern.

But with liquor we must look at this particular facility. If an individual came to the Licensing Board and said *“I want to build a seven and a half million dollar facility, I want to employ 70 odd people and as an adjunct to that there will be flow-on benefits which will ensure or guarantee the employment of a thousand people and will provide fun and entertainment to half the population of Tasmania. We would also like to sell them a drink. We would also like to provide them with food and with that we would hope to get a gaming licence.”* What would the Board say in reply?

We would be going against the flow if we refused the licence and that is not our desire.

To answer the specific concerns of the objectors.

One of the factors we have to take into account is whether the need which the applicant intends to satisfy is already being satisfied by existing businesses operating under licences and permits in the area.

There is clearly an element, there always is an element, where the intended need could be satisfied and is being satisfied. In balancing that question, whilst the evidence is not definitive about it, it is apparent to us that the need which they intend to satisfy will be an additional need, which will not be represented by an equivalent taking away of services provided by existing hotels etc in the vicinity. That is, this will provide more for the public overall.

We are obliged to take account of representations made to the Board by any other person and we only have a couple of representations from individuals who are not associated with other licensed premises. They are in favour of the grant of the application.

One was the newsagent owner in the vicinity. The reality is we do not have any objections from anybody apart from existing licence holders and their representatives.

Taking account of the way in which the General Licence guideline is framed (that we will direct the General Licence unless we are of opinion that it would be contrary to the interests and concerns of the community) we conclude this is an appropriate application to be granted.

The objections were with regard to public interest and s 216, focusing on economic and social growth by encouraging orderly development of the hospitality industry. There is nothing that has been put to us which indicates that the grant of this application will create disorder within the hospitality industry. There is much to say it will contribute to social growth by encouraging and facilitating the racing industry and that is beneficial, and unambiguously so with regard especially to the significant section of the community interested in racing.

A main factor is also that liquor in this instance will be an adjunct to these other services. This is not an application where someone wants to simply open up another liquor venue. It will be an adjunct to other services, and most of the revenue and most of the sales are not going to be from sales of liquor.

The bottleshop issue - we have taken note of the statements by the applicant that they have no intention to establish a bottleshop. This licence is granted on that understanding. If the application had been framed on the basis that they intended to establish a bottleshop, we may have come to a different conclusion. So therefore if the applicant does proceed to establish a bottleshop in the near future, we would view it as this application having been granted on the basis of a misrepresentation. That may not be our role to determine in the future but I state that point so that it may be referred to if anyone wishes. If however, the applicant does wish to establish a bottleshop they can return to this Board with a fresh application and say they wish to vary your licence and we would consider it as a new licence, for a General Licence encompassing the bottleshop, and then we could have a fresh round of objections and then deal with it on that basis. That would be the fair way to deal with it.

We are grateful for the information given to us by those opposing the application and those associated with the industry but not necessarily applying for the licence; for the time that they have all taken to prepare their propositions. It truly helps us in

understanding what is at stake in the issue. We understand it takes some time and effort and it helps us as people not involved in either side of it, in making the decision.

Thank you for your time and effort. We wish you the best with your development.

We direct the Commissioner to grant the general licence.

Phillip Kimber: Presiding Member

William Morris; Member

Louise Finney: Member

Tas Racing Club 170800