

## **LICENSING BOARD OF TASMANIA**

In the matter of the **Liquor and Accommodation Act 1990**

In the matter of an application for a liquor licence by  
The **Smithton Turf Inc.**

In the matter of an **On-Licence.**

### **REASONS FOR DECISION**

The Smithton Turf Club Inc applied for a licence under the Liquor and Accommodation Act 1990. A hearing was conducted at Smithton on the 11<sup>th</sup> March 2004.

The Board inspected the premises at the corner of Bugg and Havelock Sts, Smithton.

Mr Elliot Mainwaring appeared with Peter Harrison on behalf of the Club.

The Australian Hotels Association (Tas Branch) (“AHA”) was represented by Marina Polita, legal officer, and Daniel Hanna, Executive Director.

The Board took account of the application document, the written submission provided by the applicant, the Commissioner for Licensing’s Inspectors’ report, a letter from the Circular Head Council (indicating no objection) and the AHA’s written submission opposing the application. In addition operators of local hotels opposed the application, submitted letters of opposition, and were represented at the hearing by Mr John Dabner (Tall Timbers) and Mr Craig Porteus (Bridge Hotel)

The evidence uncontroversial was that the applicant has been vigorous in Smithton in community activity for many years, providing a structure for raising funds and maintaining community facilities, in particular a synthetic surface for hockey and other sports, and clubrooms for participants, members, spectators, and guests.

What was immediately apparent on the application documents, was that the application fitted well within the category of a club licence.

The applicant had had an unlicensed club permit of originally 15 hours, extended to 25 hours for some years. It is a natural progression for active and expanding clubs to seek to move from the UCP (limited as it is in hours, and inflexible in allocation of those hours week to week) to a Club Licence. Numerous clubs have moved in that fashion (see decisions in *Bagdad Community Club*, *Geilston Bay Sailing Club*, *Brighton Football Club*, *Northern Hockey Association*, but cf. *Ross Community & Sports Club*).

Some clubs have then moved to seek an on-licence: on the basis that the nature of their activities are more generally based in provision of services to the public, rather than simply club members: see *Claremont Golf Club and Riverside Golf Club decisions*.

These decisions are available on disc from the Commissioner's Office. Some are available on the internet at the Department of Treasury & Finance website, specifically: <http://www.treasury.tas.gov.au/domino/DTF/DTF.nsf/469c3db8e1e959feca256e31000ecd60/f701988d152c9781ca256e310014ac3b?OpenDocument>.

It was clear to the Board that the nature of the enterprise conducted by the applicant was very much in the nature of an umbrella club, providing the constitutional background for an organisation to bring people together to manage and maintain facilities, to raise funds for upkeep and improvement, to galvanise community labour for those purposes, and to provide a worthwhile social and sporting environment for members of the community with a common interest reflected by the aims of the principal sporting clubs involved under the umbrella: viz, hockey and softball.

The applicant caters for children and adults. Assertions that there was an inherent danger to children in service or access to alcohol should the licence be granted can be discounted given the established stable structure of the applicant association, the obvious reliability and integrity of the applicant's representatives (who have been and would continue to be involved in the day to day management of the facilities) and in the intended adherence to

responsible service of alcohol initiatives. This objection, raised by the operators of the local hotels, was not demonstrated to be a justification for refusal.

When questioned about the decision to apply for an on-licence category licence, rather than a club licence, the applicant's representative indicated that they felt the paper work required to be maintained, and the restrictions on entry to members, guests and invitees, made the on-licence more apposite and desirable.

What was immediately apparent to the Board was that the Club Licence category was the appropriate licence, and the strictures of maintaining the registers of members, and signing in visitors (with the numerous exceptions to that in the Commissioner's guidelines for record keeping for clubs) were appropriate limitations where the privilege to supply alcohol is to be granted to a community organisation of this type.

We think that the applicant may have misunderstood some of the limitations implicit in the club licence category regarding record keeping, and that with some modification of their constitution, and establishing appropriate journals or day-books, the club licence would serve them well.

It was evident that the purpose of having a licence was to provide for the reasonable needs or desires of members of clubs under the applicant's umbrella. Those people could be made members of the umbrella club social club, by amendment to the constitution, and would be appropriate for automatic admittance without signing in requirements. Visitors on match days are automatically entitled to admittance to the club (subject to any limitations the club itself wishes to impose), and without the necessity for signing in.

In this instance, a club licence is appropriate, and had the licence been advanced on that basis, subject to consideration of any other evidence which might have been presented in opposition, the Board would have granted the licence. In order to give objectors and any others who might oppose the grant of a club licence, **this application will be adjourned.**

If the applicant wishes to proceed with the application as a club licence application, it should be re-advertised as such, present objectors notified of the new date for hearing, and the Board will take any additional evidence at that time and make a determination on that application.

There was some comment at the hearing by Mr Dabner as to the role of the Licensing Commissioner's staff, and in particular, in informing or advising the applicant on licence categories and alternatives.

In the Board's view, it is entirely appropriate, subject to appropriate allocation of resources within the Commissioner's office, for those staff to answer queries, and to assist applicants and objectors, and others seeking to make representations or otherwise to know of the functions, and prior decisions of the Licensing Board, in guiding them towards appropriate information and alternatives.

Clearly it is the responsibility of the applicant to take their own advice, and make their own conclusion on whether or not to apply for a licence, what licence to seek, what conditions to propose, and what evidence to bring forward. The Commissioner's office guidance is assisting in the efficient administration of that office, and to assist the public. Officers should not be subject to complaint that they may have referred applicants or objectors to past cases, areas of potential conflict, or Board determinations on adequacy or inadequacy of evidence. This can only help to bring issues more fully before the independent board for the better adjudication in the best interests of the community.

Dated: 16th April 2004

PA Kimber, Chairman.

WF Morris, Member.

L Finney, Member

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