

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: **FEDERAL SPORTS CLUB**
Undoolya Road
ALICE SPRINGS NT

LICENSEE: Federal Sports Club Inc

LICENCE NUMBER: 81402530 Liquor
GM130 Gaming

NOMINEE: Robert J Fraser

PROCEEDINGS: Hearing into Proposed Sale and Lease

HEARD BEFORE: Mr Richard O'Sullivan (Chairman)
Ms Brenda Monaghan (Legal Member)
Ms Helen Kilgariff

DATE OF HEARING: 21 September 2009

APPEARANCES: Mr Michael Deane for the Licensee

- 1) On 21 September 2009, the Licensing Commission met with representatives for VCG Nominees (VCG) and the Federal Sports Club Inc (the Club) to consider the following proposal:
 - a) The resolution of the Club to sell its assets to VCG comprising of;
 - i) its interest in the newly created title over Lot 8059 Undoolya Road, Alice Springs (the Club premises);
 - ii) Its plant and equipment; and
 - iii) Its improvements on the Club's premises.
 - b) As part of the sale agreement, VCG to discharge the disclosed debts to the Club's unsecured creditors and to provide a security guarantee with respect to the debt owed to the ATO which the Club is currently repaying;

- c) An agreement between the Club and VCG that the Club will lease back the assets under a formal lease agreement;
 - d) Following the necessary Constitutional changes and a refurbishment of the premises, the intention that the Club will continue to trade as a community club under the new name of Club Eastside; and
 - e) That Mr Geoff Booth, a Director of VCG will be the Nominee / Manager of the Club answerable to the Club's elected Executive Committee. The Executive Committee will include nominations from various Foundation Clubs namely – Federal Football, Federal Cricket Club, Federal Netball Club, and Federal Devil's Rugby Union Club.
- 2) The proposed lease is a matter for the Commission's consideration by virtue of the restrictions imposed by Section 170 of the *Gaming Machine Act* (the Act), and the reasonableness of the rent is a matter for the Commission's consideration under Section 49(1)(c)(v)(C) of that Act. The approval of Mr Booth as Nominee by the Commission is also required.
- 3) The Commission has carefully considered:
- All relevant documentation and oral evidence including the following:
 - Letter from the Minister for Planning and Lands dated 3.3.09 approving the conversion of Crown Lease in Perpetuity 733 to an estate in fee simple in the Club's name for a stated sum of money;
 - All relevant documents including the proposed Club Constitution, VCG Property Trust Deed, Contract of Sale and Purchase and Lease and information regarding VCG Nominees whose directors are Vivian Oldfield, Craig Oldfield and Geoff Booth;
 - Relevant correspondence, financial reports, a thorough brief prepared by the Director, statutory declarations of Robert J Fraser (*Club member since 1975 and current Club President temporary nominee*), Angel N Akarana (*Club member since 1986 with interest in netball and current committee member*), Jarrod R Wapper (*Club involvement for 16 years, Board member of Federals Cricket Club for 11 years and past President for 3.*), David B Williams (*Club involvement for 20 years, past Club Manager*), David R Gloede (*Club involvement since 1971 principally with Aussie Rules, Basketball and Cricket, past Club committee member, current President of Australian Rules Football Club*) Geoff J Booth (*current nominee/manager of Gillen Club and Director of VCG Nominees*), Patrick N Black (*Chartered Accountant and principal of Black Business Consulting,*) and Andrew D Doyle (*Director of Frampton First National Real Estate, Licensed Real Estate Agent*).

- Oral evidence from Mr RJ Fraser Ms Angel Akarana, Mr Geoff Booth, and others stating the following:
 - That the Club is in serious financial difficulties,
 - That the Club is unable to borrow funds commercially from normal financial institutions;
 - That Club management and their advisors consider that this proposal is the Club's only available means of remaining viable, paying off its debts and improving its financial performance into the future;
 - That the intention is to provide a venue to attract membership focussed on the following:
 - ❖ Family activities in a safe and controlled environment;
 - ❖ Sporting organisation activities including fundraising opportunities, areas for functions and somewhere they can call 'home';
 - ❖ Opportunity for charity groups and other non-profit groups to utilise venue for fundraising, meetings etc;
 - ❖ Other groups with the aim of shoring up a robust base.
 - That the intention is to effect capital improvements and an upgrade of the venue as follows:
 - ❖ In the first stage, VCG to spend approx \$825,000 on a relocation and fit out of a new reception area with associated office/service facility to gaming room, a refresh of the internal fitout with replacement of ceiling tiles, painting, new carpet and new floor tiles, an upgrade of toilets, an upgrade of kitchen to current standards and to support an increased membership, the establishment of a sports bar with TAB facilities, new bar tops and taps and an extension of bar into newly created Alfresco area catering for 300 patrons, a children's playground and play stations, new furniture throughout venue, 14 new gaming machines, new point of sale system, 8 plasma TV screens and CCTV throughout.
 - That the intention is to provide improved and additional services to Club members including the following:

- ❖ a kitchen service offering 'value' priced, family suitable meals 7 days a week at both lunch time and dinner time with children's meals and treats promoted.
 - ❖ A sports bar with all TV sports options, TAB and Keno.
 - ❖ An alfresco area used not only for dining but also for corporate functions, members functions, weddings and birthday parties with a permanent stage erected at the rear of the premises; and
 - ❖ Ten (10) to fifteen (15) new fulltime staff largely trained at the venue.
- That the Club will be run by a Board of Management in the manner successfully adopted by the Gillen Club;
 - That the proposed lease arrangement is fair and reasonable in all the circumstances;
 - That the Club Committee obtained the support of members of the Club at its AGM to explore the proposed sale/leaseback arrangement with VCG and later held information sessions and Special Meetings to ensure that all members were fully informed of the proposals;
 - That the members supported the proposal at a Special Meeting on 5 July 2009 with in excess of a 3/4 majority (72 to 19);
 - That the benefits to the community of retaining the Club into the future and in having a modern facility on the eastside of town will be tremendous; and
 - That even in the first year of operation, the proposed nominee has budgeted for \$36,000 worth of donations back to community and sporting associations.
- 4) The Club currently has a licence allowing for fourteen (14) gaming machines on the premises. Ten (10) machines are currently installed. Pursuant to Section 49(1)(c)(v)(C) of the Act, the Commission has grounds to suspend or cancel a Gaming Machine Licence if it considers that "*payments for the rental or lease of the club's licensed premises are unreasonable*". The Commission has considered carefully all of the evidence put forward by the Club and VCG Nominees who submit that the rental rate of twenty (20%) on the lessor's total capital expenditure (ROCE) is reasonable.

- 5) The proposed rate is based in part on an earlier arrangement approved by the Commission for the Gillen Club where a rental rate of eighteen (18%) of the Lessor's ROCE was accepted as reasonable. The joint submission of VCG and the Club is that the extra 2% in the rental rate sought by VCG in this matter takes account of VCG's higher exposure to risk. In particular, the Club has only a maximum of 14 gaming machines from which a steady income can be drawn as compared with an income from 45 gaming machines at the Gillen Club.
- 6) When considering the reasonableness of the proposed rent, the Commission has sought independent financial advice from Merit Partners, Chartered Accountants. The Commission's concern was to ensure that the rental was not so high as to be potentially burdensome on the Club and its ability to continue as a viable entity in a commercial environment. The Report received made the comment that based on the existing level of operations, the proposal to return 20% of the purchase costs to VCG appears unviable, without a substantial increase in the level of income to support the cost. Provision of more detailed information and analysis of the estimated increased level of operations was sought to demonstrate how the capital injections would increase the income and profitability of the Club.
- 7) The opportunity was afforded to VCG and the Club to consider the report obtained and provide further information to address the concerns raised. A response was received from Mr Patrick Black including budget projections for the new Club Eastside Inc. for the financial year ended 30 June 2011 extrapolated out to 2014. These projections detail estimated expenses relating to the Club, including proposed lease payments, after the improvements have been made and project that the Club will become profitable in 2013. It is noted however that \$36,000 worth of donations is budgeted for in the first year of operation to assist community and sporting groups. The budget projects are, in Mr Black's considered view, conservative.
- 8) VCG and the Club are confident that the proposal will be successful, just as the Gillen Club has been successful. Mr Booth sees the Eastside as an untapped market where a refurbished, well-run community club offering good dining and entertainment in an alfresco setting will be well received. He anticipates that the budget projections provided to the Commission are conservative and both he and VCG's experienced accountant, Mr Black have great confidence in a strong food and beverage trade once established.
- 9) The Commission has considered the extra information provided by the Club and Mr Black in support of their request that the Commission provide support to the proposal to allow it to proceed. After careful consideration and with some reservations, the Commission accepts the proposed rental as reasonable in all the circumstances. In reaching this decision, the Commission has also taken account of the Club membership's clear support for this arrangement and the approval by the Minister for Planning and Lands of the conversion of the 'Club land' from a Crown Lease to a freehold title in

the Club's name which in turn allows the sale/leaseback proposal to take place. The Commission has also taken account of the Club's inability to borrow funds commercially from normal financial institutions such that this proposal appears to be the Club's only available means of remaining viable into the future.

- 10) The Commission accepts the evidence provided by Mr Booth that as well as having an obvious commercial objective, there is also a genuine collateral objective of seeing the local community served by the Club's revitalisation and its proposed financial support for community and sporting groups.
- 11) In reaching this decision, the Commission notes that it is reasonable of the lessor to seek to protect its investment by ensuring an efficient standard of day to day management of the Club's business operations. The Commission accepts Mr Geoff Booth as nominee on the proviso that he is accountable only to the Executive Committee of the Club.

DECISION

- 12) The Commission approves the adoption of the new constitution and the proposed new management arrangements.
- 13) For the purposes of Section 170 of the Act, the Commission approves the proposed lease back to the Club from VCG Nominees such that the lease in its presently proposed form is exempted from any adverse application of either that section or of Section 49(1)(c)(v)(D) or (E),
- 14) The Commission determines the rent formula to be not unreasonable for the purposes of the application of Section 49(1)(c)(v)(C) of the Act.
- 15) The foregoing approvals are conditional upon and subject to:
- a) the satisfactory completion by the Director of all probity checks and investigations of all persons and entities as in his absolute discretion he shall see fit, inclusive of any Unit Holder in the Trust at any time; and
 - b) the execution of enabling documentation by the Licensee and VCG Nominees in the forms submitted to the Commission for the purposes of these approvals.
- 16) The nomination of Mr Geoff Booth as Manager pursuant to Section 25(2) of the *Liquor Act* is supported and will continue to be processed and finalised by the Director in the normal course.

Richard O'Sullivan
CHAIRMAN
30 December 2009