

LEGISLATIVE COUNCIL SELECT COMMITTEE
ON THE PROPOSAL TO DEVELOP ROSEHILL

INQUIRY INTO THE PROPOSAL TO DEVELOP ROSEHILL RACECOURSE

Hearing: 9 August 2024

SUPPLEMENTARY QUESTIONS

Mr Timothy Hale SC, Vice Chair and Director, Australian Turf Club

I, Timothy Hale SC, provide the following answers to the Supplementary Questions asked of me. As requested, each question and answer is on a separate page.

Question 1:

Mr Garry Charney has given evidence to this committee that: "I think if we continue the way we are going, there will be no industry in 50 years' time. I think there has to be radical change and that gaming is going to decrease – the gaming revenue is going to decrease. Our social licence to engage with gaming revenue is going to decrease, in some ways. It's hugely problematic, so there has to be changes". Do you agree?

If not, why not?

Answer:

Garry Charney and I were once fellow junior barristers at the NSW Bar. I have the greatest respect for him. In this instance, the opinion he expresses is very broad and general and based upon many unstated premises and assumptions. A number of things need to be said about his opinion.

First, Garry's perspective is the regulator's perspective (RNSW), which is part of the executive branch of Government. This is different again from the perspective of the legislative branch of Government. The Australian Turf Club, by contrast, is a corporation. It is a company limited by guarantee under the *Corporations Act 2001*. The directors of the ATC have a duty to the company as a whole, which is primarily to its members. In a sense, the members own Rosehill Racecourse. It is their land. Therefore, for the directors of the ATC, the question is whether the sale of Rosehill is in the best interests of the ATC members.

Secondly, while wagering income is vital, it is not the ATC's only source of income. As the ATC Annual Reports show, in 2023, the ATC commercial revenue was \$82.5 million up from \$72.8 million in 2017. In 2023 the ATC received revenue of \$85.14 million from TAB distributions compared with \$87.6 million in 2018. The ATC has already been making changes and has been endeavouring, with some success, to ever increase its commercial revenue so as to be less reliant on gaming revenue.

Thirdly, while there may well be a risk to gaming income in the future which must be addressed, the Annual Reports of RNSW do not suggest such a risk is presently upon us. Although TAB distributions may be declining, the wagering revenue that RNSW

receives from other sources is increasing. In 2023 RNSW received a total of \$512 million from wagering revenue of which \$177 million came from TAB distributions and \$335 million from other wagering revenue, up from \$314 million in 2022. In 2018 other wagering revenue was \$171 million.

Question 2:

Do you believe that a reasonable person, discharging their duties with a degree of care in these circumstances, would explore alternative long-term revenue streams to wagering?

Answer:

Of course, a reasonable person in the position of the directors of the ATC would explore alternative long term revenue streams to wagering. That is what the ATC has been doing for some time. The expansion of non-race day commercial activities is such an example, as is the proposed Randwick Hotel development and the investigation of the possible sale of surplus land.

Question 3:

As a practicing barrister, are you also engaged by clients to prepare the detailed feasibility modelling, capacity and demand assessments, or other data analysis that is required to establish a business case or valuation for large scale development proposals?

Answer:

In my practice at the Bar of more than 40 years, my many areas of practice have included an expertise and specialty in property development and property matters, including the valuation of land. My curriculum vitae can be downloaded from my professional web site. Over many decades I have worked with and called valuers to give expert valuation evidence, which usually involves the valuer preparing a draft valuation report for me to settle, usually in conference with the valuer. This means I check and test his/her conclusions, and that the draft report is in accordance with valuation principles and of sufficient quality to be presented in evidence. I also cross examine the valuer(s) and other experts for the other party and make submissions about the strengths and weaknesses of expert valuation reports. In short, although the valuer or expert will do the modelling and data analysis, my role is to check the quality of the work that has been done by the expert and expose any weaknesses.

Question 4:

Would you agree that this is a niche and complex body of work requiring a mix of planning, economic, and data analytical skills and professionals?

Answer:

Yes I agree that this is an area of professional expertise.

Question 5:

In your evidence you stated that “I have a great deal of difficulty in accepting, and I have never accepted, that figure of \$5 billion”.

- (a) *Have you undertaken your own detailed modelling, assessments, or other data analysis specific to this proposal to form that view?*
 - i. *If not, have you relied on external professional advice to form that view?*
- (b) *Have you been provided with any valuations? If so, have you raised your scepticism with those who prepared it? If not, why not.*
 - i. *If so, what concerns do you continue to hold about those valuations and why could they not be addressed?*

Answer:

- (a) I have not carried out my own modelling. One of the reasons I have difficulty in accepting the valuation figure of \$5 billion is because I have never seen a valuation to support that figure. As I said in my evidence on 9 August 2024 at page 22, the figure seems to be based on \$200,000 a dwelling times 25,000 dwellings. A project for the development of 25,000 dwellings would take decades to construct and sell. Therefore, the profit and risk factor would be very high. Also, the sale proceeds/ revenue would be received over such a long period that for valuation purposes the sum would need to be brought back to present value, which would significantly reduce the valuation figure.
 - i. See the answer to (b) below. Also, with the permission of the Chairman, I spoke to a well-respected valuer with whom I have worked for many years and who is familiar with land values in the locality. I did not disclose Project Wattle but spoke to him in terms of land values if surplus ATC lands were sold at Rosehill as part of the Camelia Town Centre. That discussion strengthened my view.
- (b) Yes. The directors of the ATC were provided with a summary of the valuation that Mr McGauran referred to in evidence at page 10 and it appears Mr McMahon was referring to in the last answer on page 9. It is the valuation of \$1.6 billion. The valuation consultants HillPDA were engaged by the ATC and provided a valuation which was part of what was referred to as the HillPDA Feasibility Presentation (the PDA valuation), and which appears to be dated 15 March 2024. That valuation was summarised, as was a report by WT Partnership, quantity surveyors, in a report to the Board dated 18 April 2024. I am unaware whether the Committee has a copy of the PDA valuation or the report to the Board of 18 April. The reference in the evidence to a valuation of \$1.6 billion is a reference to the HillPDA valuation. The HillPDA valuation and the summary of it were, of course, confidential. However, in view of the reference to the valuation of \$1.6 billion, both in the evidence before the Committee and subsequently in the media, the conclusion and opinion reached in the HillPDA valuation has ceased to be confidential.

Although I have only seen the summary of the HillPDA valuation provided to the Board, I do not have any scepticism about that valuation. To the contrary, it is entirely consistent with my approach to the valuation of the land. On the

assumption of the Metro Station, the rezoning for Rosehill Racecourse for 25,000 dwellings and the construction and sale of those dwellings over 43 years, the HillPDA valuation concluded that net present value of the land is \$1.6 billion. It also concluded that the receipt of sale proceeds amounting to \$5 billion would not take place until 2052, that is in 28 years' time. The total net return has been calculated by HillPDA using the Estate Master Modelling and is summarised in *Annexure 1 HillPDA Estate Master Summary*.

Question 6:

In your evidence, you also stated that “I would have thought a substantial majority of members will vote against this proposal when it comes to the members, if things stay as they are”. Do you agree that, having first been considered in general terms in November 2023, a significant body of work is now required to establish the full scope, costs, benefits and risks of a proposal of this scale?

(a) Can the ATC board, or members, make an impartial assessment of it, that is in the best interests of the club, before having received the full details of a final proposal?

Answer:

I agree-that a significant body of work is now required to establish the full scope, costs benefits and risks of a proposal of this scale. The members will need to decide on the evidence and information before them whether the net benefits that will accrue to the ATC and its members, taking into account the inherent risks of the proposal, will outweigh the loss of Rosehill Gardens Racecourse.

(a) With respect, I am not clear what is intended by sub question (a). What is meant by the connection between the members being able to make an “*impartial assessment*” of the proposal and the need for them to have “*the full details of a final proposal*”? I am confident that members can make an “*impartial assessment*” whatever level of detail of information is provided to them. However, the less information that is provided, the less compelling is the case for the sale of Rosehill. Nor do I agree with what appears to be implicit in the question, namely that it is only if members have the full details of the final proposal that they will be in a position to make an informed assessment of the proposal or an impartial assessment of it. For example, if the proposal is developed to the point that it is apparent that it is not feasible, the members would be in a position to make an informed decision about it without further costs being incurred to develop “*the full details of a final proposal*”.

17September 2024

Tim Hale SC