

Decision Notification

Application Details

Application no.	84138
Licence No.	57200376
Premises Name	Barzaar
Premises Address	166 Unley Road UNLEY SA 5061
Licensee	The Unley Community Sports Club Inc
Applicant	The Unley Community Sports Club Inc
Application Type	Application for Removal of Gaming Licence
Representative	Didier Vollerin - Australian Hotels Association

Outcome

Decision	Refused
Effective Date	20 Dec 2021

Reasons for Decision

The applicant Unley Community Sports Club Inc currently holds a Club liquor licence and gaming licence at the premises “BarZaar” at 166 Unley Road, Unley. There are 30 gaming machines in operation at the premises and approval for a maximum of 31 machines. The Club has applied to the Liquor and Gambling Commissioner (“the Commissioner”) to remove the liquor and gaming licence to new premises located at 186 Unley Road, Unley.

Section 27F of the *Gaming Machines Act 1992* (“the Act”) states that the Commissioner may approve the removal of a gaming machine licence and the relocation of gaming machine entitlements from premises A to premises B if:

- the licensing authority has granted an application for the removal of a liquor licence from premises A to premises B;
- if premises A and premises B are in the same locality; and
- in the case of a designated application, the applicant has satisfied the requirements set out in the community impact assessment guidelines.

The Commissioner must also have regard to the matters set out in section 15(5)(a) of the Act to the extent that they are relevant to the application.

Further, section 27G of the Act states that the Commissioner may, after receiving an application for the removal of a gaming machine licence, determine that the application is to be a designated application for the purposes of section 17A of the Act. The Commissioner has had regard to that provision and has determined that this is a designated application.

A designated application may only be granted if the Commissioner is satisfied that it is in the community interest to do so. In determining this application under section 17A of the Act, I must have regard to:

- the harm that might be caused by gambling, whether to a community as a whole or a group within a community; and
- the cultural, recreational, employment or tourism impacts; and
- the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and any other prescribed matter.

I must also apply the community impact assessment guidelines which state: *“The onus is on the applicant to satisfy the Commissioner that the grant of the application is in the community interest and to provide relevant evidence and submissions to discharge this onus.”*

The applicant has submitted a community impact submission. I will have regard to this submission, the application itself and supporting material in making my determination.

Background

The current premises are located at 166 Unley Road, Unley and have been described by the applicant as “the home of the Sturt Football Club” (“Sturt”). Sturt Football Club is based at the nearby Unley Oval.

The Unley Community Sports Club Inc. (“the Club”) is the applicant and current licensee. The Club’s constitution refer to its objects as:

1. promoting and supporting the game of Australian Football; and
2. promoting and encouraging the playing of such other forms of athletic sports as the Board from time to time determines; and
3. becoming a member or associate member of a body or association that is relevant to the activities of the Community Club or the Football Club¹ as the Board from time to time determines; and
4. providing services and facilities for the purposes of supporting the football club and its community, including by managing venues and premises associated with the provision of such services; and
5. participating in community activities associated with the Football Club; and
6. providing facilities for members of the Football Club and the wider community; and
7. promoting the activities of the Football Club to the wider community; and
8. funding any activities associated with these objects or providing funding in connection with the activities of the Football Club; and
9. promoting any other activity which directly or indirectly encourages or fosters the playing of football by the Football Club, or which is otherwise incidental or conducive to the activities outlined above.

It is clear by reference to the 'objects' listed above that the Club is closely associated with the Sturt Football Club, as its sole purpose appears to be to support the Football Club and the constitution states "The members of the Board of the Football Club from time to time will be the members of the Community Club". However, it is important to note that Sturt Football Club is a separate legal entity and incorporated as an association, namely Sturt Football Club Inc.

Despite the obvious connection between the two associations, the applicant is the Unley Community Sports Club Inc, not the Sturt Football Club Inc. As such, the community impact submission and supporting materials must be read in that context.

Submissions

The submissions made by the applicant rely heavily on the purported impact on the Sturt Football Club and are summarised below.

According to the applicant, the current site of BarZaar is regarded as the 'home base' for Sturt, its players, members and supporters as Sturt has no gaming facilities at the oval. Also, Sturt only has access to dining and bar facilities at Unley Oval on home match days, which is just 10 days of the year.

The relocation to the proposed premises on Unley Road is due to recent development plans at the current site. The applicant maintains that the new premises will operate in a similar fashion to the existing facility. Whilst gaming machine usage is not expected to change, food options will be limited to pizza, hot dogs, toasted sandwiches and hot chips rather than the full bistro menu currently available. It is likely that only pre-packaged alcoholic beverages will be available as beer on tap will no longer be offered.

Notably there will be no special arrangements for children, there will be no 'kids menu' or other inducements such as drinks or food items that appeal to children. Also, from the plans submitted it appears that there is a very small seating area available outside the gaming area for those attending the premises with children, or for reasons other than gaming.

Although the new site is significantly smaller than the current premises, the applicant submits the existing premises (including a full bistro and alfresco area) were largely underutilised. In order to continue to operate in smaller premises, the applicant is of the view

that it will have to rationalise the non-gaming aspects of its business, such as bistro dining and tap beer.

As there are many restaurants and cafes in the vicinity of the premises, most of which serve meals throughout the day, the applicant believes that offering only a limited range of snack style food items will have no social impact on the community.

Harm

I note that the applicant is not seeking an increase in the number of gaming machines, it is simply purporting to relocate the existing gaming machines to a new site only a short walk away. As the new site is apparently the same distance from the Unley Oval, the applicant has not provided a detailed analysis of the locality.

At-risk or vulnerable groups have not been identified in the locality and the applicant submits that over the last 10 years there have been no incidents that would indicate an increase in 'harm' or anti-social behaviour attributable to the gaming venue. For that reason, the applicant maintains that the grant of this application would have no negative impact on the community.

I note that the nearest gaming facilities are the Cremorne Hotel 500m away and the Unley Hotel 700m away. Another five venues were also identified within the locality providing a further combined 185 active gaming machines (excluding the applicant's 30 machines). The combined total number of approved machines for the seven premises is 232.

Cultural, recreational, employment or tourism impacts

It has been put to the authority that the relocation of the venue is necessary for the survival of the applicant and the Sturt Football Club. The Club currently employs 15 people at the venue. The applicant has suggested that if the application is refused, the venue will be forced to close and all 15 staff members will be unemployed. It was also mentioned that there is no prospect of Sturt relocating its hospitality facilities to the Unley Oval, however, I must clarify that this is an application by the Unley Community Sports Club, not Sturt Football Club to relocate its gaming machine licence to a place other than Unley Oval.

The applicant has asserted that whilst BarZaar is not Sturt, its operations are critical to the football club's survival. It was submitted that Sturt employs approximately 100 part time coaches, trainers, instructors, doctors, therapists, statisticians, cleaners and water runners and also engages with a large number of football players. Sturt also manages training programs for over 60 volunteers, supporting university study, employment prospects, work experience and mental health wellbeing. According to the applicant, each year BarZaar devotes \$100 000 of its profits to Sturt Football Club Inc, which is used to fund staff and support the community programs described above.

I note that the applicant has referred to several detrimental impacts on the community should the application for removal be refused. It has stated that without the revenue generated by the gaming operations at BarZaar, Sturt would be unable to contribute to the Stage 2 development of Unley Oval, 15 staff members would be made redundant, operations at the football club would be reduced and many community programs would be cancelled or otherwise be adversely affected.

Social impact and impact on amenity

The applicant did not address the issue of the social impact or the impact the grant of the application would have on the amenity other than to assert that the existing venue is used as a meeting place for locals, and that it would be unfortunate to lose such a facility. A number of letters from local community groups and other stakeholders, purportedly showing support for the proposal have also been submitted.

Decision

This is an application for the removal of an existing gaming machine licence, to a smaller venue within the same locality. There is no proposed increase to the number of machines.

The applicant submits that as there is no change to the number of machines and the proposed new site is only a short distance from the existing venue, there is little, if any change to the impact on the community and on that basis the application should be granted.

I accept that whilst there may not be an increase in the number of machines, there is clearly a change to the focus of the business conducted under the licence. The applicant stated that it was difficult to find suitable premises within the locality, and so was forced to 'rationalise' its operations in order to fit into the smaller premises.

Given that the licensed premises have substantially reduced in size yet maintained the same number of gaming machines, it follows that its focus on gaming (rather than other social activities) has also changed. However, the applicant has not properly addressed the impact of this change on the community, particularly any potential harm associated with the significant shift in its business model.

The Community Impact submission refers to the venue as a 'meeting place for locals' and further, if the application is refused, the locals will 'lose their meeting place'. The applicant also states that as the premises are located on Unley Road and surrounded by restaurants, it is not imperative that it continue to provide meals at its new venue, as there are many other options available for patrons.

I find this argument contrary to the Club's position of providing a meeting place for locals. Whilst members of the public, including locals may attend the bistro at BarZaar to socialise with friends over a meal, it is unlikely that under the new model people would attend the premises simply for its food offerings. It appears that the new menu is aimed to cater for people simply looking for "a quick bite" either before, during or after their gambling session.

I note that the new venue provides seating for just 18 people in the café/lounge adjacent to the gaming room. The applicant has not addressed the impact on the community of the much smaller 'meeting place', nor has it mentioned the social impact for those who currently attend the premises for reasons other than gaming.

The applicant has described the current BarZaar venue as being regarded as the 'home base' for Sturt, its players, members and supporters. The new proposed venue appears to be a gaming room with a small area for gaming patrons to sit and eat and drink.

The plans as submitted show the gaming area is approximately 3 times larger than the lounge area. The applicant has not provided a description of the proposed layout and so it is not clear whether the gaming machines would be visible from the lounge, or from outside the venue, or whether there is any attraction for minors. In any event, there seems to be very little reason for members of the Club, locals or the public at large to attend the premises other than for the purpose of gambling.

It has been submitted that the Club currently employs 15 people at the venue and should this application be refused, those 15 people will lose their jobs. Given the proposed venue will be much smaller and without a bistro or alfresco dining area, it is fair to assume that several existing kitchen and wait staff will nevertheless also lose their jobs. Importantly, the applicant has not disclosed the number of staff to be employed at the new venue, nor mentioned the impact on those whose positions will be made redundant.

In respect of the cultural impact, I understand there is no requirement nor expectation that the club relocate to Unley Oval. I note many of the other SANFL Clubs have hospitality facilities not located at their home ground. I understand that it may have been difficult to find premises within the locality, but proximity to the existing venue should not be the only consideration.

The application included twelve 'letters of support' from local community groups and stakeholders such as the Gold Foundation, the Life Changer Foundation, Youth Inc. the Lobethal Football Club, the Glenunga Football Club, the River Murray Football League, the Unley Kindergarten and Primary School and St Mark's Lutheran School. These letters all refer to the contribution and support the Sturt Football Club has provided to their particular organisation.

There is nothing in the purported letters of support to show that members of the community either understand or support the current application before me. The applicant has stressed the importance of the Club's gaming operations to Sturt, however has not provided any evidence to indicate to the Authority that the community specifically supports the relocation of a gaming machine licence from a larger club/bistro style venue on Unley Road to a small gaming room with no other facilities further along Unley Road.

It appears that the applicant has relied upon the perceived detrimental impact should the application be refused, rather than demonstrating any positive impact on the community resulting from the relocation of the existing licence.

Having considered the merits of the application, I find that the scale of the proposed gaming operations is not relative

to the other business to be conducted at, or in connection with, the premises. In particular, the size of the proposed gaming operations on the premises would predominate over the undertaking ordinarily carried out on premises operating under a club licence.

The applicant has described the current BarZaar venue as being regarded as the 'home base' for Sturt, its players, members and supporters. The new proposed venue appears to be a gaming room with a small area for gaming patrons to sit and eat and drink. The applicant is encouraged to identify another venue for the purpose of removing the current operations of BarZaar to continue to support the Sturt Football Club.

Pursuant to s 27F(1)(a) of the Act, the Commissioner must not grant a removal of a gaming licence unless the removal of the liquor licence is approved. Section 60(1)(a) of the *Liquor Licensing Act 1997* requires the applicant for removal of a liquor licence to satisfy the applicant that the premises to which the removal of the licence is sought are of an appropriate standard for carrying on business under the licence.

I am not satisfied under s 60(1)(a) of the *Liquor Licensing Act 1997* that the premises are appropriate for carrying on the Club's liquor licence given the size of the bar and the small area proposed for seated consumption of liquor particularly when having regard to the relative size of the gaming operation.

Further, I cannot be satisfied that the grant of the application for removal of the gaming licence is in the community interest. Should this application be granted, it is likely to set an undesirable precedent by encouraging other sporting clubs to scale down their sporting or community activities in favour of simply operating a gaming room.

In accordance with section 24(1) of the Act the application is refused.

Under Delegation from the Liquor and Gambling Commissioner



Dini Soulio
Liquor and Gambling Commissioner
20 Dec 2021