

Corporate Report

NO: R009

COUNCIL DATE: January 17,

2005



REGULAR

TO: Mayor & Council DATE: January 11,
2005

FROM: City Solicitor FILE: 0930-30-178

SUBJECT: Proposed Sale of Orangeville Raceway Limited to
Great Canadian Gaming Corporation

RECOMMENDATIONS

1. That City Council permit the sale of the shares of Orangeville Raceway Limited ("Orangeville") to Great Canadian Gaming Corporation ("Great Canadian") subject to the satisfaction by Orangeville and Great Canadian of the terms and conditions of Council's permission recommended by staff in Appendix I to this report.
2. That City Council authorize the amendments to the Lease between Orangeville and the City of Surrey contained in Appendix I to this report.

INTENT

The intent of this report is to advise Council on Great Canadian's proposed purchase of the shares of Orangeville to enable it to take over and control the business and assets of Orangeville's Fraser Downs casino and racetrack located on the City's lands presently leased to Orangeville.

BACKGROUND

On March 1, 2004 the City of Surrey ("Landlord") leased its lands at the Cloverdale fairgrounds to Orangeville (the "Tenant") for the purpose of a casino and an enclosed grandstand and racetrack with associated pari mutuel betting (the "Lease"). The following is a brief summary of the Lease:

1. Leased Premises:

Lot 4 as shown on the attached lease plan on Appendix II – A new casino building of approximately \$25 million containing gaming machines owned and operated by the B.C. Lottery Corporation ("BCLC").

Lots 1 and 4 as shown on the attached lease plan on Appendix II – A horse racetrack with an enclosed grandstand combined with pari mutuel betting.

2. **Term and Renewals:**

Twenty years commencing April 1, 2004 with a right to renew for a further and final 10 year term at a new rental, subject to the continued use of the lands as a casino and racetrack under a BCLC Operating Agreement.

3. **Permitted Uses:**

Only a casino on Lot 4 and a horse racetrack with pari mutuel betting on Lots 1 and 4 provided the operation is under a BCLC Operating Agreement in good standing.

4. **Rent:**

In each year of the Term the Tenant pays the sum of the following:

Minimum Rent:

- (a) \$225,000 per annum in year one rising to \$300,000 in year six with Consumer Price Index ("CPI") increases beginning in year three. In years 7 to 20, Minimum Rent is increased by the greater of the CPI increase or the percentage increase in Pari Mutuel Gross Revenue; and

Percentage Rent:

- (a) 1% of any amount of the Net Win up to and including \$38,500,000;
- (b) 2% of any amount of the Net Win between \$38,500,000 and \$43,800,000; and
- (c) 4% of any amount of the Net Win greater than \$43,800,000.

Net Win is defined as gross monies wagered by patrons less payouts to winners.

In 2005 the Tenant will likely achieve the 4% level of percentage on the amount of Net Win greater than \$43,800,000 because of the increase in the number of machines from 250 to 450 in October 2004. November 2004 Net Win increased to \$4,136,361.72 from \$2,830,361.40 in October, 2004 after the introduction of the additional 200 new machines. There remains however the question of the impact on the gaming revenue

of the Fraser Downs Casino from a new casino opening in Langley in 2005.

5. Other Financial Terms:

The Lease is a completely net lease to the Landlord with the Tenant liable for all construction costs, on and off site services and improvements, utilities, repairs, maintenance costs and property taxes. The Tenant is required to construct improvements of approximately \$25 million, including a casino, parking facilities and off site services.

6. Parking:

The Tenant must provide a minimum of 1,200 parking stalls, including related lighting, drainage, landscaping and paving, and 395 of the 1,200 parking spaces located on the Parking Easement Area are for use in common with the City.

Assignment of Lease, Subletting of Premises, Change in Corporate Control of Tenant:

Council has the sole discretion to approve (which approval may be arbitrarily withheld) any sale or transfer of the Tenant's shares (except among family members) that effectively changes control of the tenant, the assignment of the Lease or subletting of the leased premises.

DISCUSSION

Structure of Proposed Sale Transaction:

Great Canadian is proposing to acquire the business and assets of Orangeville, which includes the Fraser Downs Casino and Racetrack and the Sandown Racetrack in Victoria, through the purchase by Great Canadian of the shares of Orangeville. The following are the principal terms of the transaction:

1. Properties Purchased Closing Date:

Subject to the approval of City Council and the BCLC, Great Canadian proposes to close on January 31, 2005 the purchase of the majority of the shares of Orangeville which company holds the leases and operates the businesses of the Fraser Downs Casino and Racetrack and the Sandown Racetrack in Victoria.

2. Purchase Price:

The total purchase price for Orangeville is \$40 million plus an upward adjustment of the purchase price over the next three years after closing, based upon specified gaming "net win" revenue increases and Pari Mutuel Gross Revenue increases. The purchase price assumes that Orangeville holds in good standing the leases to both Fraser Downs and Sandown.

3. Conditions to be Satisfied Prior to Closing:

- (a) Surrey City Council approval of the change in control of Orangeville from the existing shareholders to Great Canadian.
- (b) BCLC approval.
- (c) No material change in legal or financial status of Orangeville.

City's Conditions to Consent to Sale of Shares of Orangeville to Great Canadian:

The staff recommended conditions to Council's agreement to the change in control of Great Canadian are outlined in Appendix I.

Great Canadian

Great Canadian is a public company with over 3,000 employees, with shares listed on the Toronto Stock Exchange (symbol GCE). It is the largest casino operator in BC with full service casinos in Coquitlam, Nanaimo, Richmond and Victoria. It also operates four casinos in Washington State and the Hastings thoroughbred racetrack in Vancouver.

Great Canadian opened the first phase of the River Rock Casino Resort in Richmond on June 25, 2004. According to Great Canadian's last annual report, its auditor's Deloitte Touche on February 6, 2004 signed the audited consolidated financial statements of Great Canadian and opined that the financial position of the company as at December 31, 2002 and 2003 presented fairly the results of its operations and its cash flows for those years ended, in accordance with Canadian generally accepted accounting principles. A copy of the latest financial statements of Great Canadian are available in my office.

CONCLUSION

City staff are recommending that Council approve the sale of Orangeville's shares to Great Canadian, subject to the satisfaction by those parties of the conditions set out in Appendix I of this report.

The casino management and operating experience of Great Canadian could likely be of benefit to the operation of Fraser Downs. Since Great Canadian operates the Hastings Park thoroughbred racetrack and other lower mainland casinos there may be synergies that can result from the joint marketing of these properties.

CRAIG MacFARLANE
City Solicitor

CM:mlg
Attach.

c.c. General Manager, Planning & Development
General Manager, Finance, Technology & HR

APPENDIX I

City's Conditions to Consent to Sale of Shares of Orangeville to Great Canadian:

The following is a list of conditions to be satisfied by Great Canadian and Orangeville before closing in connection with City Council's approval of the sale of the shares of Orangeville to Great Canadian:

1. Great Canadian to be added as a party to the Lease to ensure all Lease obligations of Orangeville are satisfied jointly and severally by Orangeville and Great Canadian.
2. Great Canadian will be required to be sole controlling shareholder and manager of Orangeville and any subsequent transfer of the Lease or the change in control of Orangeville is subject to Council's approval in its sole discretion.
3. BCLC approval of this transaction and obtaining a new Operating Agreement showing Great Canadian as controlling shareholder within meaning of *Canada Business Corporations Act*.
4. Revision to the definition of "Pari Mutuel Gross Revenue" in the Lease (for the purpose of minimum rent adjustment) to be consistent with industry terminology.
5. Refinement of the definitions of "Casino" on Lot 4 and "Racetrack" on Lots 1 and 4 in the Lease. These definitions need to be clarified to relate to existing approved plans and specifications. An amendment to Section J.5. "Subsequent Construction" (p. 47) to clarify that no expansion or replacement of improvements can take place outside existing plans and specifications without the Landlord's consent in its sole discretion.
6. Orangeville to be named as the owner on the existing Fraser Downs building permits.
7. Section J. in the Lease – Construction – p. 35 – Great Canadian must complete \$25 million in building and off site improvements by the specified completion date (365 days from Commencement and Construction). A satisfactory construction monitor's report is to be provided to the City.
8. Council approval by resolution of the applicable Lease amendments required.
9. Either new certificates of insurance to be provided in accordance with the Lease or a confirmation from the insurer that the change in control of Orangeville does not affect the insurance.
10. No material change in legal or financial status of Great Canadian or Orangeville.
11. Receipt of updated financial credit report on Great Canadian satisfactory to the General Manager, Finance.
12. Receipt of up to date financial statements from Orangeville and Great Canadian satisfactory to the General Manager, Finance.
13. Payment of all outstanding amounts owing under the Lease by Orangeville to the City.
14. Completion of all necessary corporate acts and steps by Orangeville and Great Canadian to complete the transaction to the satisfaction of the City Solicitor.