

**IN THE MATTER OF A ROYAL COMMISSION
INTO THE CASINO OPERATOR AND LICENCE**

**CROWN'S SUBMISSIONS REGARDING ITS OBLIGATION
TO SUB-LEASE THE MELBOURNE CASINO**

(Filed pursuant to leave granted on 3 August 2021, T4108.40-4109.30)

1. Under the Crown Lease – Melbourne Casino Site dated 19 November 1993,¹ as varied by the Deed of Variation dated 10 August 2010² (the **Lease**), Crown Melbourne leases the “Site” from the State for a 99 year term. The Site is the land bounded by the Yarra River, Clarendon Street, Whiteman Street and Queensbridge Street. It forms part of Crown Allotments 2324 and 2323, and is identified in plans annexed to the Lease.³
2. Clause 7.2 of the Lease permits Crown to sub-lease any part or parts of the Site. The Lease does not impose an obligation on Crown to sub-lease any part of the Site.
3. However, cl 26.5 of the Casino Management Agreement provides, *inter alia*, that if the casino licence is cancelled, the State may require Crown to grant a sub-lease of the “Melbourne Casino” to any new casino operator. It states:⁴

If the Casino Licence is cancelled or surrendered at any time, and the State determines that it wishes **a licence to be granted to a person other than the Company for the operation of a casino in the Melbourne Casino Complex**, the following provisions will apply-

- (a) the State shall give a notice to the Company informing the Company that the State requires the Company to **grant to the new casino operator a sub-lease of the Melbourne Casino** and the Company must do so in accordance with clauses 26.5(b) to (i) inclusive;
- (b) the sub-lease will commence on the date of issue of the new licence and end on the termination of the new licence or the termination of the Site Lease, whichever is the earlier;
- (c) the initial rental payable under the sub-lease will be the market rental as at the date of commencement of the sub-lease of the Melbourne Casino, as agreed between the State and the Company, and will be payable monthly in advance on the first Business Day of each month;
- (d) the sub-lease rent will be reviewed annually to the market rental as agreed between the sub-lessor and the sub-lessee, and failing agreement, determined in accordance

¹ CRW.512.262.0021 Crown Lease – Melbourne Casino Site.

² CRW.512.262.0001 Deed of Variation.

³ CRW.512.262.0021 Crown Lease – Melbourne Casino Site Part 1 (p .0027), cl 3.1 (p .0028), Schedule 1 (p .0046), as varied by CRW.512.262.0001 Deed of Variation cll 2-4 (p .0007).

⁴ COM.0005.0001.1056 at .1108 Consolidated Casino Management Agreement cl 26.5.

with clause 26.6 as if a notice had been issued under this clause on the anniversary of the commencement of the sub-lease;

(e) the sub-lessee will be liable to pay to the sub-lessor all outgoings which are properly attributable to the occupation and use of the Melbourne Casino;

(f) the sub-lease will contain all appropriate rights, including rights of access and egress over the Melbourne Casino Complex to the Melbourne Casino, as are necessary to enable the casino operator to operate a casino in the Melbourne Casino Complex;

(g) the other terms and conditions of the sub-lease will be similar to the terms and conditions of the Site Lease in so far as they relate to the Melbourne Casino and to the extent that it is appropriate to include them in the sub-lease;

(h) the form of the sub-lease shall be as determined by the State;

(i) the Company must use its best endeavours to facilitate the operation of the Melbourne Casino within the Melbourne Casino Complex and this obligation shall also be a term of the sub-lease. (emphasis added)

4. Accordingly, Crown Melbourne may be required to grant a sub-lease of the “Melbourne Casino”. That term is defined in cl 2 as follows:⁵

“Melbourne Casino” means those areas identified in the Drawings of the Melbourne Casino Complex as the areas which constitute a casino and includes the areas in which money counting, surveillance, storage and other activities related to the conduct and playing of games are carried on

5. “Drawings” is defined in cl 2 as follows:⁶

“Drawings” means:

(a) the plans, designs and working drawings relating to the Temporary Casino Complex provided by the Company and initialled by the State’s Nominated Representative on behalf of the State and the Company for the purpose of identification and described in Schedule Two; or

(b) the plans, designs and working drawings relating to the Melbourne Casino Complex provided by the Company and initialled by the State’s Nominated Representative on behalf of the State and the company for the purposes of identification and described in Schedule Two;

or such other plans, designs and working drawings authorised in writing by the Minister in accordance with section 16 of the Casino (*Management Agreement Act 1993*) ...

6. “Melbourne Casino Complex” is defined as follows:⁷

“Melbourne Casino Complex” means the Melbourne Casino and Ancillary Facilities and such other facilities as are nominated by the Company, with the approval of the Minister, as forming part of the Melbourne Casino Complex (*SVDV*) to be constructed

⁵ COM.0005.0001.1056 at .1067 Consolidated Casino Management Agreement cl 2.

⁶ COM.0005.0001.1056 at .1063 Consolidated Casino Management Agreement cl 2.

⁷ COM.0005.0001.1056 at .1067 Consolidated Casino Management Agreement cl 2.

on or located within the Site in accordance with the provisions of this document and the Casino Agreement

7. “Ancillary Facilities” is defined to include “hotel, restaurant, retail, recreation, entertainment and carparking facilities, residential and office accommodation, staff facilities, staff carparking, coach storage facilities and open space areas”.⁸
8. Accordingly, if the State determines that it wishes a licence to be granted to a person other than Crown Melbourne for the operation of a casino in the Melbourne Casino Complex, that part of the Melbourne Casino Complex that Crown is then required to sub-lease (the “Melbourne Casino”):
 - 8.1. is defined by reference to the Drawings. It is not identified by reference to the Lease, Certificates of Title, Crown Allotments or any other mechanism; and
 - 8.2. is limited to those areas within the Melbourne Casino Complex identified in the Drawings as “the areas which constitute a casino”.⁹
9. Crown has located a set of plans that it understands to be the Drawings.¹⁰ The plans identify some parts of the complex that answer the description “the areas which constitute a casino” (e.g., gaming floors, VIP salons and “casino back of house” areas) and others that do not (e.g., hotel, restaurant, carparking, retail and administration areas).
10. As a result, in the event of cancellation or surrender of the licence, the Management Agreement imposes an obligation to sub-lease only those parts of the Melbourne Casino Complex that are identified in the Drawings as “areas which constitute a casino” (if required to do so by the State). The Management Agreement does not impose an obligation on Crown to sub-lease the Melbourne Casino Complex in its entirety, or any part of the Melbourne Casino Complex other than those areas that constitute the Melbourne Casino.
11. Indeed, cl 26.5 clearly contemplates Crown continuing to operate the broader Melbourne Casino Complex, with the sub-lessee operating the Melbourne Casino *within* that complex. Sub-clause (f) expressly requires the sub-lease to include “rights of access and egress over the Melbourne Casino Complex to the Melbourne

⁸ COM.0005.0001.1056 at .1058 Consolidated Casino Management Agreement cl 2.

⁹ The term “casino” is not specifically defined in the Casino Management Agreement. Accordingly, cl 2 provides that, in the Casino Management Agreement, the term “casino” bears its meaning as defined in the *Casino Control Act 1991* (Vic), ie. “premises, or part of premises, defined as a casino for the time being under section 17” of that Act and shown in the Casino Boundary Plans approved under section 17 of that Act CRW.512.262.0093.

¹⁰ As set out in correspondence from Crown’s solicitors to Solicitors Assisting dated 9 August 2021, these plans broadly correspond with paragraph (b) of the definition of “Drawings”, save that some are not initialed and some are drawn to a different scale than that referred to in Schedule Two. Crown has asked the State and the VCGLR whether they have copies of the “Drawings” that are initialed and drawn to the scale referred to in Schedule Two. Crown does not have (but has offered to seek to obtain) copies of any “other plans, designs or working drawings authorised in writing by the Minister in accordance with s 16 of the *Casino (Management) Agreement Act 1993* (Vic)”.

Casino, as are necessary to enable the casino operator to operate a casino in the Melbourne Casino Complex”. Similarly, sub-clause (i) requires Crown to “use its best endeavours to facilitate the operation of the Melbourne Casino within the Melbourne Casino Complex”. There would be no need for such terms if the sub-lease were to cover the entire complex.

12. If Crown were required to grant a sub-lease under cl 26.5, the Lease would still remain on foot. Clause 7.13 of the Lease provides that Crown Melbourne covenants with the Minister to “promptly and strictly comply with each and all of its obligations pursuant to clause 26.5”.¹¹ Clause 9.1(b) of the Lease further provides that a failure by Crown to comply with its obligations under cl 26.5 of the Management Agreement may give rise to a right for the Minister to re-enter the site, at which point the Lease Term would absolutely determine.¹²
13. Crown accepts that the State may require it to grant a sub-lease of the Melbourne Casino under cl 26.5 in the event that the Melbourne Casino licence were to be cancelled. However, it submits that cancellation of the licence followed by such a requirement would not be in the public interest for the reasons referred to in its closing submissions, including:¹³
 - 13.1.the State benefits from the integration of the casino and resort sides of the business, including because of cross-subsidies between the casino and other parts of the resort;
 - 13.2.it should not be assumed that the operation of the licensed casino could be efficiently and effectively (or even practically) separated from the balance of the integrated resort. The evidence does not support such a finding. Crown is not aware of any integrated resort in the world that has been dis-integrated; and
 - 13.3.in Crown's submission, dis-integration of the integrated resort would be more likely to result in reduced casino tax, significant inefficiencies, an inferior offering for customers and employees and a substantially diminished offering to tourism and the State of Victoria.
14. In those circumstances, Crown respectfully submits that the Commissioner should not be satisfied that dis-integration of the integrated resort would deliver the same or even similar benefits that an integrated resort provides to the State of Victoria and to the broader Victorian community.

9 August 2021

¹¹ CRW.512.262.0021 Crown Lease – Melbourne Casino Site cl 7.13 (p. .0037).

¹² CRW.512.262.0021 Crown Lease – Melbourne Casino Site cl 9.1 (pp .0038-.0039).

¹³ Closing Submissions of Crown Melbourne and Crown Resorts at [A.39]; T4071.43-4072.24; T4073.23-T4075.4.