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Port Anchor – Application to vary Gaming Machine Licence; Application for Alteration to Licensed Premises

The applicant has applied to vary the conditions of the Gaming Machine Licence (**GML**) by way of varying the designated gaming area under the GML. I note that the variation is to occur in two stages:

1. Move the designated gaming area to the existing bistro/dining space whilst renovations are undertaken to the existing gaming room
2. Move the designated gaming area back to its previous position within the licensed area, which will be larger.

As a result of the renovations to the gaming room approval is also sought to alter the licensed premises under the *Liquor Licensing Act 1997* (**the LLA**).

Whilst there are effectively two variations to consider (Stage 1 and Stage 2) it is prudent to consider them together and focus on the final proposed gaming area, as presumably stage 1 will not occur if stage 2 is not approved.

In determining an application for a variation of a GML the Commissioner must have regard to the matters set out in section 15(5)(a) of the *Gaming Machines Act 1992* (**the GMA**) (to the extent they are relevant to the application). Upon initial assessment of the application, a number of concerns in relation to the application and these matters were flagged. These concerns were raised with the applicant by letter dated 25 November 2022 and the applicant was invited to address these matters. I note a response was received by this office and has been taken into consideration when determining this application.

In particular, concerns were raised in regard to the proposed final redefinition detracting unduly from the character of the premises, the nature of the undertaking carried out on the premises and the enjoyment of persons ordinarily using the premises (apart for the purposes of gaming).

In November 2022, the website for the premises invited patrons to “come and enjoy a traditional pub meal” and indicated that the premises prides itself with “fresh, affordable and delicious meals, 7 days a week”. The website went on to say, “Be sure to make a booking as tables fill fast and come and see what all the fuss is about”. The website promoted their menu, the Chef Specials’ and the affordability of their meals. The current floor plan of the premises has a clear focus on dining.

The proposed floor plan provided to the Commissioner in support of the application for redefinition does not appear to have a kitchen, the expansion to the gaming room appearing to have subsumed the area where the kitchen is currently located.

The proposed gaming room is also significantly larger than the current gaming room. Concern is held that the scale of the proposed gaming room is not relative to the other business to be conducted at, or in connection with, the premises. In particular, that the size of the proposed gaming operations on the premises would take away from the undertaking carried out at the premises currently, and would significantly detract from the enjoyment of persons ordinarily using the premises.

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The applicant submits that since the requirement to provide meals at hotels was removed, food trade has declined and kitchens are no longer viable for many licensed premises. The applicant submits that, once all stages of the redevelopment are complete there will be pizzas and other various hot food options available, as well as their intention to invite food trucks in the new beer garden at the rear of the premises. The applicant further notes that the kitchen at this hotel was in disrepair and not operating when the current licensee recently purchased the hotel, therefore the demolition of the kitchen will not impact any existing staff at the hotel. They also advised that they have amended their website to advise the public the kitchen is now closed.

The applicant provided updated plans of the ground floor for each stage which shows that the premises will transition from the gaming area being 102m² and the public/bar area being 100m² to the final stage where the gaming area will be 200m² and the public/bar area being 285m².

I have reviewed the proposed plans and whilst the public/bar area may be predicted to be 285m², I note that it appears a large portion of this is the beer garden to the rear of the premises and, based on the scale provided, the internal dining/function space towards the back of the venue would only be approximately 60m², with the remaining 220m² presumably being located outside by reference to the plans.

Legislative Framework

The application to vary the gaming area is made pursuant to s 27AA of the GMA which falls within Part 3 of the GMA. The Liquor and Gambling Commissioner (**the Commissioner**) has, subject to the GMA, an unqualified discretion to refuse an application under Part 3 on any ground, or for any reason, that the Commissioner thinks fit.

In considering the application, I have had regard to the objects of the Act, in particular:

(a) to ensure that gaming machine gambling is conducted responsibly, fairly and honestly, with regard to minimising the harm caused by gambling; and

...

(e) to ensure that the club and hotel gaming machine industry develops in a manner consistent with the needs and aspirations of the community and is in the community interest.

I am also mindful that gaming machine licences cannot be held without a liquor licence, indicating Parliament's intention that gaming is intended to be ancillary to and compliment the business conducted under the liquor licence, rather than subsume it.

If I were to approve this application (noting it applies to both stages) it would have the effect of turning the Hotel primarily into a gaming venue, given the internal floor space dedicated to gaming versus internal bar and dining for the public.

The Port Anchor Hotel is located on Church Street in Port Adelaide. As the website tells us, the Port Anchor Hotel (previously known as the Kent Hotel) opened in 1876, when it converted into a hotel from two stone houses.

It is one of the many pubs which contribute to the history of Port Adelaide. I acknowledge that Hotels generally in South Australia have been through many changes and demands as

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to what they must offer, as far back as the early 1800s when the registered publican was obliged to keep a light burning outside the front of the premises during the hours of darkness for the guidance of travellers (*Hotels and Publicans in south Australia 1836 – 1993*, 2nd Edition, J.L. (Bob) Hoad at p.11).

However, the constant that has remained throughout history is that Hotels have been a place of community where people can connect, the place for meetings small and large, public and private, meals shared with families and friends, a familiar place to enjoy a solo drink after work, celebrations, sporting club gatherings and a place for the unfamiliar tourist to have a drink or find a meal. Indeed, as J.L. Hoad notes, historically hotels were “frequently used for meetings of all kinds, the hotel having usually the only large room in the district.” (p.12)

I recognise there is no longer a requirement for hotels to offer meals at certain times of the day, however when that requirement was removed, it is unlikely it was contemplated that Hotels would seek to exploit that and reduce their bar and dining to a minimal area such that their gaming areas could be maximised.

The introductory remarks of the first edition of *Hotels and Publicans in South Australia* by J.L. (Bob) Hoad should be noted:

During the 150 years since the settlement of South Australia, the Hotel industry has played a very significant part in the development of the State in providing shelter and hospitality and facilitating a focal point for community activity.

Having regard to the objects of the Act, I am of the view that to allow this application would be inconsistent with object (2)(e) – that the club and hotel gaming machine industry develops in a manner consistent with the needs and aspirations of the community and is in the community interest.

I am of the view it would create an undesirable precedent whereby other GML holders could follow suit by reducing the size of their bar and dining to a minimal ‘footprint’ and maximise gaming which could ultimately lead to the collapse of the traditional Hotels that have played such a vital role in the history and social fabric of the State, which would negatively impact on the community and would be contrary to the aspirations of the public.

Whilst this application concerns a hotel in Port Adelaide, in considering the undesirable precedent it would set, I am also mindful of the potential impact it could have on country Hotels, arguably the lifeblood of the outback. The temptation for licensees to reduce overheads by reducing their bar and dining and rely largely on gaming for revenue could have a disastrous impact on country towns and tourism.

I have had regard to the applicant’s submission that the motive for increasing their gaming area is because it is no longer viable to run a kitchen, and am mindful that Hotels are subject to the vicissitudes of the economy, and like all businesses their profit margins fluctuate, and Hotels regularly change hands, are renovated and revived. Whilst commercial considerations may explain the motive for an application, those factors cannot be determinative when considering the broader impact the grant of this application would have and public interest considerations.

For all of those reasons, and in the exercise of the Commissioner’s unqualified discretion to refuse the application on any ground, I refuse the application.

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It follows that the application for alteration to licensed premises under the *Liquor Licensing Act 1997* is also refused.

Zoe Thomas
Assistant Director, Licensing
Delegate of the Liquor and Gambling Commissioner

21 March 2023