

CASINO (BURSWOOD ISLAND) AGREEMENT AMENDING BILL 1997

EXPLANATORY MEMORANDUM

GENERAL OUTLINE

This Bill seeks to amend the Casino (Burswood Island) Agreement Act 1985 to:

- ratify the amendments in the Seventh Supplementary Agreement to the Casino (Burswood Island) Agreement;
- entrench in the Act the Mandatory Articles to be contained in the Articles of Association of the Approved Company (that is, the new "Burswood" public company, to be approved by the Minister to hold, as part of the corporatisation of the Burswood Property Trust, all the units in the Trust);
- ensure that the Act contains for reference purposes a complete set of text of the Third, Fourth, Fifth and Sixth Amending Agreements; and
- enable the maintenance of an up-to-date text of the Agreement.

The long title, names the Act to be Amended

Clause 1

Names the amending Act.

Clause 2

Sets the commencement date.

Clause 3

Names the principal Act as the Casino (Burswood Island) Agreement Act 1985.

Clause 4

- (i) amends the definition of Agreement in section 3 of the Act to include the Seventh Supplementary Agreement; and
- (ii) defines the Seventh Supplementary Agreement, a copy of which is set out in Schedule 4 of the Bill.

Clause 5

Inserts new section 3A to:

- (i) ensure that the Act contains, for reference purposes, a complete set of the text of amending agreements; and
- (ii) enable the maintenance of an up-to-date text of the Agreement.

Clause 6

The insertion of section 4C ratifies the Seventh Supplementary Agreement and authorises its implementation.

Clause 7

The entrenchment of Clause 17A of and Schedule B to the Agreement through the insertion of section 10, means that the Mandatory Articles in the Articles of Association of the Approved Company (ie the new "Burswood" public company) to be approved by the Minister to hold, as part of the corporatisation of the Burswood Property Trust, all the units in the Trust, cannot be amended except by amendment to the Casino (Burswood Island) Agreement Act 1985. Clause 17A of the Agreement empowers the Minister to approve the Approved Company holding all the units in the Trust subject to the:

- (a) company's voting shares being quoted on the Australian Stock Exchange Limited;
- (b) Articles of Association of the company comply with the requirements set out in Schedule B of the Agreement; and
- (c) Memorandum and Articles of Association of the company must have been approved by the Minister.

Clause 8

Inserts Schedule 4 containing a copy of the Seventh Supplementary Agreement.

SCHEDULE 4

Casino (Burswood Island) Agreement Seventh Supplementary Agreement.

The Agreement is between the Minister for Racing and Gaming, Perpetual Trustees W.A. Ltd and Burswood Resort (Management) Limited.

Recitals

Cites the original agreement and all the amendments to date and indicates that the parties have agreed to further amend the State Agreement.

Clause 1

Outlines the intent of the definition and interpretations.

Clause 2

Acknowledges the State's commitment to securing the passing of the Casino (Burswood Island) Agreement Amendment Bill 1997 through the parliament as an Act by 20 September 1997.

Clause 3

Amends the definitions in the following manner :-

- (a) Defines Approved Company as the company to be approved by the Minister to hold, as part of the corporatisation of the Burswood Property Trust, all the units in the Trust (ie, the new "Burswood" public company).
- (b) Deletes the definition of Burswood Park Technical Committee as the committee was abandoned soon after the original development of the parklands was completed. The Committee's function was to consult with the Burswood Park Board, the Manager of the Trust and to make recommendations to the Minister or the Board on the development of the Burswood parkland.
- (c) Inserts a definition of the Gaming Commission of Western Australia.
- (d) Amends the definition of Manager of the Burswood Property Trust and provides for the possibility of a manager not being appointed as part of the corporatisation of the Trust so that, reference to manager in the Agreement is to be read as reference to the Trustee.
- (e) Inserts a definition of Mandatory Articles in relation to an approved company.
- (f) Amends the definition of Resort Complex to provide for the inclusion of land the subject of an order revoking a previous order made under section 21F(1b) of the Casino Control Act. This allows for the hotel site to be brought back to form part of the Resort Complex.
- (g) Amends the definition of Resort Site (ie, the Burswood Park Reserve) to incorporate the Tennis Centre Reserve into the Burswood Park Reserve and allows for the Resort Site to constitute some other area as notified in the Government Gazette pursuant to clause 6(2B) of the Agreement, but does not include the Site (ie, the casino complex) or any land which ceases to be part of the Site by virtue of an order made under section 21(F)(1b) of the Casino Control Act, that is, land, by virtue of the order, that does not form part of the casino complex.
- (h) Amends the definition of Site to include the additional land granted or leased to the Trustee for the purposes of the Agreement and provides for the inclusion of land the subject of an order revoking a previous order made under section 21(F)(1b) of the Casino Control Act. However, the definition of Site in clauses 6, 9(1) and 9(3) does not include any additional land granted or leased by the trustee for purposes of the Agreement.

Clause 4

- (a) Amends Clause 6(1)(c)(iii) to remove the restriction on the Gaming Commission nominees to the Burswood Park Board being limited to only members of the Commission.
- (b) Inserts new sub-clauses 2A, 2B, 2C and 2D.

Sub-clause 2A means the State may from time to time determine the boundaries of the Resort Site or amend the boundaries of the Resort Site to:

- (i) increase or decrease the area of the Resort Site with the consent of the trustee and the manager; or
- (ii) decrease the area of the Resort Site pursuant to clause 23(3)(a).

Sub-clauses 2B and 2C set the effective dates when the determination of the boundaries of the Resort Site or an amendment of the boundaries of the Resort Site, as appropriate, are effective.

Sub-clause 2D requires the State to amend the class "C" reserve created pursuant to clause 6(1)(c) if the Resort Site is amended pursuant to sub-clause (2A).

- (c) The insertion of new clause 6(5) means:
 - (i) the State may, on the recommendation of the Minister, cause part or parts of any land excised from the Resort Site (but not exceeding in aggregate of 10 hectares) be granted or leased to the Trustee on terms and conditions approved by the Minister by notice published in the Government Gazette; and
 - (ii) the State may also pay or direct monies received from the Trustee for the land granted or leased to the Trustee to the person who was the registered proprietor of that land immediately prior to its acquisition by or on behalf of the State. This is in recognition of the fact that not all the land comprising the Resort Site was originally Crown land.

Clause 5

Deletes the reference to the Burswood Park Technical Committee in relation to the Resort Site as the committee is no longer necessary.

Clause 6

Amends the heading by replacing the reference to Committee's with Commission's, as the Gaming Commission replaced the Casino Control Committee when the Gaming Commission Act 1987 came into operation in 1988.

Clause 7

Deletes clause 12 of the Agreement as Burswood Park Technical Committee is no longer necessary.

Clause 8

Deletes reference to the founders of the Burswood Casino Complex as the provisions of the clause go beyond the issue of units and options in the Burswood Property Trust to the founders.

Clause 9

Clause 14 is amended by inserting clause (ca) to authorise the Manager to issue further units in the Trust to the public or otherwise at a price and under terms and conditions as to the payment of the price, approved by the Minister, to facilitate the corporatisation of the Trust. The Scheme of Arrangement to be approved by unit holders for the corporatisation of the Trust will authorise the Manager issuing further units in the Trust.

Clause 10

- (a)
 - (i) Inserts new paragraph (ea) prohibiting the Approved Company authorised to hold all the units in the Trust as part of the corporatisation of the Burswood Property Trust, from being able to alter or amend the Memorandum or Articles of Association without the prior approval of the Minister.
 - (ii) Inserts new paragraph (eb) prohibiting the approved company otherwise disposing of the units in the Trust without the prior approval of the Minister.
- (b) Subject to the Approved Company being granted approval by the Minister in accordance with clause 17(A) to acquire all the units in the Trust, paragraph (g) is amended to increase from 5 per cent to 10 per cent the total aggregate number of units on issue in the Burswood Property Trust that any person shall be entitled to hold. The reference to the Australian Associated Stock Exchanges is amended to refer to the Australian Stock Exchange Limited.
- (c) This new paragraph (ga) stipulates that there will be no breach of the Mandatory Articles of the Approved Company.
- (d) Insertion of paragraph (ia) is to ensure that there can be no change in the ownership or control of a future Operation Management Agreement without the prior approval of the Minister.
- (e) Without the Minister's consent, paragraph (m) means the Approved Company is not able to carry on any investment or business activity which the Trustee would not have power under the Trust Deed to be involved in.

- (f) Clause 17A provides for the Minister to approve a company acquiring and/or redeeming or cancelling all the units in the Trust as long as all the units in the trust are held by a company provided:
- (i) the company is a public company incorporated in Australia and the voting shares of which are capable of being listed on the Australian Stock Exchange Limited and the Minister must be reasonably satisfied that the company's voting shares will be listed on the Australian Stock Exchange;
 - (ii) the Memorandum and Articles of Association of the company be approved by the Minister; and
 - (iii) the Articles of Association comply with the requirements of the Mandatory Articles set out in Schedule B.

Clause 11

Amends the heading of clause 18 to read Excess Holding of Units and Options and breach of Mandatory Articles.

Clause 12

- (i) Amends clause 18 to become sub-clause 1 and provides for the Minister's authorisation under clause 17A for the limitations of 10 per cent and 40 per cent contained in paragraphs (g) and (l) of clause 17(1) respectively to be exceeded.
- (ii) Notwithstanding paragraph (ga) of clause 17 (1) stating that there should be no breach to the Mandatory Articles, new sub-clause (2) provides that if the directors of an Approved Company, as soon as possible upon becoming aware of a breach of those articles, enforce compliance with those articles under the enforcement provisions of the Mandatory Articles, a breach of the Mandatory Articles shall not constitute a breach of the Agreement.

Clause 13

- (a) Amends clause 23(2)(b) so that the obligation of the Trustee under sub-clause (1)(c) continues in force so long as the Resort Site, exclusive of the part or parts thereof to be dedicated as public streets pursuant to clause 6(1)(d) is not decreased subject to the:
 - (i) excision of land in accordance with sub-clause (3); and
 - (ii) determination or amendment of the boundaries of the Resort Site pursuant to clause 6(2A).
- (b) The insertion of sub-clause (2B) means the Tennis Centre Reserve land, which is being incorporated into the Burswood Park Reserve land and forms part of the definition of the Resort Site (by virtue of sub-clause (h) of clause 3 of the Seventh Supplementary Agreement) remains under the control and management of the

Board even if the Board, with the prior approval of the Minister and the Trustee, leases the whole or part of the Tennis Centre Reserve land to Tennis West. As a result, the obligation of the Trustee under sub-clause (1)(c) continues in force as long as the Resort Site remains under the control and management of the Board.

(c) (i) The insertion of paragraph (aa) means that without affecting the obligation of the Trustee under sub-clause (1)(c), the State shall be at liberty to excise from the Resort Site any part or parts of the Resort Site agreed to be granted or leased, on the recommendation of the Minister, to the Trustee under clause 6(5).

(ii) The amendment to paragraph (a) of sub-clause 3 authorises the State, without affecting the obligation of the Trustee under sub-clause (1)(c), to excise with the agreement of the Trustee for any other purpose provided the area or aggregate of the areas so excised shall not, without the consent of the Trustee exceed, whichever area is the greater of:

- 10 per cent of the area of the Resort Site as at 3 January 1986 (ie 10 per cent of 97.9333 hectares); or

- 10 per cent of the aggregate of the area of -

(A) the Resort Site at the time of excision; and

(B) any land that has been excised from the Resort Site pursuant to paragraph (aa).

Clause 14

Amends clause 24(2)(aa) to reflect the fact that the hotel has been excluded from the operation of the Agreement.

Clause 15

Amends clause 35(2) to extend it to the new clauses 6(5), 14(ca), 17(1)(ea), 17(1)(eb), 17(1)(ia), 17(A) that the consents or approvals of the Minister or the Commission shall be at the absolute discretion of the Minister or the Commission whichever the case may be.

Clause 16

Updates the addresses and facsimiles listed in clause 36.

Clause 17

Deletes the reference to Committee and substitutes Commission in the clauses listed in the table.

Clause 18

Deletes the reference to Committee's and substitutes Commission's in the clauses listed in the table.

Clause 19

Inserts Schedule "B" setting out the requirements of the Articles of Association that must be complied with pursuant to clause 17A.

- (1) (a) Limits to 40 per cent of the aggregate total number of shares on issue in the Approved Company that foreign shareholders may hold, subject to the Minister granting approval for a specified person to exceed this limit.
- (b) Limits to 10 per cent of the aggregate total number of shares in the Approved Company that any person shall be entitled to hold, subject to the Minister granting approval for a specified person to exceed this limit.
- (c) Ensures that at any particular time, no less than two-thirds of the directors of the Approved Company have been appointed by a resolution of shareholders in respect of which no votes attaching to any substantial foreign shareholding are counted.
- (d) Confers powers on the directors of the Approved Company to enable the directors to enforce restrictions referred to in paragraphs (a), (b) and (c).
- (e) Unless otherwise approved by the Minister, the name of the Approved Company must include the word "Burswood".
- (f) The head office of the Approved Company must be located in Western Australia.
- (g) Any one shareholder of the Approved Company is limited to nominating or appointing one member of the Board of Directors of the Approved Company.
- (h) At least two-thirds of the directors of the Approved Company to be Australian citizens.
- (i) The presiding director at board meetings to be an Australian citizen.
- (j) The Approved Company to remain incorporated in Australia.
- (k) The appointment of an auditor must be approved by the Minister.
- (l) The Approved Company is to make available information for inspection by the Minister, the Commission, or the Commission's nominated representative, and the Commission or the Commission's nominated

representative is entitled to attend and speak at meetings of the Approved Company in the same terms as clauses 19 and 20 of the Agreement respectively apply to the Burswood Property Trust.

- (2) Defines a person as having a relevant interest in a share in the Approved Company by reference to the Corporations Law.
- (3) Sets out how a person who is not an Australian citizen is ordinarily resident in Australia at a particular time is to be determined for the purposes of the Mandatory Articles in the same manner as that question is determined under the Foreign Acquisitions and Takeovers Act 1975.
- (4) Sets out how a substantial foreign shareholding is to be determined for the purposes of the Mandatory Articles.
- (5) Defines terms contained in the Mandatory Articles.

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